



**HON'BLE MR. JUSTICE  
CH. MUSHTAQ AHMAD  
JUDGE LAHORE HIGH COURT,  
LAHORE**

**(NOV. 07, 2014 TO APR. 06, 2021)**

Hon'ble Mr. Justice Ch. Mushtaq Ahmad was born on 7-4-1959. He hails from the fertile lands of Punjab and his native village is Head Faqirian, Tehsil Malikwal, District Mandi Bahauddin. His Lordship passed his Secondary School Examination from Government High School, Mona, District M.B.Dine in the year 1974., F.A. from Government Degree College, Bhalwal in 1976, completed his graduation from Government Degree College, Sargodha in the year 1978 and passed his LL.B. Examination through Federal Law College, Islamabad affiliated with University of the Punjab in 1984.

His Lordship was enrolled as an Advocate in the year 1985 and started legal practice as Member, District Bar Association, Rawalpindi. He was enrolled as an Advocate High Court in the year 1987 and practiced in the field of law till 1998 when His Lordship joined the judicial service through competitive examination and was appointed as Additional District & Sessions Judge in the year 1999.

In February, 2007 His Lordship was promoted as District & Sessions Judge and remained posted as Special Judge, Anti-Corruption, Bahawalpur for three years; as District & Sessions Judge, Rajanpur; Special Judge, Anti Terrorism Court No.I, Gujranwala, District & Sessions Judge, Toba Tek Singh and District & Sessions Judge, Nankana Sahib. In recognition of His

Lordship's abilities as a brilliant judge with great administrative qualities and judicial bent of mind with well articulated and comprehensive grasp on the intricacies of law, He was elevated as Judge of Lahore High Court Lahore on 07-11-2014.

His Lordship delivered numerous landmark judgments on different points of law and significantly contributed in development of precedential jurisprudence particularly on the criminal side of law, which not only ensured administration of expeditious justice but also provided guidelines for district courts to rightly comprehend and correctly decide cases.

As Judge of High Court, other than delivering remarkable judgments, His lordship also made notable contribution on different assignments of administrative nature. He remained Chairman Performance Evaluation Committee for District Judiciary. His Lordship also remained Inspection Judge for District Courts of Mianwali, Chiniot and Jhang. His Lordship further remained part of different committees of High Court being a member as listed below:

### **Member committee**

- Member Proforma Promotion Recommendation Committee for District Judiciary.
- Member Performance Evaluation Committee for District Judiciary.
- Member Rules Committee (CPC).
- Member Rules Committee (Under Section 554 Cr.P.C 1898).

## CONTENTS

No.	Citation	Area of Law	Page
1.	Sajjad Ahmad Waseem Vs. State, PLJ 2015 Cr.C (Lah.) 313	Post arrest bail Application: Offence under Section 489-F, PPC	01
2.	Haji Muhammad Boota Vs. State, PLJ 2015 Cr. C (Lah.) 409	Pre-arrest bail: Offence under Sections 457, 380, PPC	03
3.	Ghulam Mustafa Vs. State, PLJ 2015 Cr. C (Lah.) 424	Murder reference: Personal vendetta..... offence under Section 6 read with Section 7 of Anti-Terrorism Act, 1997 was not established	05
4.	Hammad Haider Vs. State, PLJ 2015 Cr.C. (Lah.) 590: 2016 YLR 2640	Criminal Appeal: Plea of self defense	17
5.	Muhammad Khan Vs. State, PLJ 2015 Cr.C. (Lah.) 621	Post-arrest bail: Offence under Sections 302 of Pakistan Penal Code	21
6.	Mst. Ayesha Malik Vs. SHO, PLJ 2015 Lah. 1065	Writ Petition: Where continuation of process of Court would result in futile exercise and undue harassment, it would be in fitness of things to quash proceedings	23
7.	Muhammad Mukhtar Vs. SHO, PLJ 2015 Lah. 1068	Writ Petition: Quashment of FIR at stage of investigation is not contemplated under law	27
8.	Muhammad Afzal Vs. State, 2015 YLR 2665 (DB)	Criminal Miscellaneous: suspension of sentence.	33
9.	Mst. Nasim Akhtar Vs. Pervez Akhtar, 2015 YLR 2524	Writ Petition: when findings were based on insufficient evidence, mis-reading of evidence, erroneous assumption of facts and non-consideration	35

		of material evidence, High Court could interfere while exercising constitutional jurisdiction	
10.	Umer Hayat Vs. State, PLJ 2015 Cr.C. (Lah.) 588	Criminal appeal: compromise.....fasad-fil-arz	43
11.	Muhammad Yar Vs. State, 2016 MLD 261	Criminal Appeal: Where prosecution version is disbelieved, statement of accused is to be considered as a whole and not in piecemeal	47
12.	Mudassar Hanif Vs. State, 2016 MLD 502	Criminal Appeal: If prosecution evidence was disbelieved by the Trial Court, the position taken by the accused under S. 342, Cr.P.C. was to be accepted or rejected as a whole.	53
13.	Auranzeb Vs. Masood Hussain, 2016 MLD 644	Civil Appeal: While dismissing the application for temporary injunction any observation by the trial Court about maintainability of suit was an illegality and excess of jurisdiction	59
14.	Noor Elahi Vs. Muhammad Mehboob, 2016 MLD 840	Civil Revision: Production of additional evidence in Appellate Court	63
15.	Abdul Sattar Vs. ASJ, 2016 MLD 911	Writ Petition: custody and disposal of property pending trial	67
16.	Muhammad Arshad Vs. State, 2016 PCr.LJ 1089 (DB)	Criminal Appeal: Promoting peace and harmony between the families as well as in the society, permission was granted to compound the offence of qatl-i-amd	73
17.	Muhammad Irshad Vs. State, 2016 PCr.LJ 1319 (DB)	Criminal Appeal: Ocular account, being indivisible in nature, could not be	77

		made basis for conviction in absence of strong corroboratory evidence coming from independent source	
18.	Muhammad Sadiq Vs. State, 2016 PCr.LJ 1390 (DB)	Criminal Appeal: Evidence collected through modern devices (CD etc.) was admissible in evidence under Art.164 of Qanun-e-Shahadat, 1984	85
19.	Pakistan Medical Association Vs. Ministry of National Health, 2016 PLC (C.S.) 676	Writ Petition: Person could be said to be aggrieved only when he/she was denied of a legal right by someone who had a legal duty to perform an act with regard to such right---Justifiable right should be in existence to give jurisdiction to the High Court in the matter	95
20.	Asadullah Rafique Vs. State, PLJ 2016 Cr.C (Lah.) 21	Bail before arrest: Offence under s section 489-F, PPC	103
21.	Muhammad Shafi Vs. State, PLJ 2016 Cr.C (Lah.) 31	Criminal appeal: Evidence of prosecution witnesses regarding involvement of co-accused in the alleged occurrence was not relied upon by learned trial Court; therefore, it was not safe to record conviction against appellant	105
22.	Javed Akhtar Vs. State, PLJ 2016 Cr.C (Lah.) 105	Criminal appeal: extra judicial confession..... accused is entitled to benefit of doubt if it arises from facts and circumstances of case	109
23.	Muhammad Waqas Vs. State, PLJ 2016 Cr.C (Lah.) 152	Post-arrest bail: Offences under Sections 367-A, 377, PPC	113

24.	Malik Iqbal Hussain Samita Vs. State, PLJ 2016 Cr.C 180	Criminal Revision: -To summon proposed witness along with record was sine qua non for ascertaining real facts regarding stance of parties	115
25.	Muhammad Zaman Vs. State, PLJ 2016 Cr.C (Lah.) 196	Post-arrest bail: Offences under Sections 380, 457, 411, PPC	117
26.	Umar Farooq Vs. State, PLJ 2016 Cr.C (Lah.) 199	Criminal Appeal: Co-accused persons were attributed similar role and were acquitted by the trial Court on the same evidence. On the basis of similar facts and circumstances and the evidence led by the prosecution, no charge was proved against present appellant beyond reasonable doubt	119
27.	Muhammad Saleem Vs. State, PLJ 2016 Cr.C (Lah.) 201	Criminal Appeal: While placing reliance on extra judicial confession, utmost care and caution was to be exercised	123
28.	Sajjad Ahmad Waseem Vs. State, PLJ 2016 Cr.C 241	Pre-arrest bail: offence under Section 489-F, PPC	129
29.	Ghulam Mustafa Vs. State, PLJ 2016 Cr.C (Lah.) 702 (DB)	Criminal Appeal: When main stay of prosecution (ocular account) is found untrust worthy and unreliable, evidence of recovery which is supporting in nature only would not advance case of prosecution	131
30.	Muhammad Akram Vs. State, PLJ 2016 Cr.C (Lah.) 716 (DB)	Criminal Appeal: Accused nominated with specific role ...Interested witnesses--Lalkara--Benefit of doubt--	139

		Ocular account--	
31.	Ahmed Ali Vs. State, PLJ 2016 Cr.C (Lah.) 732 (DB)	Criminal Appeal: -Motive-- Substitution is rare phenomena	145
32.	Mst. Yasmeen Riaz Vs. Riaz Ahmad, 2016 YLR 321	Civil Revision: Relief by way of delivery of possession in a suit for specific performance would spring out of contract for sale and would be incidental to main relief of specific performance granted in the suit	151
33.	Muhammad Shafi Vs. State, 2016 YLR 769	Criminal Appeal: It was not possible to accept the inculpatory part of the statement of accused, and to reject the exculpatory part of the same statement	155
34.	Mehdi Hassan Vs. State, 2016 YLR 1329	Criminal Appeal: Qatl-i- amd, attempt to commit qatl-i-amd and common intention---Appreciation of evidence---Benefit of doubt	163
35.	Mst. Ayesha Malik Vs. SHO, 2016 YLR 2106	Writ Petition: After her admission of having contracted marriage with respondent, there remained no case, or charge to be tried	169
36.	Dr. Aaqib Habib Malik Vs. Judge Family Court, 2016 CLCN 26	Writ Petition: Constitutional jurisdiction was not to be exercised in routine but only to foster the ends of justice	173
37.	Muhammad Sarwar Vs. State, KLR 2016 Cr.C 19 (DB)	Criminal Appeal: Offence under Section 9(c) of the Control of Narcotic Substances Act, 1997.... Reduction of sentence	175

38.	Raja Muhammad Ghayas Vs. Tasawar Liaquat, etc., 2016 CLJ 789	Writ Petition: Tenant who after receiving the notice about transfer of rented premises fails to pay rent to successor landlord would be defaulter	177
39.	Muhammad Amanat Khan Vs. State, 2016 MLD 1884	Post arrest bail: Offences under Sections 302/392 P.P.C. and 13/20/65 A.O	181
40.	Muhammad Ali Vs. State, 2017 MLD 194 (DB)	Criminal Appeal: - Enhancement of compensation awarded under S. 544-A, Cr.P.C--- Condonation of delay in filing appeal against conviction	185
41.	Muhammad Ajmal Vs. State, 2017 MLD 266 (DB)	Criminal Appeal: - Improvement inconsistent with the case set up in the FIR, as well as change of role of accused qua fatal fire shot in the private complaint, cast serious doubt on the veracity of ocular testimony	193
42.	Abdul Waheed Vs. ASJ, 2017 MLD 1319	Writ Petition: -Non-granting physical remand by the Magistrate was a judicial function and complainant in a criminal case had locus standi to file revision petition being an aggrieved person	201
43.	Javed Iqbal Vs. State, 2017 MLD 1440	Criminal Appeal: Benefit of doubt.... Neither the prosecution declared a witness as hostile nor he was given-up	205
44.	Shabbir Hussain Vs. State, 2017 MLD 1861	Cancellation of bail: Offence under section 489-F PPC	213



45.	Aurangzeb Vs. State, 2017 PCr.LJ 699 (DB)	Criminal Appeal: -Incident was unseen... Skeleton/dead body, had been recovered prior to arrest of accused.... Benefit of doubt	217
46.	State Vs. Razia Bibi, 2017 PCrLJ 1377: KLR 2017 Cr. C 91	Criminal Appeal: -If prosecution failed to prove its case against accused person, the accused was to be acquitted even if he had taken a plea and thereby admitted killing the deceased	223
47.	Ghulam Mohi-ud-Din Vs. State, PLJ 2017 Cr.C (Lah) 5	Post arrest bail: offence under Sections 17/22 E.O	231
48.	Muhammad Sarwar Vs. State, PLJ 2017 Cr.C (Lah) 13 (DB)	Criminal Appeal: single fire shot was attributed to appellant--Extreme penalty of death is not justified	233
49.	Muhammad Ibrahim Vs. State, PLJ 2017 Cr.C (Lah) 19	Post arrest bail: Offence under Sections 302/109/34, P.P.C	241
50.	Muhammad Irfan Vs. State, PLJ 2017 Cr.C (Lah) 57: 2017 MLD 382	Criminal Appeal: mitigating circumstances	243
51.	Safdar Hussain Vs. State, PLJ 2017 Cr.C (Lah) 62 (DB)	Criminal Appeal: Appellant was inclined to take his wife to his home but she refused, it aggravated situation which ultimately led to unfortunate incident--Death penalty was not warranted and alternate sentence of imprisonment for life was sufficient to meet ends of justice	249
52.	Iftikhar Vs. State, PLJ 2017 Cr.C (Lah) 74 (DB)	Criminal Appeal: Impugned judgment was silent about criminal liability of appellant....	255

		Community of intention as contemplated u/S. 34, PPC was an important question which was left undecided-- Impugned judgment was set aside and case was remanded.	
53.	Muhammad Haroon Vs. State, PLJ 2017 Cr.C (Lah) 133	Post arrest bail: Offence under Sections 337-A(i), A(iii), L(ii)/34, PPC	259
54.	Riaz Ali Vs. State, PLJ 2017 Cr.C (Lah) 139 (DB)	Criminal Appeal: evidence of a close relative cannot be discarded merely on ground of relationship with deceased or complainant provided it rings true and finds support from an independent source	261
55.	Nadeem Amjad Vs. State, PLJ 2017 Cr.C (Lah) 256 (DB)	Post arrest bail: offence under Sections 23, 27 of Drugs Act, 1976	265
56.	Muhammad Shahid Vs. State, PLJ 2017 Cr.C (Lah.) 415	Criminal Appeal: when there is no explanation as to where was original complaint--State of affairs, FIR could not be treated as dying declaration to be made basis for recording conviction	267
57.	Asmat Ullah Khan Vs. Ansar Javed, PLJ 2017 Lah. 438	Writ petition: Revision against order passed by magistrate refusing discharge of accused was not competent	273
58.	Muhammad Ishaq Vs. State, PLJ 2017 Cr.C (Lah.) 800	Criminal appeal: Section. 25-D--Anti-Terrorism Act	275
59.	Talib Hussain Vs. State, 2017 YLR 436: 2016 LN 1240 (DB)	Criminal Appeal: -Motive was not alleged by prosecution---Presence of witnesses of ocular account at the place of occurrence at relevant time had become	281

		doubtful	
60.	Ghulam Farid Vs. State, 2017 YLR Note 31	Criminal Appeal: - Complainant had made improvements in his version while appearing in the witness box before the Trial Court--Ocular account in the case was not believable---Charge against the accused had not been established	293
61.	Rao Khalid Anjum Vs. Shams-ur-Rehman, 2017 YLR Note 69: 2015 LN 261	Regular First Appeal: - Right of fair trial... - Question whether cheque was without consideration after amount having been paid, or otherwise, was a factual controversy	303
62.	Behram Vs. State, 2017 YLR Note 237	Criminal Appeals: Confessions, though were retracted by accused persons, but same were corroborated through evidence of accused and medical evidence---Same was reliable piece of evidence	307
63.	Ghulam Murtaza Vs. State, 2017 YLR Note 255	Criminal Appeal: Statement of accused recorded under S.342, Cr.P.C. had to be accepted as a whole when prosecution witnesses had been disbelieved	317
64.	Muhammad Azam Vs. State, 2017 YLR 1576: PLJ 2017 Cr. C (Lah) 840	Criminal Appeal: Evidence of "Wajj Takkar"	323
65.	Muhammad Riaz Vs. State, 2017 YLR 2465: PLJ 2017 Cr. C (Lah.) 845	Post arrest bail: Offence under sections 337-F(v), 148, 149, P.P.C.	329
66.	Muhammad Sarwar Vs. State, 2017 CrLJ 184	Pre- arrest bail: Offence under Sections 377L	331

		(ii)\452\354\147\ 149, PPC	
67.	Nosher Ali Vs. State, KLR 2017 Cr.C 78	Criminal Appeal: Ocular account, Medical evidence and Recoveries	333
68.	Muhammad Saeed Vs. State, KLR 2017 Cr.C 86	Criminal Revision: Delay in filing private complaint.... longer the complaint was delayed, the lesser would become the chance of believing its truth	339
69.	Iqbal Nisar Vs. State, PLJ 2017 CrC 705: 2017 YLR Note 110	Criminal Appeal: Medical evidence alone is not sufficient for conviction when presence of eye witnesses is found doubtful	345
70.	Muhammad Saleem Vs. State, PLJ 2018 Cr.C. Lahore 54	Post arrest bail: Offence under Sections 4/8-23 Foreign Regulation Act, 1947 & Sections 3 & 4 of Anti Money Laundering Act, 2010, read with Sections 109, 420, PPC	351
71.	Abdul Majeed Awan Principal Government college of Commerce, Burewala District, Vehari Vs. DCO, Vehari, PLJ 2018 Lahore 117	Writ Petition: Prior permission of Chief Secretary to proceed against officer in BPS- 19.... Punjab anti- Corruption Establishment Rules 1974	353
72.	Muhammad Afzal Vs. State, PLJ 2018 Lahore 125: 2018 LN 380 Lahore	Writ petition: Concurrent sentence..... Discretionary powers of Court--Duty of Court	355
73.	Noor Muhammad Vs. State, PLJ 2018 Cr.C. 192	Post arrest bail: Offence under Section 489-F PPC	359
74.	Khurshid Ahmad Vs. State, PLJ 2018 Cr.C. Lahore 601	Post arrest bail: Offence under Sections 496-A, 376, PPC.	361
75.	Muhammad Imran Vs. Addl. Sessions Judge, Tehsil Jahanian, district	Writ petition: Offence covered under the Punjab Loud Speaker Ordinance,	365

	Khanewal, PLJ 2018 Lahore 616	2015	
76.	Muhammad Shahzad Vs. State, PLJ 2018 Cr.C. Lahore 728	Criminal Appeal: Suspension of execution of sentence	367
77.	Shah Muhammad Vs. State, PLJ 2018 Cr.C. Lahore 749	Criminal Appeal: weakness of motive	369
78.	Bashir Ahmad Vs. State, PLJ 2018 Cr.C. Lahore 796	Criminal Revision: inefficiency/mala fide on the part of -Medical officer	375
79.	Muhammad Azam Vs. Shahzad Akhtar, 2019 MLD 551 Lahore	Criminal Appeal: Ascendance.... double presumption of innocence attached to acquittal	377
80.	State Vs. Muhammad Ramzan,etc, PLJ 2019 Cr.C. 11	Murder Reference: - Reliability and trustworthiness of evidence	387
81.	Allah Ditta Vs. State, PLJ 2019 Lahore 33	Writ Petition: Conviction could not be impliedly construed to be under Section 7 of ATA, merely on basis of forum of trial or joinder of charges under threat	395
82.	Qasim Vs. State, PLJ 2019 Cr.C. 169	Post arrest bail: Offence under Sections 379, 337A(i), A(vi), F(v), L(ii), 148/149, PPC	399
83.	Muhammad Tahir Vs. Government of Punjab through Secretary home Department Lahore, PLJ 2019 Lahore 514	Writ Petition : Name of a person can be inserted repeatedly in list of 4th Schedule of ATA, 1997 provided some fresh evidence or material is surfaced on record	401
84.	Asif Hussain Vs. ADJ,Sahiwal,etc, PLJ 2019 Lahore 534: YLR 2020 Lahore Note 3	Writ Petition: Mere statement of an accused before police and report submitted by police before Court may not be relevant as compared to opinion of	403

		experts	
85.	Zeeshan alias Sani Vs. State, 2019 PLJ Cr.C 577: 2019 YLR 2547	Criminal Appeals: Appreciation of Evidence-- Night time occurrence-- Acquittal	407
86.	Ghulam Abbas Vs. State, PLJ 2019 Cr.C. 1048	Criminal Appeal: Granting an opportunity to to cross examine witnesses.	417
87.	Rabnawaz Vs. State, PLJ 2019 Cr.C. 1066	Criminal Appeal: Suspension of sentence-- Statutory ground	419
88.	Muhammad Azam Vs. State, PLJ 2019 Cr.C. 1068	Criminal Appeal: Suspension of sentence-- Statutory ground	421
89.	Fayyaz Hussain Vs. State, PLJ 2019 Cr.C. 1162	Criminal Appeal: Suspension of sentence..... Statutory right	423
90.	Mazhar Iqbal Vs. State, PLJ 2019 Cr.C. 1202	Pre Arrest bail: Offences under Sections 337-A(ii), 337-F(i), 148, 149 PPC	425
91.	Imran Khan Vs. State, PLJ 2019 Cr.C. Note 12	Pre-arrest bail: offences under Sections 337-A(i), 337-A(ii), 34, PPC	427
92.	Muhammad Siddique Vs. State, PLJ 2019 Cr.C. (Note) 93	Criminal Appeal: Suspension of sentence	429
93.	Gulzar Ahmad Vs. State etc, PLJ 2019 Cr.C. (Note) 126 Lahore	Criminal Appeal: Benefit of doubt....	431
94.	Muhammad Junaid ur Rehman Vs. The State, 2020 PCr.LJ 310 Lahore	Post arrest bail: Offences under sections 11-EE(4)/ 11-F(2) / 11F(5) / 11-F(6) / 11-J / 11-N / 11-H / 11-I/11-W(2) of Anti-Terrorism Act, 1997	437
95.	Muhammad Asif alias Acchi Vs. The State, 2020 PCr.LJ Note 28 Lahore	Criminal Appeal: Murder Reference...	439
96.	Muhamad Ishfaq Vs. State etc., PLJ (Cr.C)	Post arrest bail: Offence under Sections	447

	2020 Lahore 1	420/468/471, PPC	
97.	Shaukat Ali Vs. State, PLJ 2020 Cr.C. (Note) 21 Lahore	Pre-arrest bail: Offence under Section 406, PPC	449
98.	Rana Sanaullah khan Vs. State, PLJ 2020 Cr.C Lahore 300	Post-arrest bail: Offence under sections 9(c)/15/17 of Control of Narcotic Substances Act, 1997 read with Sections 186/189/225/353 PPC	451
99.	Muhammad Asghar Vs. State, PLJ 2020 Cr.C. Lahore 439	Pre-arrest bail: Offences under Sections 462-C, 379, PPC	459
100.	Hafeez Ullah Vs. State, PLJ 2020 Cr.C. Lahore 753	Bail before arrest: Offences under Sections 386, 447/511, 337-F (i), 148, 149, PPC	461
101.	Muhammad Afzal Vs. Muhammad Hussnain, PLJ 2020 Cr.C. Lahore 1648	Criminal Appeal: Cheating and dishonestly--Essential ingredients	463
102.	Muhammad Boota Vs. State, PLJ 2020 Cr.C. Lahore 1738	Pre-arrest bail: offence under Section 406 PPC.	467
103.	Mumtaz Ahmad Vs. State, PLJ 2020 Lahore 96	Writ Petition: Preparation of Qalandra	469

**PLJ 2015 Cr.C. (Lahore) 313**  
**[Multan Bench Multan]**  
**Present: CH. MUSHTAQ AHMED, J.**  
**SAJJAD AHMAD WASEEM--Petitioner**  
**versus**  
**STATE and another--Respondents**

CrI. Misc. No. 1197-B of 2015, decided on 19.3.2015.

**Criminal Procedure Code, 1898 (V of 1898)--**

---S. 498--Pakistan Penal Code, (XLV of 1860), S. 489-F--Pre-arrest bail--Confirmed--Dishonestly issued a cheque--Offence u/S. 489-F, PPC does not fall within prohibitory clause of Section 497(1), Cr.P.C.--Record did not show that petitioner/accused was a previous convict--He has already joined investigation and no recovery was to be effected from him--Trial against petitioner has already been commenced and he was appearing before trial Court--Sending petitioner behind bars at this stage would serve no useful purpose for prosecution--Provision of Section 489-F, PPC was not intended by legislature to be used for recovery of amount in dispute; same was designed to determine guilt and award sentence--Remedy for recovery of amount has been provided in Order XXXVII, C.P.C.--Bail was confirmed [P. 314] A

*Mr. Muhammad Bilal Butt*, Advocate for Petitioner.

*Mian Abdul Qayyum*, APG for State.

*Ch. Muhammad Siddique*, Advocate for Complainant.

Date of hearing: 19.3.2015.

**ORDER**

This petition has been moved seeking, pre-arrest bail in case FIR No. 297/14 dated 06.06.2014 under Section 489-F, PPC registered with Police Station Mumtazabad, Multan.

2. Allegation against the petitioner, in brief, is that he dishonestly issued a cheque of Rs. 10,00,000/- to the complainant, which on presentation before the concerned bank was dishonoured.

3. Arguments heard and record perused.



4. Offence under Section 489-F, PPC does not fall within prohibitory clause of Section 497(1), Cr.P.C. Record did not show that petitioner/accused was a previous convict. He has already joined investigation and no recovery is to be effected from him. Trial against petitioner has already been commenced and he is appearing before the trial Court. Sending the petitioner behind the bars at this stage would serve no useful purpose for the prosecution. Provision of Section 489-F, PPC was not intended by legislature to be used for recovery of amount in dispute; same was designed to determine the guilt and award sentence. Remedy for recovery of amount has been provided in Order XXXVII, C.P.C.

5. In view of above, this petition is allowed and ad-interim pre-arrest bail already granted to the petitioner by this Court is confirmed, subject to his furnishing bail bonds in the sum of Rs. 2,00,000/- with one surety in the like amount to the satisfaction of trial Court.

(A.S.) Bail confirmed

**PLJ 2015 Cr.C. (Lahore) 409**  
**[Multan Bench Multan]**  
**Present: CH. MUSHTAQ AHMAD, J.**  
**Haji MUHAMMAD BOOTA--Petitioner**  
**versus**  
**STATE & another--Respondents**

Crl. Misc. No. 719-B of 2015, decided on 23.2.2015.

**Criminal Procedure Code, 1898 (V of 1898)--**

---S. 498--Pakistan Penal Code, (XLV of 1860), Ss. 457, 380--Bail before arrest--Confirmed--Further inquiry--Though offences allegedly committed by petitioner were not compoundable but fact was that complainant was not ready to support charge against petitioner--accused before Court--He has submitted an Affidavit in this respect which has been placed on file--In circumstances case of petitioner needs further probe falling within ambit of Section 497(2), Cr.P.C.--Petition was accepted and ad-interim pre-arrest bail already granted to petitioner by High Court was confirmed. [P. 410] A

*Ch. Muhammad Shafique*, Advocate with Petitioner.

*Mr. Hassan Mehmood Khan Tareen*, D.P.G. for State.

Complainant in person.

Date of hearing: 23.2.2015.

**ORDER**

This petition is moved by *Haji Muhammad Boota*, petitioner for the grant of pre-arrest bail in case FIR No. 922 dated 8.12.2014 registered under Sections 457, 380, PPC at Police Station Model Town, District Vehari.

2. Allegation against the petitioner is that he alongwith his co-accused committed theft at the shop of the complainant and took away mobile phones and cash amount.

3. Complainant *Rao Muhammad Akbar* present in Court has submitted Affidavit whereby he has exonerated the petitioner mentioning therein that he has settled the dispute with the petitioner and he has no objection to the acceptance of his pre-arrest bail petition.

4. Learned law officer after going through the police file has submitted that the parties have effected compromise outside the Court.

5. Heard. Record perused.

6. Though the offences allegedly committed by the petitioner are not compoundable but the fact is that complainant is not ready to support the charge against the petitioner-accused before the Court. He has submitted an Affidavit in this respect which has been placed on the file as 'Mark-A'. In the circumstances case of the petitioner needs further probe falling within the ambit of Section 497(2), Cr.P.C. Resultantly, this petition is accepted and the ad-interim pre-arrest bail already granted to the petitioner by this Court is confirmed subject to his furnishing fresh bail bonds in the sum of Rs. 1,00,000/- with one surety in the like amount to the satisfaction of the trial Court.

(A.S.) Bail confirmed

**PLJ 2015 Cr.C. (Lahore) 424 (DB)**

**[Multan Bench Multan]**

**Present: QAZI MUHAMMAD AMIN AHMED AND CH. MUSHTAQ  
AHMAD, J.**

**GHULAM MUSTAFA and others--Appellants**

**versus**

**STATE and others--Respondents**

Crl. A. No. 20-ATA of 2009, Cap. Sentence Ref. No. 13 of 2009, Crl. Appeal No. 29-J-ATA of 2010, heard on 18.2.2015.

**Pakistan Penal Code, 1860 (XLV of 1860)--**

---S. 302(b)--Conviction and sentence--Challenge to--According to said PWs, accused came and started firing at deceased as well as injured--Their presence at time and place of occurrence was well explained--Record revealed that Dr. conducted medical examination of injured, whereas Dr. conducted post-mortem examination on dead bodies--Both of them noted injuries sustained by deceased well as injured--According to post-mortem report fire-arm injuries were found on dead bodies--Injuries attributed to appellants caused by fire-arm were noted by both PWs--Ocular account in this case was corroborated by medical evidence--All above mentioned appellants came together and caused injuries to deceased and injured in furtherance of common object--Prosecution successfully proved charge against appellants beyond reasonable doubt--After going through evidence, observed that it was version of PWs that all accused came together and started firing--In such like situation it was not probable that PWs could have taken a photographic view as to who had fired at whom during incident--Moreover, appellants in their statements recorded u/S. 342, Cr.P.C. stated that complainant party had earlier murdered five persons of their party which showed that both parties have been indulged in taking law into their own hands--It was not a case of extreme penalty--Present occurrence was also a result of personal vendetta--Offence u/S. 6 read with S. 7 of Anti-Terrorism Act, 1997, therefore, was not established on record--After re-appraisal of evidence available on record and going through impugned judgment, Court were inclined to maintain conviction

recorded by trial Court u/S. 302(b), PPC but commute death sentence to imprisonment for life--Appeals were partly allowed. [Pp. 432 & 433] A, B, C & D

*Malik Muhammad Saleem, Rana Muhammad Nadeem Kanju, Mr. Mudassar Altaf Qureshi, Malik Imtiaz Haider Maitla, Advocates for Appellants.*

*Mr. Nazar Muhammad Nonari, Advocate for Complainant.*

*Malik Riaz Ahmad Saghla, DPG for State.*

Date of hearing: 18.2.2015.

## **JUDGMENT**

**Ch. Mushtaq Ahmad, J.**--Ghulam Mustafa and Muhammad Siddique have filed Criminal Appeal No. 20-ATA of 2009 against their conviction and sentence, whereas Muhammad Akhtar and Abdul Hameed appellants have filed Criminal Appeal No. 29-J-ATA of 2010 against their conviction. Besides these appeals, Capital Sentence Reference No. 13 of 2009 has been sent by the trial Court for confirmation of death sentence awarded to the appellants.

2. Appellants Ghulam Mustafa, Muhammad Siddique, Muhammad Akhtar and Abdul Hameed alongwith six others were tried by learned Judge, Anti-Terrorism Court No. I Multan in case FIR No. 523 dated 25.11.2007, under Sections 148, 302, 324, 149, PPC read with Section 7 and Section 21-L of Anti-Terrorism Act, 1997 registered at Police Station Saddar Lodhran, who *vide* his judgment dated 29.06.2009, convicted and sentenced all the four appellants as under:--

- (i) Rigorous Imprisonment for two years to each convict under Section 148, PPC and to pay Rs. 10,000/- each as fine and in default, to further suffer SI for three months.
- (ii) Death on five counts to each convict under Section 302(b) read with Section 149, PPC and to pay Rs. 1,00,000/- each as compensation to the legal heirs of all the five deceased u/S. 544-A, Cr.P.C. and in

default whereof to further undergo SI for six months to each convict.

- (iii) Rigorous Imprisonment for ten years to each convict under Section 324 read with Section 149, PPC and to pay Rs.20,000/- each as Daman to injured Haseena Bibi.
- (iv) Death to each convict under Section 7 of ATA, 1997 and to pay Rs.1,00,000/- as fine and in default, to further suffer SI for six months to each convict.

3. FIR in this case was registered on the basis of statement of Faiz Ahmad (PW-15). The prosecution story as set out in the FIR is that on 25.11.2007 at about 07:30 p.m., complainant Faiz Ahmad alongwith his nephew Muhammad Musa and son Riaz Hussain were standing outside the Gate of Qadir Bakhsh. Suddenly, Muhammad Akhtar, Nawab, Ghulam Mustafa, Muhammad Siddique, Muhammad Abbas armed with Kalashnikovs, Shahzad, Ramzan, Rafique, Habib armed with rifles, Madni, Abdul Rehman, Abdul Hameed and Sooba armed with pistols entered the house of Qadir Bakhsh. Fire shot made by Muhammad Akhtar hit Qadir Bakhsh at backside of his head. Nawab also made fire shot at Qadir Bakhsh. Shahzad made fire shot which hit Sher Khan at his chest. Fire shot made by Madni hit Saeed at right thigh and fire shot made by Abdul Rehman hit Sher Khan above his right elbow. Ramzan made fire shot which hit Abdul Hameed at right arm and fire shot made by Ghulam Mustafa hit Saeed at chest. Rafique made fire which landed at chest of Abdul Hameed. Fire shots made by Habib landed at right and left arms of Saeed. Abdul Hameed made fire shot which hit Sher Khan above his right elbow. Muhammad Siddique made fire shots which landed at abdomen of Abdul Hameed at right side and also at foreleg of Haseena Bibi. Fire shot made by Muhammad Abbas landed at backside of head of Rashid. Two unknown persons remained standing outside the house.

4. It has been alleged in the FIR that this occurrence took place on abetment of Ghulam Fareed son of Yaaran.

5. As to motive, it has been stated in the FIR that relatives of the complainant had been murdered before this occurrence at Mauza Gundi and Chak No. 94/M and the complainant family had participated in their funeral ceremony. The accused persons had suspicion that the complainant party had been helping the complainant party of that case. Accused were also having suspicion that the deceased persons had demolished their houses.

6. Investigation in this case was conducted by PW-18 Muhammad Akram SI and then by Rasheed Ahmad Ranjha SI (PW-19). PW-18 during spot inspection recovered crime empties P-8/1-9 and took the same into possession through recovery memo. Ex.PFF. He also took into possession crime empties P-9/1-17 through recovery memo. Ex.P-GG. He also arrested accused persons Habib, Rafique, Abdul Rehman, Ramzan, Shahzad, Madni and Sooba Khan on 31.12.2007 and Abdul Hameed on 27.68.2008. PW-18 recovered .44 bore rifle from Habib accused and a pistol .30-bore from Abdul Hameed accused. During investigation, PW-19 recovered Kalashnikov from Ghulam Abbas accused on 28.10.2008 and a pistol .30-bore from Muhammad Siddique accused. After completion of investigation, report under Section 173, Cr.P.C. was submitted before the Court.

7. Charge against the appellants alongwith six others was framed by learned trial Court on 11.02.2009, to which they pleaded not guilty and claimed trial. Thereafter, the case was fixed for prosecution evidence.

8. Prosecution in order to prove its case, produced as many as nineteen witnesses, whereas Akhtar Abbas 765/C, Muhammad Saleem, Naseer Ahmad 411/C, Mian Mukhtar Ahmad and Riaz were given up by learned Public Prosecutor being unnecessary witnesses.

9. Medical evidence was furnished by PW-4 Dr. Aneela Ali and PW-5 Dr. Shaukat Ali. Haseena Bibi injured PW was medically examined by PW-4 Dr. Aneela Ali on 05.12.2007, who observed as under:--

**Entry wound:**

A lacerated wound was present on the middle antromedial aspect of left leg measuring 1 x 2 CM with debried edges. It was in healing phase.

**Exit wound:**

A wound on postromedial aspect of left leg measuring 9x7 CM. It was also in healing phase. Tendon were exposed on postromedical aspect. There was swelling on left leg, there were impaired sensation over posterior tibial nerve supply area.

According to PW-4, all injuries were fire-arm injuries. Probable duration was 10 to 15 days.

Postmortem examination on the dead body of Rashid was conducted by PW-5 Dr. Shaukat Ali. He observed as under:-

**INJURY:**

1. 10 CM x 10 CM injury on the top of head with fracture of skull bone, brain matter was coming out from the injured side. Rest of viscera and body were healthy.

**OPINION:**

Cause of death in this case was due to brain death leading to Neurogenic shock. Death and injury was due to fire-arm and was sufficient to cause death in ordinary course of nature.

PW-4 also conducted post-mortem examination on the dead body of Abdul Hameed and observed as under:--

**INJURIES:**

1. 1 CM x 1 CM through and through, the left external ear.
2. 1 CM x 1 CM behind the left ear and skull bone.
3. 3 CM x 2 CM on middle top between neck and right shoulder.
4. 4 CM x 3 CM on lateral side of right shoulder (wound of exit).



5. 2 CM x 2 CM on right arm (wound of entry).
6. 10 CM x 5 CM on back of right arm (wound of exit).
7. 1 CM x 1 CM on right side of chest 3 CM from right nipple (wound of entry).
8. 3 CM x 2 CM on right side of chest 7 CM from the right nipple (wound of exit).
9. 5 CM x 3 CM on the right side of abdomen
10. 10 CM x 8 CM on back of abdomen.
11. 1 CM x 1 CM on left side of abdomen.
12. 4 CM x 4 CM on the back of central chest.
13. 0.5 CM x 0.5 CM on anterior side of left shoulder.

There was found hole through sternum and pleurae was full of blood, right lung was ruptured and blood vessels were also ruptured. Abdomen and peritoneum were also ruptured. Stomach was semi-filled, small intestines and large intestines were ruptured and liver was injured. Urinal was partially filled with urine.

**OPINION:**

Cause of death was due to injury to liver and lungs, injury was due to fire-arm and was sufficient to cause death in ordinary course of nature.

Post mortem examination on the dead body of Qadir Bakhsh was also conducted by PW-5 and observed as follows:-

**INJURIES:**

1. 2 CM x 2 CM on back of neck (wound of entry) just below the occipital bone.
2. 7 CM x 7 CM on back of head on occipital bone with fracture of occipital bone, brain matter was coming out from the injured side.

Fracture of occipital with cervical vertebrae membranes were also ruptured and brain matter was coming out. Rest of the body was normal.

### **OPINION:**

Cause of death was due to brain death, leading to neurogenic shock, death and injury was due to fire-arm and was sufficient to cause death in ordinary course of nature.

PW-5 conducted post-mortem examination on the dead body of Sher Khan and observed as under:--

### **INJURIES:**

1. 1 CM x 1 CM on anterior aspect of right arm (wound of entry).
2. 1.5 CM x 1.5 CM on medial side of right arm (wound of exit).
3. 1 CM x 1.5 CM on right side of back of chest (wound of entry).
4. 3 CM x 3 CM on front of central chest (wound of entry).
5. 1 CM x 1 CM on the left side of abdomen (wound of entry).
6. 2 CM x 2 CM on back of the left side of abdomen and chest (wound of exit).
7. 1 CM x 1 CM on lateral side of right thigh (wound of entry).
8. 3 CM x 4 CM on inner side of right knee (wound of exit).

The ribs were fractured with injury to cartilage. Blood was present inside the pleurae. Right lung, left lung were injured. Pericardium, heart and its blood vessels were ruptured. Walls of abdomen and peritoneum and diaphragm were ruptured. Large intestines were ruptured. Spleen and right kidney were also ruptured.

### **OPINION:**

Cause of death was injury to heart, lungs and left kidney and these injuries were due to fire-arm and were sufficient to cause death in ordinary course of nature.

PW-5 while conducting post-mortem examination on the dead body of Saeed Ahmad, observed as under:--

**INJURIES:**

1. 1 CM x 1 CM on the right temporal region (wound of entry).
2. 2 CM x 2 CM on the back of neck (wound of exit).
3. 1 CM x 1 CM on right side of chest (wound of entry).
4. 4 CM x 4 CM on the back of right chest below the scapula (wound of exit).
5. Crush injury of 20 CM x 30 CM on the right elbow joint with fracture of humerus, radius and ulna.
6. 1 CM x 1 CM on the lateral side of left hand (wound of entry).
7. 4 CM x 4 CM on the medial side of left hand (wound of exit).

Right temporal bone was fractured. Rib No. 9 and Rib No. 10 were fractured. The pleurae was full of blood. Right lung was also ruptured. Rest of the body was normal.

**OPINION:**

Cause of death was due to head injury right lung injury, and crush injury of right upper limb (elbow joint area). All the injuries were due to fire-arm and ante-mortem and were sufficient to cause death in ordinary course of nature.

10. Thenceforth statements of the appellants were recorded under Section 342, Cr.P.C. wherein they again pleaded innocence. They neither opted to make statement on oath as required u/S. 340(2), Cr.P.C. nor they intended to produce any defence evidence. They while answering to the question why this case against them and why the PWs had deposed against them, stated as follows:--

“It was pitch dark night and unseen occurrence. The deceased were sleeping when some unknown persons murdered them. The complainant party killed five persons from our side.

They have grudge against us so they have falsely implicated us in this case after consultation and deliberation with the police. We are innocent and falsely involved in this case due to enmity. All the PWs are related inter se and interested witnesses. They have falsely deposed against us due to previous grudge”.

11. At conclusion of trial, the appellants were convicted and sentenced as mentioned above, hence, these criminal appeals as well as capital sentence reference.

12. Learned counsel for the appellants contends that, motive set up in the FIR has not been established by the prosecution and the learned trial Court has not made even an oblique reference thereof; that the entire incident is structured on the motive alleged by the prosecution which remained far from the apertures; that occurrence took place at 07:30 pm in a small village at the end of the month of November in presence of Faiz (complainant), Muhammad Musa and Riaz Hussain standing by the door step of the house of occurrence, without there being any plausible reason, is not confidence inspiring and it appears that they were subsequently inducted as witnesses to furnish ocular account on the basis of an FIR which is the result of consultations and deliberations through the good offices of Muhammad Saddique, who admittedly deposed towards the appellants and himself is accused in a previous incident of identical gravity. Learned counsel further contends that even if presence of the witnesses is considered at the cited point, the incident did not come within their view according to prosecution's down site-plan. Learned Counsel further contends that role of Akhtar appellant vis-a-vis injury on the back of head of Qadir Bakhsh has been changed during the trial. In this regard while referring to the statements of Musa and *Mst. Hasina Bibi* PWs, learned counsel for the appellants contends that both these witnesses have implicated Akhtar appellant by way of a massive improvement. In so far as case of Muhammad Siddique appellants vis-a-vis Abdul Hameed deceased is concerned, the learned counsel contends that given the diameters of the injury, the same could not have possibly been caused by the weapons used in the occurrence as apertures on the abdomen belie the role attributed to Muhammad Siddique. Further contends that Muhammad Siddique

appellant is assigned a fire shot of Kalashnikov during the course of occurrence, but he led to the recovery of .30-bore pistol instead. Even Musa and Hasina Bibi PWs ascribed role to Muhammad Siddique by their previous statements with which they were duly confronted. Lastly contended that autopsies were conducted belatedly without there being any explanation of the same.

13. Contrarily, it has been argued by the learned Deputy Prosecutor General assisted by learned counsel for the complainant that prosecution has been able to bring home charge against all the appellants beyond a shadow of doubt and that acquittal of co-accused does not adversely affect the case of the prosecution vis-a-vis the appellants for the reasons that they were extended benefit of doubt even to ensure safe administration of criminal justice. Further contends that ocular account is fully corroborated by the medical evidence. According to the learned DPG, report of forensic science laboratory is in the negative but the appellants led to the recovery of weapons which according to the medical evidence were found to have used in the occurrence. There is enmity which provided a motive to the appellants who amounted pre-concerted and premeditated attack resulting into death of five innocent inmates within the safety of their house and that occurrence was witnessed by *Mst.* Hasina Bibi who is an injured witness and whose presence cannot be disputed at the spot being one of the inmates of the family. In so far as Musa and Faiz PWs are, concerned their presence is also sufficient sound and plausible.

14. Arguments heard and record perused.

15. Record in this case shows that Faiz Ahmad complainant (PW-15), Hasina Bibi injured PW-16 and Muhammad Musa PW-17 furnished ocular account regarding the main incident. According to PW-15, on 25.11.2007 he went to Bahawalpur to participate in a marriage ceremony of his nephew and thereafter he returned home. He alongwith Musa and Riaz PWs was standing at the door of house of Qadir Bakhsh. Accused persons duly armed came there and entered the house of Qadir Bakhsh. They committed the occurrence as mentioned in the FIR. Hasina Bibi PW-16 herself sustained injuries

during occurrence. Muhammad Musa PW-17 is also one of the eye-witnesses of this case.

16. According to said PWs, accused came and started firing at the deceased as well as injured PW. Their presence at the time and place of occurrence was well explained. The record reveals that PW-4 Dr. Aneela Ali conducted medical examination of *Mst. Hasina Bibi*, whereas PW-5 Dr. Shaukat Ali conducted post-mortem examination on the dead bodies. Both of them noted injuries sustained by the deceased as well as injured PW. According to post-mortem report fire-arm injuries were found on the dead bodies. The injuries attributed to appellants caused by fire-arm were noted by both PW-4 and PW-5. Ocular account in this case was corroborated by medical evidence. All the above mentioned appellants came together and caused injuries to the deceased and injured PW in furtherance of common object. The prosecution successfully proved the charge against appellants beyond reasonable doubt.

17. After going through the evidence, we have observed that it was version of PWs that all accused came together and started firing. In such like situation it was not probable that PWs could have taken a photographic view as to who had fired at whom during the incident. Moreover, appellants in their statements recorded under Section 342, Cr.P.C. stated that the complainant party had earlier murdered five persons of their party which shows that both the parties have been indulged in taking the law into their own hands.

18. In the light of above backdrop, it was not a case of extreme penalty. Present occurrence was also a result of personal vendetta. The offence under Section 6 read with Section 7 of Anti-Terrorism Act, 1997, therefore, was not established on the record.

19. After re-appraisal of the evidence available on record and going through the impugned judgment, we are inclined to maintain the conviction recorded by the trial Court under Section 302(b), PPC but commute death sentence to imprisonment for life on each count with amount of compensation, as directed by the learned trial Court, whereas conviction under Section 7 of Anti-Terrorism Act, 1997 is set aside. The conviction recorded by the trial Court under Sections 324, 148, PPC is maintained. All the sentences shall run concurrently

with benefit of Section 382-B, Cr.P.C. Both the Criminal Appeals are partly allowed in above terms. Resultantly, death sentence awarded to the appellants on each count is NOT CONFIRMED and Capital Sentence Reference No. 13 of 2009 is answered in the NEGATIVE.

(A.S.) Appeal partly allowed

**PLJ 2015 Cr.C. (Lahore) 590**  
**[Multan Bench Multan]**  
**Present: CH. MUSHTAQ AHMAD, J.**  
**HAMMAD HAIDER--Appellant**

**versus**

**STATE--Respondent**

CrI. Appeal No. 156 of 2006, heard on 20.5.2015.

**Pakistan Penal Code, 1860 (XLV of 1860)--**

---S. 302(b)--Conviction and sentence--Challenge to--On day of occurrence deceased alongwith PW went to house of accused to make complaint about an incident which took place one day earlier--It was case of prosecution that accused (appellant) alongwith others were carrying knife (*churees*) and all of them caused injuries to deceased on various parts of his body--Complainant and also reached spot--Accused persons after inflicting *churee* blows escaped--During trial above mentioned witnesses reiterated same version--Medical evidence was furnished by PW Dr. who noted seven injuries on dead body of deceased--Ocular account furnished by eye-witnesses is straight forward and confidence inspiring--Parties admitted time and place of occurrence--However, version of appellant was that complainant party injured DW, and co-accused who were medically examined by DW-1 and appellant caused injuries to deceased in self defence--Present appellant did not sustain any injury during occurrence--Fatal injury to deceased was attributed to present appellant whereas co-accused also inflicted *churee* blows to deceased who have filed separate criminal appeal against their conviction and sentence--Plea of self defence raised by appellant was not available to him in peculiar circumstances of case--Version put forth by appellant that deceased and his companions were assailants, was not correct as they went only to make complaint but accused over-powered deceased and stabbed him to death--Trial Court in this case has correctly appreciated evidence and findings recorded were in line with facts established on record--Appeal was dismissed. [P. 593] A

*Sh. Muhammad Farooq, Muhammad Bilal Butt*  
*and Malik Muhammad Saleem, Advocates for Appellant.*  
*Mr. Muhammad Aslam Dhukkar, Advocate for Complainant.*



*Ch. Ahmad Raza*, Addl.P.G. for State.

Date of hearing: 20.5.2015.

### **JUDGMENT**

Appellant Hammad Haider has challenged his conviction and sentence through this Criminal Appeal No. 156 of 2006. He was tried by learned Additional Sessions Judge, Taunsa Camp at D.G. Khan alongwith co-accused Muhammad Yousaf in case FIR No. 106/2005 registered under Sections 302, 34, PPC at Police Station City D.G. Khan.

2. On conclusion of trial, learned trial Court *vide* his judgment dated 31.01.2006 convicted the appellant and sentenced him as under:

Convicted U/S. 302(b), PPC and sentenced to imprisonment for lift. He was held liable to pay Rs. 20,000/- as compensation in terms of Section 544-A, Cr.P.C. to the legal heirs of deceased and in case of default in payment thereof, to further undergo imprisonment for six months (S.I.).

However, co-accused mentioned above was acquitted of the charge.

3. FIR was got registered by Qamar Ali son of Qalandar Hussain. Prosecution story as narrated in the FIR is that on 05.06.2005 at about 09:30 p.m., complainant was present near shrine of Ameer Shah, when on hearing noise he proceeded towards Block-T. He saw that Asif Ali *alias* Munna and Yousaf had caught complainant's brother Haider Ali, whereas Ansar Ali, Ushtar Ali and Hammad Haider (appellant) while armed with Churrees, were causing injuries to Haider Ali. One Irfan Haider was trying to rescue Haider Ali. Imran Haider also attracted to the spot in the meantime. Complainant alongwith Imran Haider came forward to rescue Haider Ali, but the accused persons threatened them and in their view, Ansar Ali, Ushtar Ali and Hammad Haider gave several *churee* blows to Haider Ali at different parts of his body. Many people from the locality reached there, on which accused persons fled away. Haider Ali succumbed to the injuries when he was being shifted to hospital.

4. After registration of FIR, investigation of this case was conducted by PW-09 Ghulam Shabbir SI. Report under Section 173, Cr.P.C. was submitted before trial Court. Appellant and co-

accused Muhammad Yousaf were declared juvenile and their trial was conducted separately. Formal charge was framed, to which they pleaded not guilty and claimed trial. In order to prove its case, prosecution examined nine witnesses. Medical evidence was furnished by PW-8 Dr. Abdul Rehman Qaisrani, who noted six incised wounds and one lacerated wound on the dead body. According to PW-8, due to multiple injuries and specially Injury No. 7, bleeding occurred profusely, which resulted in shock and ultimate death. Ocular account was furnished by PW-6 Qamar Ali (complainant) and PW-7 Irfan Haider. After completing prosecution evidence, statement of appellant was recorded under Section 342, Cr.P.C., wherein he took the plea of self defence. Appellant did not opt to appear in the witness box as required under Section 340(2), Cr.P.C. However, he produced Dr. Mehmood Khan Leghari as DW-1 and Muhammad Imran as DW-2.

5. On conclusion of trial appellant was convicted and sentenced as mentioned above, hence this criminal appeal.

6. Learned counsel for appellant argued that the place and time of occurrence in this case is not disputed, however, the prosecution had suppressed the injuries sustained by appellant; that plea of appellant that he alongwith others had caused injuries to Haider Ali deceased in self defence, is supported by medical evidence; that a case under Section 302(c), PPC was made out and that the sentence already undergone by appellant was sufficient to meet the ends of justice.

7. Conversely, learned Additional Prosecutor General assisted by learned counsel for complainant argued that appellant had not surrendered for medical examination on the first day of occurrence; that on the second day he was examined by doctor and only skin deep injuries were noted, which were not sufficient to allow him to cause death of a person on the pretext of self defence.

8. I have heard the arguments advanced by learned counsel for the parties and gone through the record with their able assistance.

9. Perusal of statements of PW-6 Qamar Ali (complainant) and PW-7 Irfan Haider reveals that on the day of occurrence at 09:30 p.m., Haider Ali (deceased) alongwith Irfan Haider (PW-7) went to

the house of accused to make complaint about an incident which took place one day earlier. It was case of the prosecution that accused (appellant) Hammad alongwith Ushtar and Ansar were carrying knife (*churees*) and all of them caused injuries to Haider Ali on various parts of his body. Complainant Qamar Ali and Imran Haider also reached the spot. The accused persons after inflicting *churee* blows escaped. During trial above mentioned witnesses reiterated the same version. Medical evidence was furnished by PW-8 Dr. Abdul Rehman, who noted seven injuries on the dead body of Haider Ali. Ocular account furnished by eye-witnesses is straight forward and confidence inspiring. The parties admitted the time and place of occurrence. However, version of appellant was that complainant party injured Imran Ali (DW-2), Ushtar and Muhammad Yousaf who were medically examined by DW-1 and the appellant caused injuries to deceased in self defence. Present appellant did not sustain any injury during the occurrence. Fatal injury to the deceased was attributed to present appellant whereas co-accused Ushtar and Ansar also inflicted *churee* blows to Haider Ali (deceased) who have filed separate Criminal Appeal No. 82 of 2006 against their conviction and sentence. Plea of self defence raised by the appellant was not available to him in the peculiar circumstances of the case. Version put forth by appellant that Haider Ali deceased and his companions were the assailants, is not correct as they went only to make complaint but the accused over-powered the deceased and stabbed him to death. Learned trial Court in this case has correctly appreciated evidence and findings recorded are in line with the facts established on record.

10. On re-appraisal of evidence, I am of the view that conviction recorded and sentence awarded to the appellant does not call for interference in appeal. Therefore, appeal in hand is dismissed, while upholding conviction and sentence recorded by the trial Court. Appellant is on bail as his sentence was suspended by this Court *vide* order dated 06.10.2011. He shall be taken in custody and sent to jail to serve the remaining portion of sentence awarded to him by the trial Court.

(A.S.) Appeal dismissed

**PLJ 2015 Cr.C. (Lahore) 621**  
**[Multan Bench Multan]**  
**Present: CH. MUSHTAQ AHMAD, J.**  
**MUHAMMAD KHAN--Petitioner**

**versus**

**STATE and another--Respondents**

CrI. Misc. No. 2278-B of 2015, decided on 18.6.2015.

**Criminal Procedure Code, 1898 (V of 1898)--**

---S. 497(2)--Pakistan Penal Code, (XLV of 1860), Ss. 302/34--Bail, grant of--Further inquiry--Role of petitioner--"Lalkara"--FIR was registered initially under Section 324, PPC, however, offence under Section 302, PPC was added subsequently as son of complainant succumbed to injuries--Petitioner was named in FIR with only role of raising *lalkara* to co-accused--No overt act except *lalkara* is attributed to him--Main role of firing was assigned to co-accused, who is behind bars--Co-accused who was also named in FIR, was found not involved in occurrence--He has already been allowed bail by Additional Sessions Judge--In circumstances, guilt of petitioner needs further probe and his case calls for further inquiry--Bail was accepted. [P. 622]

A

*Mr. Muhammad Amir Khan Bhutta*, Advocate for Petitioner.

*Mr. Hassan Mahmood Khan Tareen*, D.P.G. for State.

*Mr. Shoaib Anjum*, Advocate for Complainant.

Date of hearing: 18.6.2015.

**ORDER**

This petition has been moved seeking post-arrest bail in case FIR No. 543 dated 5.11.2014 under Sections 302, 34 of Pakistan Penal Code, 1860, registered with Police Station Machi-wal, District Vehari.

2. FIR was registered on the complainant made by Aalamgir. Facts of case are that on 5.11.2014 at about 8.00 A.M., Shameer-Ullah, son of the complainant went out of house after taking breakfast. At that time Muhammad Khan (petitioner) was standing in the street. In the meanwhile, Saeed and Waqas came there on a motorcycle. Muhammad Khan (petitioner) raised *lalkara* to kill Shameer-Ullah, on which Saeed took out pistol from "Neipha"

and made three fire shots on Shameer-Ullah hitting his abdomen, left thigh and right hip, respectively, who fell down. Motive behind the occurrence is stated to be a dispute of complainant over land with Muhammad Khan (petitioner).

3. Arguments heard and record perused.

4. FIR was registered initially under Section 324, PPC, however, offence under Section 302, PPC was added subsequently as Shameer-Ullah succumbed to the injuries. Petitioner is named in the FIR with only role of raising *lalkara* to co-accused. No overt act except *lalkara* is attributed to him. Main role of firing was assigned to co-accused Saeed, who is behind the bars. Co-accused Muhammad Waqas who was also named in the FIR, was found not involved in the occurrence. He has already been allowed bail by learned Additional Sessions Judge, Vehari *vide* order dated 30.1.2015. In the circumstances, guilt of petitioner needs further probe and his case calls for further inquiry.

5. In view of above reasons, this petition is accepted and petitioner be released on bail, subject to his furnishing bail bonds in the sum of Rs. 2,00,000/- with one surety in the like amount to the satisfaction of the trial Court.

(A.S.) Bail accepted

**PLJ 2015 Lahore 1065**

**[Multan Bench, Multan]**

**Present: CH. MUSHTAQ AHMAD, J.**

**Mst. AYESHA MALIK--Petitioner**

**versus**

**STATION HOUSE OFFICER, P.S. CITY JAMPUR DISTRICT**

**RAJANPUR and 4 others--Respondents**

Writ Petition No. 1144 of 2015, decided on 27.2.2015.

**Constitution of Pakistan, 1973--**

---Art. 199--Pakistan Penal Code, (XLV of 1860), S. 365-B--  
Criminal Procedure Code, 1898--S. 561-A--Quashing of FIR--  
Being sui juris contracted marriage with free consent and no  
body abducted--Affidavit affirming contents as true and correct--  
Question of--Whether High Court has authority u/Art. 199 of  
Constitution r/w S. 561-A, Cr.P.C. to quash FIR--High Court has  
inherent powers to pass such order as may be necessary to prevent  
abuse of process of any Court or otherwise to secure ends of  
justice--Where continuation of process of Court would result in  
futile exercise and undue harassment, it would be in fitness of  
things and in interest of justice to quash proceedings--That she had  
contracted marriage with her free consent and without any  
pressure and that she was not abducted by anybody--After her  
admission of having contracted marriage with free consent, there  
remains no case or charge to be tried, therefore, it is a fit case for  
quashing of FIR.

[Pp. 1067 & 1068] A, B &

D

**Criminal Procedure Code, 1898 (V of 1898)--**

---Ss. 249-A & 265-K--Constitution of Pakistan, 1973, Art. 199--  
Quashing of FIR--Sui juris contracted marriage with free consent--  
Jurisdiction--By now it is well settled that main consideration to  
be kept in view is whether continuance of proceedings would be  
futile exercise, wastage of time and abuse of process of law--If on  
basis of facts admitted and patent on record, no offence is made  
out, then it would amount to abuse process of law to allow  
prosecution to continue with investigation or trial, as case may  
be. [P. 1068] C

*Ms. Farzana Kausar Rana*, Advocate for Petitioner.  
*Mian Abdul Qayyum* APG with Respondent No. 2 in person.  
Date of hearing: 27.2.2015

**ORDER**

Through this petition, *Mst. Ayesha Malik* petitioner has approached this Court in constitutional jurisdiction read with provisions of Section 561-A, Cr.P.C. and has prayed as under:

“Therefore, relying upon all above narrated submissions, it is most respectfully prayed that this writ petition may very kindly be accepted and the above mentioned FIR No. 728/2014 dated 30.12.2014 Offence U/S. 365-B PPC, Police Station City Jampur, District Rajanpur may very graciously be quashed.”

The case was got registered by Muhammad Afzal Respondent No. 2, father of petitioner who reported that his daughter *Mst. Ayesha Malik* was student of Ist year. On 16.12.2014, she left for school but did not return. They started searching her. They contacted Pervez son of Sana Ullah caste Laghari and came to know that Ayesha (present petitioner) and *Mst. Bushra Bibi*, who were friends inter-se were missing since 16.12.2014. Above mentioned Pervez admitted that his sister-in-law Bushra Bibi brought Ayesha with her and Muhammad Sajid, his son had taken away Ayesha to Karachi and that his daughter has been enticed away by *Mst. Bushra* and Muhammad Sajid. On the above information case was registered and investigation conducted. The alleged abductee *Mst. Ayesha*, in the above background, has sought quashment of FIR on the ground that she, being sui-juris contracted marriage with her free consent and no body abducted her. It is her version that case was got registered by her father who wanted to give her hand to an old person whom she did not like nor she wanted to get married with him according to the wishes of her father. With the petition, copy of Nikahnama (Annexure-B) is annexed showing that Nikah was performed between petitioner *Mst. Ayesha* and Muhammad Rahib. A certified copy of private complaint filed by her before Illaqa Magistrate Rajanpur and a certified copy of her statement dated 16.12.2014 recorded by the learned Magistrate Ist Class is also placed on the record with affidavit

of petitioner affirming the contents of the petition as true and correct to the best of her knowledge and belief.

2. Respondent No. 2 has appeared in person before the Court and states that the petitioner had not contracted marriage with his permission and she being under the influence of her husband, was not disclosing true facts. Hence, the present petition is liable to be rejected.

3. Heard. Perused.

4. After going through the contents of petition as well as other documents available on the record like Nikahnama and certified copy of the statement of the petitioner before the Illaqa Magistrate, it has been noticed that factum of marriage between the petitioner and Muhammad Rahib is an admitted fact in this case which even Respondent No. 2 is not in a position to rebut. The question arising out of the facts of this case is “whether this Court has authority under Article 199 of the Constitution read with Section 561-A, Cr.P.C. to quash the FIR at this stage”. It is clear from bare reading of Section 561-A of Cr. P.C that High Court has inherent powers to pass such order as may be necessary to prevent abuse of the process of any Court or otherwise to secure the ends of justice. Though the phrase “ends of justice”, has not been defined in the Code nor in any other statute but ends of justice would necessarily mean the justice as administered by the Courts and not in its abstract sense. Where the continuation of process of Court would result in futile exercise and undue harassment, it would be in the fitness of things and in the interest of justice to quash the proceedings. Similarly, abuse of process of Court signifies the perversion of very purpose of law and justice resulting in undue harassment.

5. The question of quashment of FIR came to be considered in a case titled “*Ghulam Muhammad v. Muzammal Khan*” (PLD 1967 SC 317) and then in another case titled “*Haqnawaz vs. Muhammad Afzal and others*” (1968 SCMR 1256) wherein it was held that High Court was competent to quash proceedings if satisfied that false complaint has been lodged and process of Court was being abused to subject accused persons to unnecessary harassment. This proposition again came for consideration before the apex Court in a case titled “*Malik Salman Khalid v. Shabbir Ahmad*” (1998 SCMR



873) wherein it was laid down that the inherent powers should be rarely and sparingly invoked only in the interest of justice so as to redress grievance for which considering the facts and circumstances of the case, no other procedure or remedy is available. It was further ruled that it is an extra ordinary jurisdiction which cannot over-ride provisions of the Code but cases may arise where administration of justice requires substantial justice. In such circumstances, the Courts would be justified to exercise their jurisdiction to save a party from harassment and abuse of the process of the Court. The above view was confirmed in a case titled "*Miraj Khan v. Gull Ahmed and 3 others*" (2000 SCMR 122) wherein it was held that High Court in exceptional cases can exercise jurisdiction under Section 561-A Cr. P.C without waiting for trial Court to pass orders under Section 249-A Cr. P.C or 265-K Cr. P.C. if the facts of the case so warrant. By now it is well settled that main consideration to be kept in view is whether continuance of proceedings would be futile exercise, wastage of time and abuse of process of law. If on the basis of facts admitted and patent on record, no offence is made out, then it would amount to abuse process of law to allow the prosecution to continue with the investigation or trial, as the case may be.

6. I have given thought to the facts of this case in the light of law on the subject. The petitioner herself appeared before this Court on 30.01.2015 and supported the contents of the petition and affidavit submitted by her stating that she had contracted marriage with her free consent and without any pressure and that she was not abducted by anybody. After her admission of having contracted marriage with Muhammad Rahib with free consent, there remains no case or charge to be tried, therefore, it is a fit case for quashment of FIR.

7. Consequently, this petition is allowed and impugned FIR is hereby ordered to be quashed  
(R.A.) Petition allowed

**PLJ 2015 Lahore 1068**  
**[Multan Bench, Multan]**  
**Present: CH. MUSHTAQ AHMAD, J.**  
**MUHAMMAD MUKHTIAR--Petitioner**  
**versus**  
**STATION HOUSE OFFICER, P.S. TULAMBA TEHSIL MIAN**  
**CHANNU DISTRICT KHANEWAL--Respondents**

Writ Petition No. 3203 of 2014, decided on 26.2.2015.

**Constitution of Pakistan, 1973--**

----Art. 199--Pakistan Penal Code, 1860--Ss. 406 & 506(b)--Criminal Procedure Code, (V of 1898), Ss. 249-A & 265-K--Quashing of FIR--Offence of misappropriation and cheating--Investigation was in progress--Validity--By now it is well settled that High Court cannot stop investigating agency to investigate case and collect evidence where criminal liability is spelt out from facts and circumstances of a particular case as quashment of FIR during investigation would amount to throttling investigation which is not permissible under law--However, if on completion of investigation of a case, investigating agency concludes that evidence collected against accused, is not sufficient to implicate him, magistrate has authority to order release of accused upon report submitted before him by investigating officer--Magistrate under Section 249-A, Cr.P.C. has also ample powers to acquit an accused at any stage of case after hearing prosecutor and accused and for reasons to be recorded if he comes to conclusion that charge is groundless and there is no probability of recording conviction against accused--Likewise, if case is triable by Sessions Court, accused can seek acquittal under Section 265-K, Cr.P.C.--Quashing of FIR at stage of investigation is not contemplated under law on subject. [P. 1072] B

**Constitution of Pakistan, 1973--**

---Art. 199--Quashing of FIR--Investigation was in process--  
Validity--There is no cavil with proposition that in appropriate  
cases, High Court has ample authority to quash proceedings in  
criminal cases but it is also well settled that Court cannot interfere  
in process of investigation. [P. 1070] A

*Mian Tahir Iqbal*, Advocate for Petitioner.

*Malik Muhammad Bashir Lakhesir*, AAG for Respondents.

Date of hearing: 26.02.2015

## **ORDER**

This petition has been moved for quashment of FIR No. 122 dated 26.03.2013 registered under Sections 406/506(b), PPC, at Police Station Tulamba, District Khanewal.

2. It is case of the petitioner that he is innocent and was falsely involved in this case with *mala fides* and ulterior motive and that petitioner was not connected with the alleged offence of misappropriation and cheating, hence, the FIR was liable to be quashed.

In support of his contention, learned counsel for the petitioner has placed reliance on "*Ameerullah v. The State*" (2003 YLR 2097), "*Muhammad Ashraf Shahzad v. Station House Officer, etc.*" (NLR 2001 Criminal 375), "*Mst. Afshan Perveen v. SHO, Police Station Qutabpur Multan and 2 others*" (2004 Cr. LJ 1006), "*Raja Haq Nawaz v. Muhammad Afzal and others*" (1968 SCMR 1256), "*State through Advocate-General, NWFP Peshawar and others v. Gulzar Muhammad and others*" (1998 SCMR 873), "*State of Islamic Republic of Pakistan through Deputy Attorney General for Pakistan, Karachi and another v. Mukhtar Ali Sh.*" (2004 Cr. LJ 115) and "*Miraj Khan v. Gull Ahmed and 3 others*" (2000 SCMR 122).

3. Petition has been opposed by learned AAG on the ground that investigation is yet in progress and the petitioner is nominated in

the FIR with specific allegation of criminal breach of trust and cheating, hence, the FIR could not be quashed.

4. Heard. Perused.

5. Record in this case shows that in the FIR present petitioner Muhammad Mukhtiar is nominated as one of the accused who remained associated with his co-accused and misappropriated the amount received from the complainant. The report submitted by the investigating agency also reveals that co-accused of the petitioner applied for bail before the concerned Court and the case was still under investigation. There is no cavil with the proposition that in appropriate cases, this Court has ample authority to quash proceedings in criminal cases but it is also well settled that Court cannot interfere in the process of investigation.

6. In the case law cited by learned counsel for the petitioner i.e. “*State through Advocate-General, NWFP Peshawar and others. v. Gulzar Muhammad and others*” (1998 SCMR 873), the apex Court laid down that the trial Court can acquit the accused under Section 249-A, Cr.P.C. and 265-K, Cr.P.C., as the case may be, at any stage of the proceedings and in the circumstances of each case, the appropriate remedy for the accused appears to be to request the trial Court to consider their case under the provisions of law. The trial Court should thereupon apply its mind to this aspect of the matter and in the first instance before it proceeds further with the proceedings, shall decide whether the accused are entitled to be acquitted in terms of Section 249-A/265-K, Cr.P.C. If the accused are not held entitled to the acquittal, in the terms aforesaid then they have right to approach the High Court for quashment of the proceedings against them.

In another case i.e. “*Miraj Khan v. Gull Ahmed and 3 others*” (2000 SCMR 122), the same proposition came up for consideration “whether High Court in exercise of jurisdiction under Section 561-A, Cr.P.C., had authority to quash the proceedings in a criminal case?”. It was held that main consideration to be kept in view

would be whether the continuance of the proceedings before the trial forum would be futile exercise, wastage of time and abuse of process of Court or not---if on the basis of facts admitted and patent on record, no offence can be made out, then it would amount to abuse process of law to allow prosecution to continue with the trial. In the cited case, it was case of the complainant that he had given the amount as Qarz-e-Hasna but in the FIR, the word “Amanat” was also added and on the basis of admitted facts, FIR was ordered to be quashed.

7. In the case in hand, investigation is in progress. Moreover, in the FIR, the allegation against the petitioners and others was that the accused had received the amount on the undertaking that they would keep it as trust and in case the original documents of transfer deed could not be handed over regarding the plot, the amount will be returned. On further inquiry, it was found that accused had committed fraud as no plot was available for transfer to the complainant and the accused deprived him of huge amount through misrepresentation and fraud.

In another case titled “*Ajmeel Khan v. Abdul Rahim and others*” (PLD 2009 SC 102), the same proposition came up for consideration. In the said case, petitioner was involved in offence under Section 489-F PPC, in which the petitioner was arrested and subsequently enlarged on bail then he filed writ petition in the High Court for quashment of FIR which was dismissed.

The matter came up for hearing before the apex Court in a petition seeking leave to appeal. It was laid down in Para No. 6 of the judgment as under:

“Needless to emphasis, that functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function. If a criminal liability is spelt out from facts and circumstances of a particular case, accused can

be tried upon a criminal charge. Quashment of FIR during investigation tantamounts to throttling the investigation which is not permissible in law. However, FIR can be quashed by High Court in its writ jurisdiction when its registration appears to be misuse of process of law or without any legal justification. The police are under a statutory duty under Section 154 of the Code of Criminal Procedure and have a statutory right under Section 156 of the Code of Criminal Procedure to investigate a cognizable offence whenever a report is made to it disclosing the commission of a cognizable offence. To quash the police investigation on the ground that the case is false would be to act on treacherous grounds and would tantamount to an uncalled for interference by the Court with the duties of the police.”

By now it is well settled that this Court cannot stop the investigating agency to investigate the case and collect evidence where criminal liability is spelt out from facts and circumstances of a particular case as quashment of FIR during investigation would amount to throttling the investigation which is not permissible under the law. However, if on completion of investigation of a case, the investigating agency concludes that evidence collected against accused, is not sufficient to implicate him, the Magistrate concerned has authority to order release of accused upon the report submitted before him by the investigating officer.

The Magistrate under Section 249-A, Cr.P.C. has also ample powers to acquit an accused at any stage of the case after hearing the prosecutor and accused and for reasons to be recorded if he comes to the conclusion that the charge is groundless and there is no probability of recording conviction against the accused. Likewise, if the case is triable by Sessions Court, the accused can seek acquittal under Section 265-K Cr. P.C.

8. Quashment of FIR at the stage of investigation is not contemplated under the law on the subject. In view of above

discussion, the petition in hand is found meritless and the same is dismissed.

(R.A.) Petition dismissed

**2015 Y L R 2665**

**[Lahore]**

**Before Ch. Mushtaq Ahmad and Aslam Javed Minhas, JJ**

**MUHAMMAD AFZAL and others---Petitioners**

**Versus**

**The STATE and others---Respondents**

Cr. M. No.1 of 2013 in CrI. Appeal No.448 of 2012, decided on 4th August, 2015.

**Criminal Procedure Code (V of 1898)---**

---S.426---Penal Code (XLV of 1860), Ss.302(b), 34 & 337-F(i)---  
Qatl-i-amd, common intention, causing Damiah---Sentence, suspension of---Accused persons, were on bail pending appeal, and thereafter, they were arrested, and they had served out about 12 years of their sentence---Co-accused, to whom the role of firing at the deceased, was attributed, had been convicted and sentenced to death--  
-No likelihood of early conclusion of the main appeal in near future existed---Prosecution could not point out any material against accused persons, showing that they were previously involved in such like cases---Further captivity of accused persons in jail, would not serve any useful purpose to the prosecution---Accused persons, were entitled to be released on bail by suspending their sentence---Sentence of accused persons, was suspended subject to their furnishing bail bonds.

Mudassar Altaf Qureshi for Petitioners.

Sh. Jamshed Hayat for the Complainant.

Malik Riaz Ahmad Saghla, DPG for the State.

**ORDER**

**C.M. No.1 of 2013**

Petitioners Muhammad Hayat and Bashir Ahmad through the instant petition have sought suspension of their sentence awarded to them by the learned Addl. Sessions Judge, Kabirwala, District Khanewal in case FIR No.203/2004, dated 22-5-2009, under Sections 302, 337-A(ii), 337-F(i)/34, P.P.C. registered at Police Station Saddar Kabirwala and vide judgment dated 21-10-2013 they were convicted under Section 302(b)/34, P.P.C. to imprisonment for life each with a fine of Rs.50,000 each as compensation under section 544-A, Cr.P.C. to be paid to the legal heirs of the deceased, in default of which to



further undergo three months S.I. each. They were further convicted under Section 337-F(i), P.P.C. and sentenced to one year R.I. each with daman of Rs.10,000 to be paid to injured Mureed Abbas, in default thereof they would be kept in jail till the realization of the same. Benefit of Section 382-B, Cr.P.C. was, however, extended to them.

2. Arguments heard. Record perused.

3. Perusal of the file reveals that previously the petitioners along with their co-accused, Afzal were convicted and sentenced vide judgment dated 30-4-2007. All the convicts preferred CrI.A. No.200 of 2007 before this Court and this Court vide order dated 10-9-2013 remanded the case back to the learned trial court to re-write the judgment separately in the private criminal complaint and the FIR case. Now the accused have been convicted and sentenced through judgment dated 21-10-2013 by the learned trial court and they have preferred Criminal Appeal No.448 of 2013. During the pendency of the appeal, the petitioners have preferred instant petition for suspension of their sentence on the ground that previously when the CrI. A. No.200 of 2007 was pending they were on bail and thereafter they were arrested on 14/15-6-2007 and they have served out about 12 years of their sentence. Their co-accused, Muhammad Afzal to whom the role of firing at the deceased was attributed has been convicted and sentenced to death, therefore, there is no likelihood of early conclusion of the main appeal in near future. Learned D.P.G. as well as the learned counsel for the complainant could not point out any material against the petitioners which shows that they are previously involved in such like cases. In these circumstances, further captivity of the petitioners in jail will not serve any useful purpose to the prosecution and they are entitled to be released on bail by suspending their sentence.

5. Resultantly, we accept the instant petition and suspend the sentence of the petitioners subject to their furnishing bail bonds in the sum of Rs.200,000 (Rupees two lac only) each with one surety each in the like amount to the satisfaction of the Deputy Registrar (Judl) of this Court. They are directed to appear before this Court on each and every date of hearing till the final disposal of the main appeal.

HBT/M-247/L

Sentence suspended

**2015 Y L R 2524**  
**[Lahore]**  
**Before Ch. Mushtaq Ahmad, J**  
**Mst. NASIM AKHTAR---Petitioner**  
**Versus**  
**PERVEZ AKHTAR and 12 others---Respondents**

Writ Petition No.1553 of 2008, heard on 27th November, 2014.

**(a) Civil Procedure Code (V of 1908)---**

---S. 12(2)---Specific Relief Act (I of 1877), S. 42---Constitution of Pakistan, Art. 199---Constitutional petition---Suit for declaration---Validity--- Decree, setting aside of---Application for setting aside decree was dismissed being time barred--- Validity---Predecessor of the parties was owner of suit property who filed suit for declaration, challenging gift deed, in his life time which was decreed---Plaintiff remained in physical possession on the suit land during his life time and after his death, mutation of inheritance was attested in favour of all the legal heirs---Delivery of possession, in the present case, by the predecessor to his sons had not been established, thus the gift was not valid---Impugned decree had not been challenged by the legal heirs during the life time of their predecessor---Findings recorded by the revisional Court were the result of mis-reading of evidence and same were based on erroneous assumption of facts and law---Impugned judgment passed by the revisional Court was set aside and that of Trial Court restored---Constitutional petition was accepted in circumstances.

Dilwar Jan v. Gul Rehman and 5 others PLD 2001 SC 149; Hassan Din v. Hafiz Abdus Salam and others PLD 1991 SC 65; Abdul Fatah and 8 others v. Nisar Ahmed and 3 others 2003 YLR 2610; Tassadaq Hussain and another v. Afzal Mumtaz and 2 others 2001 MLD 740; Muhammad Yousaf v. Manzoor Ahmad and another PLD 2006 Lah. 738; Mazhar Khan v. Additional District Judge, Mailsi and others 2007 MLD 1580; Noor Muhammad v. Sarwar Khan and 2 others

PLD 1985 SC 131 and Muhammad Khan and 6 others v. Mst. Ghulam Fatima and 12 others 1991 SCMR 970 ref.

**(b) Islamic law---**

---Gift---Ingredients---Ingredients of valid gift were offer by the donor to transfer the property as gift, acceptance by the donee and delivery of possession of the property gifted.

**(c) Constitution of Pakistan----**

---Art. 199---Constitutional jurisdiction of High Court---Scope---High Court could interfere while exercising constitutional jurisdiction if findings were based on insufficient evidence, mis-reading of evidence, erroneous assumption of facts and non consideration of material evidence.

Dilawar Jan v. Gul Rehman and 5 others PLD 2001 SC 149 rel.

Munir Ahmad Kiyani for Petitioner.

Sarfraz Ahmad Qureshi for Respondents.

Date of hearing: 27th November, 2014.

**JUDGMENT**

**CH. MUSHTAQ AHMAD, J.**--Briefly the facts are that Bostan Khan, predecessor of the parties filed a suit for declaration on 31-1-1982 challenging a registered gift deed dated 6-1-1977 in favour of his sons respondents Nos.1 to 3. The said suit was decreed on 29-6-1982. Javed Iqbal, one of the defendants appeared before the court and made statement that he had informed his brothers about institution of the suit but they were avoiding to appear before the court and that he has no objection on the suit being decreed in favour of their father. The said Bostan Khan, predecessor of the parties died and mutation of his inheritance was attested in favour of his all legal heirs on 19-6-1996. Respondent No.1 then filed a petition under Section 12(2) of the Code of Civil Procedure, 1908 (Act V of 1908) for setting aside decree dated 29-6-1982 on 1-9-2000 impleading his

brothers and sisters as respondents and alleged that he had received no summons issued by the court before ex parte decree was passed in favour of their father whereby mutation of gift was set-aside; that respondents Nos.1 and 2 had connived with Bostan Khan, their father and had not informed him about the institution of the suit and consequently, a decree was passed in favour of their father and that their father had admitted in his life time that the property was gifted by him to his sons. The said petition was contested by the present petitioner. In the light of pleadings of parties, following issues were framed:--

- (1) Whether the application is liable to be accepted on the grounds mentioned in the application? OPA
- (1A) Whether the petition is time barred? OPR
- (2) Relief.

2. Both the parties produced evidence in support of their respective versions before the learned trial court. On conclusion of trial, the learned Civil Judge, dismissed the application vide order dated 17-7-2006 on two grounds that the petitioner and his brothers were aware of the institution of suit by their father and the decree passed in his favour in 1982 but it was not challenged by them in life time of their father who had died in 1996 and a mutation of inheritance was also attested in favour of all the legal heirs and that the application was also hopelessly time barred. Feeling aggrieved, the respondent No.1 filed revision petition which was accepted by learned Additional District Judge vide judgment dated 26-4-2008 against which the present petition was filed.

3. Contention of learned counsel for the petitioner is that learned revisional court has ignored the material facts established on the record and has wrongly set-aside the decree dated 29-6-1982 on the basis of mere surmises and conjectures; that it was proved on the record that respondent No.1 was fully aware regarding the decree dated 19-6-1982 passed in favour of father of the parties who in his life time had filed the suit whereby the alleged gift in favour of the sons was challenged and the suit was not contested by the respondents

Nos.1 to 3 (the donees); that Bostan Khan predecessor of the parties did not handover possession of the property, therefore, the gift was not valid and complete and on that score, the same was rightly set-aside in the suit filed by him and that the impugned judgment passed by the learned Additional District Judge is erroneous on facts as well as law on the subject, hence, the same is liable to be set-aside. Learned counsel for the petitioner has placed reliance on "Dilawar Jan v. Gul Rehman and 5 others" (PLD 2001 SC 149), "Hassan Din v. Hafiz Abdus Salam and others" (PLD 1991 SC 65), "Abdul Fatah and 8 others v. Nisar Ahmed and 3 others" (2003 YLR 2610) and "Tassadaq. Hussain and another v. Afzal Mumtaz and 2 others" (2001 MLD 740) in support of his contention.

4. Learned counsel for the respondents has supported the impugned judgment on the ground that respondent was not served in the suit filed by Bostan Khan nor he had knowledge about the decree passed in favour of predecessor of the parties and that the order passed by the revisional court could not be interfered with in constitutional jurisdiction of this Court. Learned counsel for the respondents has referred to "Muhammad Yousaf v. Manzoor Ahmad and another" (PLD 2006 Lahore 738), "Mazhar Khan v. Additional District Judge, Mailsi and others" (2007 MLD 1580), "Noor Muhammad v. Sarwar Khan and 2 others" (PLD 1985 SC 131) and "Muhammad Khan and 6 others v. Mst. Ghulam Fatima and 12 others" (1991 SCMR 970) in support of his contention.

5. Heard. Perused.

6. Regarding question of maintainability of the petition against order passed by a revisional court I would like to dispose of the arguments advanced by learned counsel for the parties on this point first. In the case-law cited by learned counsel for the petitioner i.e. "Dilawar Jan v. Gul Rehman and 5 others" (PLD 2001 SC 149), this question came to be considered and it was laid down by the apex court that where order passed by courts below suffers from any jurisdictional defect or violates any provision of law, and if the error is so glaring and patent that the same may not be acceptable, invocation of constitutional

jurisdiction is justified. It was further laid down that when finding is based on insufficient evidence, misreading of evidence, erroneous assumption of facts, non-consideration of material evidence, excess or abuse of jurisdiction, arbitrary exercise of power and where no reasonable view on evidence has been taken, High Court can interfere in constitutional jurisdiction. In another case relied upon by learned counsel for the petitioner, i.e. "Hassan Din v. Hafiz Abdus Salam and others" (PLD 1991 SC 65), it was observed that where the District Judge exercises jurisdiction which he did not possess in the matter of reopening the auction sale by setting aside ex parte decree and thereby jeopardizes the right of respondents in the valuable immovable property, constitutional petition was rightly entertained by the High Court in circumstances. In the case-law cited by learned counsel for the respondents i.e. "Muhammad Yousaf v. Manzoor Ahmad and another" (PLD 2006 Lahore 738), "Mazhar Khan v. Additional District Judge, Mailsi and others" (2007 MLD 1580), "Noor Muhammad v. Sarwar Khan and 2 others" (PLD 1985 SC 131), the question of maintainability of constitutional petition against revisional order, came to be considered. In the cited case i.e. "Noor Muhammad v. Sarwar Khan and 2 others" (PLD 1985 SC 131), it was observed that neither impugned order passed by executing court nor that passed by Additional District Judge in his revisional jurisdiction, could, by any stretch of imagination, be said to be illegal or to have been passed without lawful authority. Constitutional petition against such order was not competent. In the other cases cited by learned counsel for the respondents, it was also held that a revisional order arising out of civil litigation, could not be challenged in constitutional petition.

7. By now it is well settled that when a finding is based on insufficient evidence, misreading of evidence, erroneous assumption of facts, non consideration of material evidence, High Court can interfere in constitutional jurisdiction, reference in this regard may be made to "Dilawar Jan v. Gul Rehman and 5 others" (PLD 2001 SC 149). Coming to the merits of the case it is to be seen as to whether the gift allegedly made by Bostan Khan in favour of his son was valid and complete. The necessary ingredients of a valid gift are:-

- (i) Offer by the doner to transfer the property as gift.
- (ii) Acceptance by the donee.
- (iii) Delivery of possession of the property gifted.

In the case in hand, it is to be seen whether the first court had correctly read the evidence produced by the parties and that the learned revisional court was justified in interfering with the findings of facts recorded. In the case in hand, it is admitted fact that Bostan Khan, predecessor of the parties, was owner of the suit property. It is also admitted fact that he, in his life time, filed suit which was decreed in his favour on 29-6-1982. During his life time, said Bostan Khan remained in physical possession of the suit property and after his death, mutation of inheritance was attested in favour of his all legal heirs. Hence, the delivery of possession in this case by Bostan Khan to his sons was not established due to which it was not a case of valid gift by doner in favour of donees. It is admitted even by respondent No.1 that respondent No.2 appeared before the court and stated that he had told his brothers about the institution of the suit by their father and defendant No.1 had also appeared before the court to prosecute the matter. Javed Iqbal respondent No.2 in the petition filed under Section 12(2) of The Code of Civil Procedure, 1908 (Act V of 1908) also made statement before the Court that he had told his brothers and that he has no objection on the suit being decreed in favour of their father. It is admitted fact that the above decree was passed on 29-6-1982 which was challenged by respondent No.1 in the year 2000. The record in this case further shows that father of the parties died in the year 1996 and mutation of inheritance was attested in favour of the parties on 29-6- 1996. The above mutation was also challenged by the respondents jointly but their appeal was dismissed. The record in this case shows that Javed Iqbal respondent appeared before the trial court as RW-2 and stated that he went with his father to pursue the suit filed by him and his father had stated that he would withdraw the suit which he filed against his sons due to his strained relations with them and that he did not know whether his father had withdrawn the suit or not and that he now has come to know that the suit had been decreed in favour of their father. He further stated that he along with his brothers had been residing at the house of their

father since 1977. Respondent No.1 who appeared before the trial court as RW-1 also admitted that Javed Iqbal was residing with his father in the same house. It is admitted fact in this case that during life time of predecessor of the parties, the decree passed in his favour was not challenged by any legal heir. The learned trial court after considering the evidence available on record concluded that it was proved on the record that respondent No.2 Javed Iqbal appeared in the suit and got recorded his statement with his free will and consent and he was estopped by his words and conduct to depose against the correctness of his statement. It is important to note that only respondent No.1 moved application under Section 12(2) of The Code of Civil Procedure, 1908 (Act V of 1908) in the year 2000 against the decree which was passed on 29-6-1982.

8. For the above reasons, the trial court rejected the application moved under Section 12(2) of The Code of Civil Procedure, 1908 (Act V of 1908) being against facts established on record and being hopelessly time barred. While reversing the findings recorded by the first court, the learned Additional District Judge mainly based his decision on the fact that petitioner (respondent No.1) was not properly served in the suit filed by his father through his elder brother and thus provisions of Order V, Rule 15 read with Rule 17 of The Code of Civil Procedure, 1908 (Act V of 1908) were violated. However, view taken by learned trial court was that it was obligatory on the petitioner to prove as to why respondent No.1 (his brother) would not have informed him about the institution of the suit. Finding of learned Additional District Judge that if the suit of the predecessor in interest was to be decreed at all, it could only have been decreed against Javed Iqbal who had made conceding statement and not against rest of the defendants, is erroneous for the reason that it has not been denied by all the legal heirs of Bostan Khan except respondent No.1 that he had challenged the gift himself and the decree was passed in his favour which was not challenged in his life time.

9. It is clear from above discussion that the findings recorded" by the learned revisional court is the result of misreading of evidence, based on erroneous assumption of facts and law.



10. Resultantly, the petition in hand is hereby accepted and the impugned judgment dated 26-4-2008 is set aside as a result of which view of learned trial court is restored. Parties are left to bear their own costs as incurred by them.

ZC/N-61/L

Petition allowed.

**PLJ 2015 Cr.C. (Lahore) 588**  
**[Multan Bench Multan]**  
**Present: CH. MUSHTAQ AHMAD, J.**  
**UMER HAYAT--Appellant**

**versus**

**STATE--Respondent**

CrI. Appeal No. 630 of 2002, heard on 13.5.2015.

**Pakistan Penal Code, 1860 (XLV of 1860)--**

---Ss. 302(b) & 34 & 311--Conviction and sentence--Challenge to--  
Compromise--Compromise effected between parties was voluntary,  
genuine and without duress, threat or coercion--It makes belief that  
parties have settled down matter in order to rehabilitate them by  
burying hatchets forever and as such compromise has been  
completed--Therefore, in interest of justice with a view to promote  
peace and harmony in society, permission to compound offence  
of *Qatl-i-Amd* of deceased was granted--There were no circumstances  
attracting *fasad-fil-arz* available on record that action under Section  
311, PPC was required to be taken against accused-convict.

[P. 590] A & B

*Sheikh Muhammad Raheem & Mr. Muhammad Bilal Butt*, Advocates  
for Appellant.

*Mr. Ahmed Raza Chaudhry*, Addl.P.G. for Complainant.

Date of hearing: 13.5.2015.

**JUDGMENT**

This judgment shall dispose of above titled criminal appeal filed  
by Umer Hayat, appellant/convict challenging his conviction and  
sentence.

2. Umer Hayat, appellant/convict alongwith another was tried in case  
FIR No. 246 dated 4.7.1999 registered under Sections 302/34, PPC at  
Police Station Harappa, District Sahiwal for causing *Qatl-e-*  
*Amd* of Murtaza, son of the complainant. At the conclusion of the trial

learned Additional Sessions Judge, Sahiwal *vide* his judgment dated 26.6.2002 convicted and sentenced the appellant Umer Hayat under Section 302(b)/34, PPC to imprisonment for life. He was also directed to pay Rs. 50,000/- as compensation in terms of Section 544-A, Cr.P.C. to the legal heirs of the deceased and in case of default thereof to undergo further imprisonment for six months R.I. Benefit of Section 382-B, Cr.P.C. was, however, extended to the appellant.

3. Umer Hayat, appellant/convict has challenged his conviction and sentence through the instant criminal appeal. During the pendency of this appeal he moved an application under Section 345, Cr.P.C. *vide* Criminal Miscellaneous No. 394-M of 2014 seeking permission to effect compromise as legal heirs of the deceased Murtaza have compounded the offence and have waived of their right of *Qisas* and *Diyat* in the name of Allah Almighty and they have no objection if he is acquitted of the charge against him.

4. *Vide* order dated 17.4.2014 learned Sessions Judge, Sahiwal was directed to submit report about genuineness of the compromise arrived at between legal heirs of the deceased and the appellant/convict. According to the report of learned Sessions Judge, Sahiwal dated 8.5.2014 deceased Murtaza was unmarried at the time of death and was survived by his parents i.e. Muhammad Yar (father) and *Mst.* Amiran Bibi (mother). They appeared and made statements before learned Sessions Judge, Sahiwal that they have forgiven the appellant/convict and have waived of their right of *Qisas* and *Diyat* in the name of Allah Almighty voluntarily and with their free consent and have no objection if the appellant is acquitted of the charge. The learned Sessions Judge is satisfied that the compromise has been effected voluntarily and without fear or duress.

5. Learned Additional Prosecutor General appearing on behalf of the State after having gone through the entire record has verified that the compromise arrived at between the parties is genuine.

6. In view of the above, I am satisfied that the compromise effected between the parties is voluntary, genuine and without duress, threat or coercion. It makes belief that parties have settled down the matter in

order to rehabilitate them by burying hatchets forever and as such compromise has been completed. Therefore, in the interest of justice with a view to promote peace and harmony in the society, permission to compound the offence of *Qatl-i-Amd* of deceased Murtaza is granted.

7. There are no circumstances attracting *fasad-fil-arz* available on record that action under Section 311, PPC is required to be taken against the accused-convict.

8. In view of the above, Criminal Appeal No. 630 of 2002 is accepted on the basis of compromise by legal heirs of the deceased. Resultantly the conviction and sentence of Umer Hayat, appellant/convict *vide* judgment dated 26.6.2002 passed by learned Additional Sessions Judge, Sahiwal is hereby set aside and he is acquitted of the charge against him in terms of the compromise. Presently appellant is on bail, his bail bonds are discharged.

(A.S.) Appeal accepted



**2016 M L D 261**  
**[Lahore]**  
**Before Ch. Mushtaq Ahmad, J**  
**MUHAMMAD YAR alias MAMI---Appellant**  
**Versus**  
**The STATE---Respondent**

Criminal Appeal No.654 of 2006, heard on 25th June, 2015.

**(a) Penal Code (XLV of 1860)---**

---Ss. 302, 322 & 34---Criminal Procedure Code (V of 1898), S. 342--  
--Qatl-i-amd, Qatl-bis-sabab, common intention---Power to examine  
accused---Duty of prosecution as to proof---Prosecution failing to  
prove charge against accused---Effect---Statement of accused  
recorded under S. 342, Cr.P.C.---Scope---Appreciation of evidence---  
Death of deceased was admitted to have resulted from accident---  
Admission treated as exculpatory statement---Accused, along with  
two others, was alleged to have killed deceased by injuring him with  
butt of gun and sotas---Trial court, disbelieving prosecution story,  
acquitted accused from charge under S. 302, P.P.C., but convicted  
and sentenced him under S. 322, P.P.C. making him liable to pay  
Diyat on ground that accused had admitted during his statement  
recorded under S. 342, Cr.P.C. that alleged occurrence was a road  
accident---Accused, during his statement under S. 342, Cr.P.C., had  
stated that deceased's buffalo, having become scared due to light of  
motorcycle, had run over his motorcycle, and as a result thereof, all  
present there had sustained injuries---Medical witness, who examined  
deceased, had supported said statement of accused---Accused had not  
admitted his guilt; rather his statement was exculpatory in nature---  
Prosecution was bound to prove charge against accused beyond  
reasonable doubt---Where prosecution version was disbelieved,  
statement of accused was to be considered as a whole and not in  
piecemeal---Conviction recorded by Trial Court was not sustainable--  
-Accused was acquitted---Appeal was allowed accordingly.

**(b) Criminal trial----**

---Duty of prosecution to prove charge against accused beyond reasonable doubt.

**(c) Criminal Procedure Code (V of 1898)---**

---S. 342---Power to examine accused---Statement of accused, appreciation of---Where prosecution version is disbelieved, statement of accused is to be considered as a whole and not in piecemeal.

Syed Badar Raza Gillani for Appellant.

Hassan Mehmood Khan Tareen, Deputy Prosecutor General for the State.

Muhammad Sharif Karkhi Kherra for the Complainant.

Date of hearing: 25th June, 2015.

**JUDGMENT**

**CH. MUSHTAQ AHMAD, J.**---Appellant Muhammad Yar alias Mami has challenged his conviction and sentence through this Criminal Appeal. He was tried by learned Additional Sessions Judge, Vehari in case FIR No.646 dated 06.10.2005 under sections 302, 34, P.P.C. registered at Police Station Saddar, District Vehari. He was convicted by learned Additional Sessions Judge, Vehari vide judgment dated 28.11.2006 under section 322, P.P.C. and sentenced to pay amount of Diyat Rs.6,55,482/- in three equal instalments. Feeling aggrieved, he has preferred this appeal.

2 Briefly, facts of the case are that Shamshad Ali complainant got recorded his statement Ex.PA on 06.10.2005 alleging therein that on 05.10.2005 Abdul Jabar, his brother and Intizar Hussain, his partner, after purchasing buffalo and calf from Chak No.198/EB were going to Chak No.188/EB to their house. Calf was small and was not in a position to walk, hence, his brother sent Intizar Hussain for fetching cart from house. Said Intizar Hussain went to Chak No.188/EB on motorcycle for fetching cart. Meanwhile, Muhammad Ashraf told him that he was coming from Vehari. When he reached on metalled road leading to Chak No.198/EB near Dera of Nazar Muhammad, he saw in the light of motorcycle that Sher Muhammad,

Mami and two other unknown persons were inflicting blows to Abdul Jabbar with butt of gun and sotas. Abdul Jabbar fell there and accused fled away on motorcycle. He further told that after receiving said information he along with Intizar Hussain, Fareed, Sarfraz reached the place of occurrence on car and saw that his brother was lying on road side. Blood was oozing from his nose and mouth and there was swelling on his face. They shifted him to the Civil Hospital, Vehari then, he was referred to Nishter Hospital and on next day at about 10.00 a.m, he succumbed to injuries. Motive behind the occurrence was that accused were going on motorcycle and said motorcycle struck against buffalo. Due to that reason, hot words were exchanged between them. Accused got angry and injured his brother who later on succumbed to injuries.

3. After submission of challan, charge was framed against the appellant, to which he denied and claimed trial. Thereafter, prosecution evidence was recorded. Case was firstly investigated by Haq Nawaz SI (PW-06) who prepared injury statement, inspected place of occurrence, recorded the statements of PWs and prepared rough site plan as well as recovery memo of motorcycle, then investigation was entrusted to Muhammad Jameel SI who arrested the appellant. PW-4 Dr. Muhammad Aslam, M.O., conducted autopsy on the deadbody of deceased Abdul Jabbar and noted two injuries on his deadbody. In his opinion, injury No.1 was ante-mortem caused by blunt weapon and was sufficient to cause death in ordinary course of nature. After recording prosecution evidence, statement of appellant was recorded under Section 342, Cr.P.C. and at conclusion of trial, appellant was convicted and sentenced as mentioned above, hence, this criminal appeal.

4. Contention of learned counsel for the appellant is that prosecution version in this case was not confidence inspiring and the same was also disbelieved by learned trial court but inspite of that present appellant was convicted on the ground that he himself had admitted that it was an accident case, therefore, he was liable to be punished under section 322, P.P.C. and that conviction recorded by the trial court in this case was unwarranted and not sustainable.



5. Conversely learned Deputy Prosecutor General assisted by learned counsel for the complainant has supported the impugned judgment.

6. Arguments heard. Record perused.

7. In the present case ocular account was furnished by PW-1 Shamshad Ali, PW-2 Intizar Hussain and PW-3 Qurban Ali. The case was got registered by PW-1 Shamshad Ali who is brother of the deceased Abdul Jabbar. He alleged that at the time of occurrence he along with Abdul Jabbar (deceased) and Intizar Hussain PW-2 went to purchase a buffalo. After purchasing buffalo they were coming to Chak No.188-EB. Intizar Hussain was sent to fetch bull-cart in order to shift calf of buffalo. According to his version, accused Muhammad Yar alias Mami (appellant) along with unknown persons caused injuries with butt of the gun and sotas to Abdul Jabbar and then fled away. Abdul Jabbar was found lying on metalled road and blood was oozing from his mouth and ear. They took him to Civil Hospital, Vehari but the doctor referred him to District Hospital where he died on the following day.

8. According to his version motive for the occurrence was that motorcycle of the accused struck against buffalo, on which an altercation took place between Abdul Jabbar deceased and accused persons due to which they murdered him.

9. PW-2 Intizar Hussain deposed on the same lines before the court. Qurban Ali PW-3 stated that on 05.10.2005 at 7.00 p.m. he was going to Chak No.188-EB on motorcycle. When he reached near sugarcane field of one Nazar Hussain he saw Abdul Jabbar lying in injured condition who informed him that Sher Muhammad alias Mulazim Hussain and Yar Muhammad alias Mami along with unknown accused person had caused injuries to him. According to him Muhammad Ashraf PW came and informed them that accused were giving beating to Abdul Jabbar. On receiving this information they went at the spot and found Abdul Jabbar lying in injured condition.

10. Learned trial court while considering ocular account furnished by the PWs concluded that PW Qurban Ali did not disclose the fact of causing injuries to deceased Abdul Jabbar by the accused. The other witnesses were not present at the spot which is evident from their statements, therefore, the version as put-forth by the prosecution witnesses, was not correct; rather Abdul Jabbar, deceased had received injuries during an accident. At the time of occurrence appellant Muhammad Yar alias Mami was driving motorcycle whereas his co-accused were sitting on his back side who were going with him on the same motorcycle. After concluding that version of the witnesses was false, learned trial court acquitted appellant under section 302, P.P.C. and held him responsible to pay Diyat to legal heirs of the deceased as provided under section 322, P.P.C.

11. The discussion made above shows that prosecution evidence was disbelieved by learned trial court and present appellant was convicted on, his own statement recorded under section 342, Cr.P.C. The question that arises for consideration is whether after disbelieving prosecution version accused could be convicted on the basis of his statement recorded under section 342, Cr.P.C. To determine liability of the appellant his statement has to be looked into. Record shows that appellant in answer to Question No.4 "Why this case against him and why the PWs deposed against him" stated that "complainant got the case registered with mala fide intention. In fact it was just a road accident. The buffalo purchased by Abdul Jabbar deceased got scared due to light of motorcycle and ran over the motorcycle. Resultantly, all the accused as well as Abdul Jabbar, deceased sustained serious injuries. His version was supported by Doctor who medically examined Abdul Jabbar when he was brought to the hospital in injured condition as he had also medically examined him at the same time". He further stated that during all investigations same conclusion was reached by the investigating officers.

12. Above referred statement of appellant reveals that he has not admitted his guilt rather his statement was exculpatory in nature. Law is well settled that it is duty of the prosecution to prove charge against

the accused beyond reasonable doubt. It is also well settled that where prosecution version is dis-believed, statement of the accused is to be considered as a whole and not in piece meal. The conviction recorded in this case by the trial court, for the reasons given above, is not sustainable.

13. Consequently, this appeal is allowed. The impugned conviction and sentence is set aside. Appellant Muhammad Yar alias Mami is acquitted of the charge. Presently, he is on bail. His bail bonds are discharged.

SL/M-217/L

Appeal allowed.

**2016 M L D 502**  
**[Lahore]**  
**Before Ch. Mushtaq Ahmad, J**  
**MUDASSAR HANIF---Appellant**  
**Versus**  
**The STATE---Respondent**

Criminal Appeal No.330 of 2007, heard on 1st June, 2015.

**(a) Penal Code (XLV of 1860)---**

---S. 302 & 34---Qatal-i-amd and common intention---Appreciation of evidence---Complainant did not mention anything about motive in FIR and reiterated the version as contained in First Information Report---Another eye witness who was son-in-law of the complainant, was not examined and one witness was presented by the prosecution to prove motive---No reason existed for prosecution for not examining the son-in-law of complainant an eye-witness of the incident---Testimony of single witness without corroboration could not be relied upon to award conviction---Prosecution story as narrated in the First Information Report was, therefore, not believable---Accused was acquitted and appeal allowed accordingly.

**(b) Penal Code (XLV of 1860)---**

---Ss. 97 & 99---Self defence, right of---"Benefit"---Scope---Preconditions---Appreciation of evidence---Accused contended that he fired a single shot, followed by five shots in order to save himself, in self defence---Accused being a student of 10th class and a minor, had no motive to kill the deceased, he only fired a first single shot in order to save himself from being a victim of un-natural lust of deceased---Accused repeated second five shots as he saw that the accused was trying to catch him, and such circumstances cannot be said as exceeding right of self defence as repetition of shots might have been as a result of grave fear.

**(c) Criminal Procedure Code (V of 1898)---**

---S. 342---Statement of accused---Acceptance or rejection of--- Principles---If prosecution evidence was disbelieved by the Trial Court, the position taken by the accused under S. 342, Cr.P.C. was to be accepted or rejected as a whole.

Muhammad Asghar v. The State PLD 2008 SC 513 rel.

Sardar Zafar Ahmad Lund for Appellant.

Hassan Mahmood Khan Tareen, Deputy Prosecutor General for the State.

Nemo for the Complainant.

Date of hearing: 1st June, 2015.

## **JUDGMENT**

**CH. MUSHTAQ AHMAD, J.**---Mudassar Hanif convict has challenged his conviction and sentence through this Criminal Appeal No.330 of 2007. He was tried by learned Additional Sessions Judge, Taunsa Sharif in case FIR No.64/2004 registered under sections 302, 34 P.P.C. at Police Station Taunsa, District Dera Ghazi Khan.

2. Appellant was declared juvenile and on conclusion of trial, he was convicted vide judgment dated 31.05.2007 and sentenced as under:--

Convicted under section 302(c), P.P.C. and sentenced to imprisonment for fourteen years (R.I). He was held liable to pay Rs.20,000/- as compensation in terms of section 544-A Cr.P.C. to the legal heirs of deceased.

3. FIR was got registered by Khalil-ur-Rehman son of Muhammad Khan. Prosecution story as per FIR is that on 01.04.2004 at about 09:30 P.M., complainant alongwith his son Tahir Muhammad Abbas and son-in-law Abdul Ghaffar were going to Basti Mandrani on a motorcycle. When they crossed canal bridge, Mudassar son of Hanif (appellant) who was present on the road, signaled to stop the motorcycle. He asked Tahir to listen to him aside. Mudassar took Tahir to a vacant place near the road whereas

complainant and Abdul Ghaffar remained at the road. After sometime, they heard sound of fire shot, on which they attracted to the spot. In their view Mudassar made five fire shots on Tahir, which hit him at abdomen, left thigh and right buttock, who succumbed to the injuries. Accused fled away by extending threats to complainant and Abdul Ghaffar.

4. Investigation of this case was conducted by PW-10 Muhammad Akram SI. Report under section 173, Cr.P.C. was submitted before trial court, where charge against appellant was framed on 03.11.2004, to which he pleaded not guilty and claimed trial.

5. During trial prosecution produced as many as ten witnesses. Medical evidence was furnished by PW-5 Dr. Abdul Rasheed, who conducted postmortem examination on the dead body and noted eleven firearm injuries. After recording prosecution evidence, statement of appellant was recorded under section 342 Cr.P.C. wherein he again pleaded innocence. In answer to the question why this case against him and why the PWs had deposed against him, appellant stated as under:--

"The PWs are closely related inter se and in fact none had seen the occurrence and no one was present at the time of occurrence. In fact on the night of occurrence Tahir deceased alongwith his friends Yasir, Zameer-ul-Hassan and Sajjad took me in a car and stopped the car on canal bridge and went for urination and also called me. The he took me in the jungle where he placed his arm on my shoulders and posted kisses on me. He assaulted upon me to satisfy his un-natural lust. I tried to rescue myself. Then Tahir caught hold of my shalwar and forced me to sit down. Meanwhile, he placed his pistol on the ground and pushed me on the ground for the purpose of sodomy. I picked up his pistol and fired at him. He abused me and tried to catch me. I fired a second shot. He came forward to catch me and then I made number of shots to save my honour".

6. At conclusion of trial, appellant was convicted and sentenced vide impugned judgment as mentioned above. Hence, this appeal.

7. Contention of learned counsel for appellant is that the prosecution in this case had failed to prove charge against appellant beyond reasonable doubt; that the appellant had no motive to kill the deceased; that he made fire shots in exercise of his right of self defence; that once prosecution version had been disbelieved, stance of appellant was to be believed or disbelieved as a whole; that findings recorded by learned trial court are not supported by evidence produced in this case, hence appellant is entitled to acquittal.

8. Conversely, learned Deputy Prosecutor General argued that appellant was the person who had caused death of son of complainant and that he exceeded his right of self defence by repeating fire shots, as such he was rightly convicted by learned trial court.

9. Arguments heard and record perused.

10. This case was registered on the complaint made by Khalil-ur-Rehman, who while appearing as (PW-8) reiterated the version as contained in the FIR. Second eye witness of the occurrence according to FIR is Abdul Ghaffar, who is son-in-law of complainant. However, it is strange to note that he was not examined by prosecution and was given up being unnecessary witness. There was no reason for prosecution for not examining said witness who was no other but son-in-law (damaad) of complainant. Testimony of a single witness without corroboration could not be relied upon to award conviction. Prosecution produced Abdul Karim PW-9 instead of said Abdul Ghaffar. PW-9 introduced motive behind the occurrence, which according to him was a dispute of money between appellant/accused and the deceased. No other witness of motive part was produced by prosecution. No motive was mentioned by complainant in the FIR.

Therefore, statement of PW-9 could not be believed. Even otherwise, prosecution story as narrated in the FIR is not believable. Further,

presence of alleged witnesses at the place of occurrence is an extremely doubtful affair.

11. Appellant in his statement took the plea of self defence and also narrated the detail of occurrence. Learned trial court disbelieved prosecution version, despite that it convicted the appellant by disbelieving his version partly. Learned trial court observed in the impugned judgment that after having made one fire shot, appellant/accused was not justified in making more fire shots as there remained no apprehension of being assaulted by the deceased. Appellant in his statement narrated the detail as to why he repeated fire shots. Appellant at the time of occurrence was a student of 10th class less than 18 years of age. He had no motive to kill Tahir Muhammad Abbas. He made first fire shot in order to save himself from being victim of un-natural lust of deceased. He repeated second fire shot as he saw Tahir Muhammad Abbas attempting to catch him. Repetition of fire shots might be under grave fear, which in the peculiar circumstances of the case cannot be said as exceeding right of self defence.

Furthermore, law is well settled that if prosecution evidence is disbelieved by the court, then the position taken by the accused under section 342, Cr.P.C. is to be accepted or rejected as a whole. The case in hand relates to the same proposition, so it is legally not possible to accept inculpatory part of statement of the appellant and to reject exculpatory portion of his statement. Reference may be made to case titled "Muhammad Asghar v. The State" reported in PLD 2008 SC 513 wherein it was held that the trial court after disbelieving the prosecution version could believe or reject version of the accused as a whole.

12. On re-appraisal of evidence, I am of the considered opinion that prosecution had miserably failed to prove charge against the appellant. Findings recorded by learned trial court were not in line with facts established on record.



Resultantly, Criminal Appeal No.330 of 2007 is hereby allowed and appellant Mudassar Hanif is acquitted of the charge. Appellant is on bail. His surety stands discharged of the liability of bail bonds.

YN/M-219/L

Appeal allowed.

**2016 M L D 644**  
**[Lahore]**  
**Before Ch. Mushtaq Ahmad, J**  
**AURANGZEB through L.Rs.---Petitioner**  
**Versus**  
**MASOOD HUSSAIN through Legal Heirs and 4 others---**  
**Respondents**

Civil Appeal No.298-D of 2005, decided on 24th November, 2014.

**Civil Procedure Code (V of 1908)---**

---O. XXXIX, Rr. 1 & 2 & O.VII, R.11---Specific Relief Act (I of 1877), S. 54---Suit for permanent injunction against co-sharers---Application for grant of temporary injunction---Rejection of plaint while deciding the application for interim injunction---Scope---Trial Court rejected the plaint while deciding the application for grant of temporary injunction holding that if plaintiff/petitioner had any grievance, he could file a suit for partition as suit for permanent injunction against the co-sharers was not maintainable---Validity---Both the parties were co-sharers in the suit land---Plaint was rejected on the day when only application for grant of temporary injunction was fixed for arguments---Arguments advanced by the plaintiffs were with regard to interim relief and not on main suit and defendants contested only application filed under O. XXXIX, Rr. 1 & 2, C.P.C.--Trial Court while dismissing the application for temporary injunction observed that suit for permanent injunction against the co-sharers was not maintainable and plaint was also rejected---Both the courts below had exercised jurisdiction contrary to law and had wrongly dismissed the suit---Courts below had committed illegality in exercise of jurisdiction---Impugned judgments and decrees passed by both the courts below were set aside---Case was remanded to the Trial Court where suit and application under O. XXXIX, Rr. 1 & 2, C.P.C. would be deemed pending and should be decided afresh after affording an opportunity of hearing to the parties---Revision was accepted, in circumstances.

Sardara and 4 others v. Muhammad Khan PLD 1998 SC 1509; Fazal and others v. Ghulam Muhammad and others 2003 SCMR 999; Syed Kamran Hussain v. PTCL and another 2012 CLC 1998 and Iftikharul Haq v. District Canal Officer and others 2005 CLC 1740 ref.

Sardara and 4 others v. Muhammad Khan PLD 1998 SC 1509; Fazal and others v. Ghulam Muhammad and others 2003 SCMR 999 and Syed Kamran Hussain v. PTCL and another 2012 CLC 1998 rel.

Yasir Mehmood Khokhar for Petitioner.

Nemo for Respondents.

## **ORDER**

**CH. MUSHTAQ AHMAD, J.**---Briefly the facts are that predecessor of the petitioners Aurangzeb filed a suit for permanent injunction that he is co-owner in the agricultural land fully described in the head note of the plaint situated in village Kotla, Tehsil and District, Rawalpindi. The agricultural land was still un-partitioned as no partition in accordance with law was conducted; that the respondents were interfering in the land by cutting trees and raising construction over there, hence, they may be restrained from illegal acts and designs. Along with the suit an application under Order XXXIX, Rules 1, 2, C.P.C. for the grant of interim injunction was also filed. Learned trial court after hearing arguments not only dismissed the said application but also rejected the plaint vide order dated 3.4.2004 holding that if the plaintiff/petitioner had any grievance he could file a suit for partition and that suit for permanent injunction against the co-owners was not maintainable. Feeling aggrieved by that order petitioners preferred an appeal which was also dismissed by learned Additional District Judge vide judgment dated 21.12.2004 while upholding the order of the trial court. Hence, the instant civil revision.

2. Contention of learned counsel for the petitioners is that the judgments and decrees passed by both the courts below were violative of the law on the subject as rejection of plaint while deciding the application for interim injunction was unwarranted and un-called for; that both the courts below have mainly rejected the plaint on the

ground that suit for permanent injunction against the co-sharers was not maintainable which view is erroneous and contrary to the law laid down in the cases titled Sardara and 4 others v. Muhammad Khan (PLD 1998 SC 1509), Fazal and others v. Ghulam Muhammad and others (2003 SCMR 999), Syed Kamran Hussain v. PTCL and another (2012 CLC 1998) and Iftikharul Haq v. District Canal Officer and others (2005 CLC 1740). Prays that the impugned judgments and decrees may be set aside while allowing the instant civil revision.

3. Despite service none has appeared on behalf of the respondents today, hence, they are proceeded ex parte.

4. I have heard the arguments advanced by learned counsel for the petitioners and perused the record available on the file.

5. Record goes to show that it was admitted by both the parties that they were co-sharers in the suit land. It is also admitted fact that on the day the plaint was rejected only application filed under Order XXXIX, Rules 1,2, C.P.C. was fixed for arguments. Perusal of the order passed by learned trial court clearly reveals that in para-2 of the application arguments advanced on behalf of the petitioners were regarding interim relief and not on main suit and on behalf of the respondents only application filed under Order XXXIX, Rules 1 and 2, C.P.C. was contested. The learned trial court while dismissing the stay application observed that suit for permanent injunction against the co-owners was not maintainable. Resultantly, the plaint was also rejected. Learned appellate court also adopted the same view in the impugned judgment. In the authority cited by learned counsel for the petitioner i.e. PLD 1998 SC 1509 (supra) it was held that appellate court and the High Court had rightly maintained that land in question being joint and having not been partitioned between the parties defendants could not unilaterally cut and sell the trees growing over the said land or raising any construction thereon. Consequently the judgments of Appellate as well as High Court were maintained. In the second case i.e. 2003 SCMR 999 (supra) the trial court had decreed the suit restraining the defendants from raising construction over the land jointly owned by the parties. Judgment of the trial court was

maintained by the appellate court as well as the High Court. The Apex Court had declined to interfere in the judgments passed by the courts below holding that defendants instead of raising construction on the property which was admittedly owned by the plaintiff should have first of all got the same partitioned and then might have constructed portion of land falling in their shares. Similarly in the case reported as 2012 CLC 1998 (supra) it was held that rejection of plaint by the trial court while hearing application under Order XXXIV, Rules 1, 2, C.P.C. was not legally correct.

6. In the case in hand both the courts below have exercised jurisdiction contrary to law on the subject and have wrongly dismissed the suit filed by the petitioners/plaintiffs, thus, have committed illegality in exercise of jurisdiction warranting interference in revisional jurisdiction by this Court. Resultantly, this civil revision is allowed and the judgments and decrees of both the courts below are set aside. The case is sent back to the trial court where the suit and application under Order XXXIX, Rules 1 and 2, C.P.C. will be deemed pending and will be decided afresh after affording an opportunity of hearing to both the parties.

7. A copy of this order be sent to the learned District Judge, Rawalpindi who shall entrust the matter to the trial court concerned for decision afresh in accordance with law. Parties are directed to appear before the learned District Judge, Rawalpindi on 8.12.2014 for further proceedings.

ZC/A-199/L

Revision allowed.

**2016 M L D 840**  
**[Lahore]**  
**Before Ch. Mushtaq Ahmed, J**  
**NOOR ELLAHI and others---Petitioners**  
**Versus**  
**MUHAMMAD MEHBOOB and others---Respondents**

Civil Revision No.624 f 2014, decided on 10th November, 2014.

**Civil Procedure Code (V of 1908)---**

---O. XLI, R. 27---Specific Relief Act (I of 1877), S. 42---Suit for declaration---Production of additional evidence in Appellate Court---Scope---Trial Court dismissed the suit against which appeal was filed wherein an application for production of additional evidence was moved by the plaintiffs which was accepted by the Appellate Court---Contention of plaintiffs was that documents which were to be produced were not traceable at the time of recording of evidence before the Trial Court---Validity---Sufficient explanation had been put forth by the plaintiffs for not producing the documents during trial---Appellate Court had correctly exercised jurisdiction and had committed no illegality or irregularity---Revision was dismissed in circumstances.

Sher Baz Khan and others v. Mst.Malkani Sahibzadi Tiwana and others PLD 2003 SC 849; House Building Finance Corporation and others v. Muhammad Akhtar Zaman and others 2005 MLD 112; Mst.Sardaran and others v. Suleman and another 2003 SC 627; Shtamand and others v. Zahir Shah and others 2005 SCMR 348; Mustafa Kamal and others v. Daud Khan and others 2009 SCMR 221; Sh.Qamar Javid and others v. Sh.Hassan Ali 2001 SCMR 1766 and Niaz Rasool through Muhammad Bilal v. Mst.Parveen Ikram and others 2013 SCMR 397 ref.

Dr. Syed Qasim Haroon Naqvi for Petitioners.

Muhammad Abdul Hayee Alvi for Respondents Nos. 1 and 2.

## **ORDER**

Brief facts in order to dispose of this civil revision are that respondents No.1 Muhammad Mehboob and respondent No.2 Mst.Saleem Alhtar alias Naseem Alhtar filed a suit for declaration, cancellation, cancellation, mandatory and permanent injunction against the petitioners including predecessor of petitioners Nos.1 and 2. After framing issues in the light of pleadings of the parties and record of evidence learned trial court proceeded to dismiss the suit vide judgment and decree dated 23.2.2012. Feeling aggrieved respondents filed appeal. During pendency of the appeal respondents Nos.1 and 2 moved an application under Order XLI Rule 27, C.P.C. for permission to produce additional evidence which was contested by the petitioners. Learned appellate court after hearing arguments dismissed the said application vide order dated 27.2.2013. Respondents Nos.1 and 2 then filed Civil Revision No.297 of 2013 before this Court against the said order which was allowed vide order dated 1.5.2013 whereby the matter was remanded to the appellate Court to the effect that application of the petitioners will be deemed pending. After remand of the matter learned appellate court provided an opportunity of hearing to the parties. In the light of the observations recorded by the revisional court and considering arguments advanced by learned counsel application moved under Order XLI Rule 27, C.P.C. was accepted vide order dated 9.4.2014. Being dis-satisfied now the petitioners has approached this Court through the civil revision in hand.

2. Contentions of learned counsel for the petitioners is that learned appellate court has accepted application ignoring the facts of the case and the law laid down by the superior courts that the respondents had not moved application before the trial court seeking production of document which was essential and pre-requisite condition for moving a petition before the appellate court; that the order passed by learned appellate court has resulted in miscarriage of justice, hence, the same is not sustainable in the eye of law. In support of his contentions learned counsel has relied upon the cases of Sher Baz Khan and others v. Mst.Malkani Sahibzadi Tiwana and others

(PLD 2003 SC 849), House Building Finance Corporation and others v. Muhammad Akhtar Zaman and others (2005 MLD 112), Mst.Sardaran and others v. Suleman and another (2003 SC 627), Shtamand and others v. Zahir Shah and others (2005 SCMR 348), Mustafa Kamal and others v. Daud Khan and others (2009 SCMR 221), Sh.Qamar Javid and others v. Sh.Hassan Ali (2001 SCMR 1766) and Niaz Rasool through Muhammad Bilal v. Mst.Parveen Ikram and others (2013 SCMR 397).

3. Conversely learned counsel for respondents Nos.1 and 2 has contended that while deciding civil revision, this Hon'ble Court had recorded observations that documents sought to be produced through additional evidence pertaining to parentage of Karam Elahi, predecessor of the petitioners needed to be appreciated. He further maintained that the documents sought to be produced were not in the knowledge of the respondents at the time of recording evidence before the trial court and the same were obtained later on, hence, sufficient explanation was available on record for not moving application before the trial court seeking permission to produce evidence in this regard.

4. I have heard the learned counsel for the parties at length and perused the available record.

5. Perusal of the application under Order XLI Rule 27, C.P.C. moved by respondents Nos.1 and 2 before the appellate court has shown that in para-4 of that application it was mentioned that at the time of recording of evidence before the trial court the documents were not traceable, however, later on respondents succeeded to obtain certified copies of mutation of inheritance of Karam Elahi bearing number 411 dated 6.9.1992 attested in the revenue estate of Jallo, Tehsil Hasan Abdaal. The parentage of Karam Elahi, predecessor of the petitioners was a moot point in this case. The learned appellate court opined that the documents sought to be produced could lead the court in reaching just decision of the case. In the opinion of the learned appellate court the said documents would be helpful for reaching a just decision in the matter, so exercise of jurisdiction by



appellate court was in line with the provisions of Order XLI, Rule 27, C.P.C. whereby it was provided that if appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgment it may allow such evidence or document to be produced or witness to be examined.

6. In the citations referred by learned counsel for the petitioners which proceeded on different set of facts and circumstances it was observed that unsuccessful party in a suit was not to be granted an opportunity to fill up weaker parts of its case by producing additional evidence to the prejudice of other party. It was also noted that where a party seeking permission to produce additional evidence failed to explain the reason for not producing evidence or moving an application before the trial court. it was not entitled to the same relief. However, in the case in hand sufficient explanation has been putforth by the respondents for not producing the documents during trial. The learned appellate court has correctly exercised the jurisdiction and has committed no illegality or irregularity warranting interference by this Court in its revisional jurisdiction. Resultantly, instant civil revision, being devoid of any merits, is hereby dismissed with no order as to costs.

ZC/N-60/L

Revision dismissed.

**2016 M L D 911**  
**[Lahore]**  
**Before Ch. Mushtaq Ahmad, J**  
**ABDUL SATTAR---Petitioner**  
**Versus**  
**ADDL: SESSIONS JUDGE, SAHIWAL, and 2 others---**  
**Respondents**

Writ Petition No.9946 of 2013, heard on 24th August, 2015.

**(a) Criminal Procedure Code (V of 1898)---**

---Ss. 516-A, 517 & 520---Order for custody and disposal of property pending trial in certain cases---Scope---Sections 516-A, 517 & 520, Cr.P.C., revealed that during pendency of criminal case, temporary custody of case property could be given by the court to a person who was prima facie entitled thereto and on conclusion of trial, court would make final order regarding disposal of property in question.

Muhammad Shafi v. Abdul Razak and 2 others 2003 YLR 324; Mst. Gul Shan v. The State 1971 PCr.LJ 1279; Malik Saif Ullah v. Ch. Rehmat Ali, S.-I 1993 MLD 542 Haji Ghulam Kadir v. State 1974 PCr.LJ 228 and Mumtaz Akhtar v. State 1977 PCr.LJ 168 rel.

**(b) Criminal Procedure Code (V of 1898)---**

---S. 516-A---Order for custody and disposal of property pending trial---Petitioner impugned the order of Appellate Court whereby order granting custody of property to petitioner, was set aside---Validity---Respondent had not approached the Illaqa Magistrate claiming to be owner of cattle which were taken in possession during investigation of a criminal case nor her claim was rejected by Illaqa Magistrate, hence, there was no decision given by the court of first instance which could be challenged by her---Respondent could only approach Illaqa Magistrate by filing proper proceedings claiming to be the owner of disputed cattle and the Illaqa Magistrate, if so moved, could consider her claim and decide the matter after providing an opportunity of hearing to both the parties---Such a course was not adopted by respondent---Appellate Court was not competent to set

aside the provisional order of Illaqa Magistrate in favour of petitioner---Impugned order of Appellate Court was set aside.

Abdul Rashid v. Arshad Ali and 2 others 2000 YLR 2619 and Mazhar Ali v. Ansar Ali and others 2014 SCMR 1536 rel.

Waseem Sarwar Khan for Petitioner.

Mirza Muhammad Saleem Baig, Additional Advocate General, Punjab for the State.

Rana Muhammad Ajmal Kanju for Respondent No.3.

Date of hearing: 24th August, 2015.

## **JUDGMENT**

**CH. MUSHTAQ AHMAD, J.**---What brought the petitioner before this Court was the order passed by respondent No.1 dated 16.08.2013 whereby order dated 19.06.2013 passed by learned Magistrate Ist Class, Sahiwal granting Spurdari of the stolen cattle in favour of petitioner, was set-aside.

2. On the complaint of petitioner, a criminal case was registered on 03.04.2013 at Police Station Noor Shah District Sahiwal vide FIR No.155/2013. Petitioner alleged that his cattle 8-in number duly described in the body of FIR were stolen at night in between 04/05.01.2013 from his cattle-shed within the area of Chak No.68/4-R. During search one Waqar Amin and Muhammad Abbas admitted to have stolen the cattle and promised to return the same but later on refused to honour their word on which case was got registered. Muhammad Abbas son of respondent No.3 Mst. Nooran Bibi, was nominated accused of FIR. During his physical remand he got recovered three buffalos from his Dera which were taken into possession by the I.O as stolen property. Present petitioner then filed application before Illaqa Magistrate/trial court for Spurdari of his buffalos. Learned Illaqa Magistrate after obtaining report from the police, allowed application vide order dated 19.06.2013 and directed the police to handover buffalos to petitioner. Respondent No.3, mother of accused Muhammad Abbas filed revision petition on 27.06.2013 against order of the learned Magistrate stating that his son was not involved in theft case and that in fact the cattle belonging to her were taken into possession by the police, custody whereof was

given by learned Magistrate to the complainant of the criminal case. Revision petition was allowed vide order dated 16.08.2013, which is called in question through this petition.

3. Contention of learned counsel for the petitioner is that the learned Magistrate, under Section 516-A Cr. P.C was competent to temporarily handover custody of stolen cattle to the complainant who was true owner of the same and that the learned Additional Sessions Judge in revisional jurisdiction, has wrongly interfered in the order passed under Section 516-A, Cr.P.C.

4. Petition has been opposed by learned AAG assisted by learned counsel for the respondent No.3 who has supported the impugned order contending that according to findings of learned Additional Sessions Judge, respondent No.3 was the last possessor of the cattle and entitled to custody of the same on Spurdari. Learned counsel for the respondent has placed reliance on the cases i.e. "Abdul Rashid v. Arshad Ali and 2 others" "(2000 YLR 2619)" and "Mazhar Ali v. Ansar Ali and others" (2014 SCMR 1536).

5. Heard. Perused.

6. Respondent No.3 Mst. Nooran Bibi had not approached the Illaqa Magistrate when the cattle were taken into possession by the police in criminal case registered against her son and others. The learned Magistrate also noted in the order dated 19.06.2013 that no rival claimant has come forward to claim custody of the cattle. The application was granted on the following terms and conditions:--

- i) Petitioner shall produce the cattle before the Court as and when it was required.
- ii) Petitioner shall submit the surety bond to the tune of Rs.5,00,000/- with one surety.
- iii) Petitioner shall not further transfer the cattle to anybody else without permission of this Court.

Without moving application before the trial court, respondent No.3 Mst. Nooran Bibi filed revision petition which was accepted vide

impugned order. It is evident from the record that a theft case was registered on the complaint of present petitioner. Stolen cattle were taken into possession by the I.O on pointation of accused Muhammad Abbas son of Nooran Bibi respondent No.3. Description given in the recovery memo of the recovered cattle, tallies with the description given in the body of FIR. The learned Additional Sessions Judge in the impugned order mentioned that at the time of recovery of cattle, accused Muhammad Abbas son of Mst. Nooran Bibi was confined in jail in a murder case registered vide FIR No.620/2011 registered at Police Station Sadar Okara and was brought from Central Jail and after obtaining his physical remand, recovery of cattle was effected on his pointation. The reason that prevailed with the learned Additional Sessions Judge for accepting the revision petition was that Muhammad Abbas accused who was nominated in the FIR would not have kept the stolen cattle at his own Dera and that Mst. Nooran Bibi would be considered as last possessor of cattle in absence of her son who was confined in judicial lock up in the murder case. The above reasoning, however, is not in line with the facts of the case. The complainant who was victim, had lodged FIR in which he had given full description of the stolen cattle. FIR was got registered much before recovery of cattle on pointation of accused Muhammad Abbas who happened to be son of respondent No.3 Mst. Nooran Bibi and was also involved in criminal cases which fact has come on record as many cases of theft were registered against him.

7. Under Section 516-A, Cr.P.C it is provided that "when any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence, is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial. It is further provided under Section 517, Cr.P.C., that the Court, on conclusion of trial, may deliver stolen property to any person claiming to be entitled to possession thereof. Under Section 520, Cr.P.C. it is provided that "any court of appeal, confirmation, reference or revision, may direct any order under Section 517, Section 518 or Section 519 passed by a Court, subordinate thereto, to be

stayed pending consideration by the former Court, and may modify, alter or annul such order and make any further orders that may be just." Above referred provisions of Cr. P.C reveal that during pendency of criminal case, temporary custody of case property can be given by the court to a person who is prima facie entitled thereto and on conclusion of trial, the court would make final order regarding disposal of the property in question. The revisional court, during pendency of the case was, therefore, not competent to interfere in the order passed by the learned trial court. Reference in support of above view may be made to cases titled "Muhammad Shafi v. Abdul Razak and 2 others" reported in (2003 YLR 324), "Mst. Gul Shan v. The State" (1971 PCr.LJ 1279), "Malik Saif Ullah v. Ch. Rehmat Ali, S.-I" (1993 MLD 542) "Haji Ghulam Kadir v. State" (1974 PCr.LJ 228) and "Mumtaz Akhtar v. State" (1977 PCr.LJ 168).

8. It is further to be noted that respondent No.3 Mst. Nooran Bibi had not approached the learned Illaqa Magistrate claiming to be owner of the cattle/buffalo which were taken in possession during investigation of the criminal case nor her claim was rejected by Illaqa Magistrate in the order dated 19.06.2013, hence there was no decision given by the court of first instance which could be challenged in revision by respondent No.3 Mst.Nooran Bibi. She could file a petition before learned Magistrate for cancellation of order dated 19.06.2013 with the prayer that the cattle belonging to her be returned to her by the police.

9. The cases cited by learned counsel for the respondent being distinguishable on facts, were not attracted to the case in hand. In the first cited case i.e. "Abdul Rashid V. Arshad Ali and 2 others" "(2000 YLR 2619)", it was observed that investigating officer had come to definite conclusion that motor-car in question, had been taken into custody by local police and thereafter, police officials had facilitated petitioner to get forged transfer of registration prepared, showing the same to be in favour of petitioner--Revisional Court was, thus, quite justified in maintaining that petitioner was not entitled to get Spurdari of said motor-car. In the second case cited by learned counsel for the respondent i.e. "Mazhar Ali v. Ansar Ali and others" (2014 SCMR

1536), it was version of the petitioner that disputed buffalos belonged to his sister and that police forcibly took away the said buffalo from his house and prepared a false recovery memo of the same against his brother who was alleged to have stolen the buffalo and was accused in the FIR. After considering the respective contentions, it was observed that learned Judicial Magistrate granted Spurdari of the buffalo under dispute to the petitioner which finding was upheld by the learned revisional court finding no illegality in the said order. It was further observed that High Court merely on the statement of investigating officer that buffalo in question was already with respondent No.1 on Spurdari for the last about one year and that crime report lodged by respondent was found false and recommended for cancellation, granted Spurdari of the buffalo whereas fact of the matter was that there was nothing on record to show that case had been cancelled. In the above context order of the High Court was held to be based on surmises and conjectures. It was further noted in the cited case that original buffalo which was stolen, had been sold out and with the money received from the sale of stolen buffalo, accused had purchased another buffalo which was given to the complainant on Spurdari whereas no evidence was available on record to show that disputed buffalo was purchased from the money gained through sale of the buffalo which was original case property.

10. In the light of the discussion made above, it is not difficult to conclude that respondent No.3 Mst. Nooran Bibi could only approach the learned Illaqa Magistrate by filing proper proceedings claiming to be owner of disputed cattle and the learned Illaqa Magistrate, if so moved, could consider her claim and decide the matter after providing an opportunity of hearing to both the parties. The above mentioned course was not adopted by respondent No.3 in this case, hence, revisional court was not competent to set-aside the order dated 19.06.2013.

11. Consequently, this petition is allowed and impugned order is declared to have been passed without lawful authority and of no legal effect, hence, is set-aside.

RR/A-144/L

Petition allowed.

**2016 P Cr. L J 1089**  
**[Lahore]**  
**Before Syed Shahbaz Ali Rizvi and Ch. Mushtaq Ahmad, JJ**  
**MUHAMMAD ARSHAD---Appellant**  
**Versus**  
**The STATE---Respondent**

Criminal Appeal No. 908-J of 2015 and Murder Reference No.1 of 2016, heard on 19th February, 2016.

**Criminal Procedure Code (V of 1898)---**

---S. 345---Penal Code (XLV of 1860), Ss. 302, 109, 34, 309 & 310--Waiver/compounding of Qisas in Qatl-i-amd---Accused, during appeal against conviction, filed application seeking permission to effect compromise with legal heirs of the deceased---Father for himself and on behalf of minor legal heirs, husband of the deceased, effected the compromise, after receiving Diyat in the shape of agricultural land---Sessions Judge reported that the compromise had been effected voluntarily and without fear or duress---State counsel also verified the compromise to be genuine---Compromise effected between the parties was voluntary, genuine, without duress, threat or coercion---High Court, with the view of promoting peace and harmony between the families as well as in the society, granted the permission to compound the offence of qatl-i-amd---Appeal against conviction was allowed accordingly.

Danyal Ijaz for Appellant.

Rana Muhammad Shafique, DDPP for the State.

Date of hearing: 19th February, 2016.

**JUDGMENT**

**CH. MUSHTAQ AHMAD, J.**---One Muqadas Bibi was done to death by inflicting Toka blows on 5.1.2012 within territorial jurisdiction of Police Station Saddar Phoolnagar, District Kasur. The crime was reported by Muhammad Aslam (PW-1) on which case FIR No.10 dated 5.1.2012 was registered under sections 302, 109, 34,



P.P.C. against appellant and another on the charge of committing Qatl-i-amd of Muqadas Bibi, daughter of the complainant. At conclusion of the trial learned Additional Sessions Judge, Pattoki vide judgment dated 27.10.2015 convicted the appellant under section 302(b), P.P.C. and sentenced him to death with a direction to pay Rs.3,00,000/- as compensation to legal heirs of deceased in terms of section 544-A, Cr.P.C. and in case of default to further undergo simple imprisonment for six months.

3. Appellant/convict challenged his conviction and sentence through Criminal Appeal No.908-J of 2015 whereas State sought confirmation of death sentence through Murder Reference No.01 of 2016. During pendency of appeal the appellant/convict moved application under section 345, Cr.P.C. vide Criminal Miscellaneous No.4573-M of 2015 seeking permission to effect compromise as legal heirs of the deceased Muqadas Bibi compounded the offence and have waived their right of Qisas and Diyat in the name of Almighty Allah and they have no objection if he is acquitted of the charge against him.

4. Vide order dated 17.12.2015 learned Sessions Judge, Kasur was directed to submit report about genuineness of the compromise arrived at between legal heirs of the deceased and the appellant. According to the report of learned Sessions Judge, Kasur dated 2.2.2016, deceased Muqadas Bibi was survived by the following legal heirs:-

1. Mst. Raj Bibi (mother)
2. Muhammad Aslam (father)
3. Shaukat Mehmood (husband)
4. Muhammad Ramzan (minor son)
5. Sharafat (minor son)
6. Usama (minor son)

5. All major legal heirs appeared and made statements before learned Sessions Judge, Kasur that they have forgiven the appellant/convict and waived their right of Qisas and Diyat in the

name of Almighty Allah voluntarily and with their free consent and have no objection if the appellant is acquitted of the charges.

6. On behalf of minors, namely, Muhammad Ramzan, Sharafat and Usama their father Shaukat Mahmood (husband of deceased) appeared and made statement before the Court that he being Wali of the minors has effected compromise with the appellant/convict after receiving Diyat amount of the minors in the shape of agricultural land measuring 10 Marla situated in Mouza Jambar Khurd valuing Rs.7,06,000/- (equivalent to their share of diyat amount) duly mutated in favour of the minors vide Mutation No.8635 attested on 28.1.2016, photocopy of Register 'Dakhal Kharij' is placed on the record of this appeal. Learned Sessions Judge has reported that he is satisfied that the compromise has been effected voluntarily and without fear or duress.

7. Learned DDPP appearing on behalf of the State after having gone through the entire record has verified that the compromise arrived at between the parties is genuine.

8. In view of the above, we are satisfied that the compromise effected between the parties is voluntary, genuine, without duress, threat or coercion. Therefore, in the interest of justice with a view to promote peace and harmony between the families concerned as well as in the society, permission to compound the offence of Qatl-i-amd of deceased Muqadas Bibi is granted.

9. There are no circumstances attracting provisions of section 311, P.P.C. as present appellant and the deceased were real brothers and both the families have decided to live peacefully after forgetting unfortunate incident.

10. Accordingly Criminal Miscellaneous No.4573-M of 2016 is accepted. Consequently, Criminal Appeal No.908-J of 2015 is allowed on the basis of compromise by legal heirs of the deceased. Resultantly conviction and sentence of the appellant/convict Muhammad Arshad under section 302(b), P.P.C. vide judgment dated

27.10.2015 passed by learned Additional Sessions Judge, Pattoki is set aside and he is acquitted of the charge. He is ordered to be released from jail forthwith, if not required in any other case.

11. As a sequel to the above, Murder Reference No.01 of 2016 is answered in Negative.

SL/M-87/L

Appeal allowed.

**2016 P Cr. L J 1319**

**[Lahore]**

**Before Syed Shahbaz Ali Rizvi and Ch. Mushtaq Ahmad, JJ**

**MUHAMMAD IRSHAD and others---Appellants**

**Versus**

**The STATE and others---Respondents**

Criminal Appeals Nos. 1758, 1916 and Murder Reference No.342 of 2009, heard on 8th February, 2016.

**(a) Penal Code (XLV of 1860)---**

---S. 302(b)---Qatl-i-amd---Appreciation of evidence---Occurrence took place at night and the same was reported to the police in the morning---Police witness deposed that the body was lying east-west with face downwards, which indicated that the body remained unattended at night---All the eye witnesses were close relatives of the deceased---Main grievance of the accused was against the complainant at the relevant time due to the civil and criminal litigation pending between them---Accused persons were allegedly armed with deadly weapons, but the eye-witnesses did not receive a scratch during the incident, nor had they informed the police---Conduct of the eyewitnesses, complainant and his sons was unnatural---Eye-witnesses did not make any effort to save life of the deceased---Ocular account of the incident was not in line with the medical evidence---Crime empties, as per Forensic Laboratory Report, had not been fired from the recovered rifle---Conviction could not be based on weak, unreliable and untrustworthy direct evidence even if the same had been corroborated by the supporting evidence---Eye witnesses had not only made improvements in their statements, but the same were also inconsistent---Trial court had acquitted the co-accused on the same set of evidence---Ocular account, being indivisible in nature, could not be made basis for conviction in absence of strong corroboratory evidence coming from independent source---Probative force of ocular account had to be seen in the light of facts and circumstances of each case---High Court

acquitted the accused---Appeal against conviction was accepted accordingly.

**(b) Penal Code (XLV of 1860)---**

---S. 302--- Qatl-i-amd--- Appreciation of evidence--- Principles--- Ocular account in case of Qatl-i-amd, plays a decisive and vital role and once intrinsic worth of the same is accepted and believed, then, rest of the evidence, both circumstantial and corroboratory in nature, will be required as a matter of caution; however, on the contrary, once the ocular account is disbelieved, then, no other evidence even that of a high degree and value, will be sufficient for recording conviction regarding a capital charge.

Ijaz Ahmad Chadhar and Ch. Ahmad Masood Gujjar for Appellants.

Ashraf Ali Qureshi for the Complainant.

Malik Muhammad Jaffar, Deputy Prosecutor General for the State.

Date of hearing: 8th February, 2016.

**JUDGMENT**

**CH. MUSHTAQ AHMAD, J.**---This judgment will dispose of Criminal Appeal No.1758/2009 filed by Muhammad Irshad appellant as well as Criminal Appeal No.1916/2009 filed by complainant along with Murder Reference No.342/2009. Appellant was convicted by learned Additional Sessions Judge, Pakpattan Sharif, in private complaint filed under sections 302/109/148/149, P.P.C. Police Station Malka Hans vide impugned judgment dated 22.10.2009 and sentenced as under:-

**Appellant Muhammad Irshad:-**

Death as Ta'zir under section 302(b), P.P.C. and to pay Rs.1,00,000/- as compensation to the legal heirs of deceased as required under section 544-A, Cr.P.C. and in default of payment, to further undergo S.I for six months.

We propose to decide all the matters through this consolidated judgment.

2. Muhammad Ramzan was gunned down at 01.30 a.m. on 28.07.2005 in the area of village Bonga Shams at a distance of 6 kilometers from Police Station Malka Hans District Pakpattan. His father Muhammad Yaqoob (PW-1) reported the incident to Muhammad Asghar SI/SHO (CW-9) at 05.20 a.m. nominating five accused namely Irshad (appellant), Zulfiqar, Abdul Ghaffar, Sufi Nazir Ahmad and Maqbool Ahmad who were variously armed. Arshad with .44 bore rifle fired at Muhammad Ramzan hitting at his abdomen. Similarly, Zulfiqar fired with rifle and the shot hit at abdomen. Then Irshad fired a shot hitting on right-side of chest. Then the accused made firing with their respective weapons. Muhammad Ramzan succumbed to the injuries at the spot.

3. Complainant dissatisfied with the investigation filed private complaint (Ex.PA.) on 20.01.2006 in which 9 accused were nominated. Siddique and Sadiq sons of Nawab, Falaksher and Muhammad Ali sons of Abdul Aziz were added on the allegation of abetment. As per contents of complaint, the police with connivance of accused had not correctly recorded version of complainant in FIR nor detailed the description of injuries to the deceased and attribution to the accused thereof, which compelled him to lodge the private complaint.

4. After registration of FIR, Muhammad Asghar SI(CW-9) visited the place of occurrence, inspected the deadbody, prepared injury statement and inquest report. Apart from rough site plan he also recorded statements of witnesses under section 161, Cr.P.C. He collected blood stained earth from place of occurrence and four crime empties of .44 bore rifle and one missed bullet along with broken butt of gun .12 bore. Muhammad Ayub PW produced before him emergency light which he took into possession vide recovery memo. Ex.PE. He also arrested accused Maqbool Ahmad in this case on 22.09.2005. On his transfer, further investigation was conducted by CW-7 and CW-8.

5. In the private complaint, accused were summoned after recording cursory evidence. Irshad (appellant) did not appear before the court and he was declared P.O along with accused Zulfiqar and Abdul Ghaffar. Charge was framed on 20.01.2007 against six accused persons. On 20.01.2007, present appellant was however, arrested and was charged along with his co-accused on 17.01.2009. Statements of PW-1 to PW-5 were recorded whereas CW-1 to CW-9 were examined as court witnesses. On conclusion of trial, learned Additional Sessions Judge convicted the present appellant under section 302(b), P.P.C. and sentenced him to death, as Ta'zir with compensation of Rs.1,00,000/- to be paid to the legal heirs of deceased and in default of payment, to further undergo SI for six months whereas co-accused namely Sufi Nazir Ahmad, Maqbool, Siddique, Sadiq, Falaksher and Muhammad Ali were acquitted from the charge vide impugned judgment dated 22.10.2009.

6. Learned counsel for appellant contended that it was an unseen occurrence reported with delay for which no plausible explanation was furnished by prosecution; that the complainant changed his version contained in the FIR by graduating number of accused from 5 to 9 which clearly indicated that he spread wide net in order to involve innocent persons; that while appearing before the court, the witnesses made dishonest improvements rendering their testimony unworthy of credit; that the recovery of weapon in this case was inconsequential as report of Forensic Science Laboratory was negative; that the learned trial court on the same set of evidence had acquitted bulk of accused, hence, the present appellant was wrongly convicted on the same set of evidence; that prosecution has miserably failed to prove charge against appellant beyond reasonable doubt hence, he was entitled to acquittal.

7. Learned counsel for complainant assisted by learned Deputy Prosecutor General argued that delay in reporting the matter was well explained; that presence of witnesses at the place of occurrence was natural and the ocular account was corroborated by medical evidence; that the present appellant remained fugitive from law for a long time which also supported the prosecution case against him; that the

complainant had filed appeal against acquittal as the learned trial court has not correctly appreciated evidence in this case; that appeal filed by Muhammad Irshad (appellant) was liable to be dismissed.

8. We have heard the arguments and gone through the record.

9. Ocular account in this case was furnished by Muhammad Yaqoob (PW-1) father of deceased Muhammad Ramzan and Muhammad Boota (PW-2) brother of deceased. Muhammad Ayub, the third eye-witness was given up by the complainant. As per prosecution, complainant along with his three sons namely Muhammad Ramzan (deceased), Muhammad Boota (PW-2) and Muhammad Ayub, was present in their paddy crop in square No.25, Killa No.9. Complainant, Muhammad Boota and Muhammad Ayub were sitting when Muhammad Ramzan (deceased) went to have a look of crop which was being irrigated at that time. At 01.30 a.m. accused suddenly emerged, Sufi Nazir Ahmad (accused since acquitted) raised lalkara on which appellant, who was carrying rifle .44 bore fired and the shot hit Muhammad Ramzan at abdomen. Fire made by Zulfiqar with rifle also hit at abdomen and the second fire made by Irshad hit on right side of chest of Muhammad Ramzan and the second fire made by Zulfiqar on right arm. Then Sufi Nazir (accused since acquitted) fired with .12 bore gun and the shot hit on chest of Muhammad Ramzan and second fire made by him hit Muhammad Ramzan on left knee. Then Abdul Ghaffar fired with his rifle which hit Muhammad Ramzan on right side of abdomen and second fire made by him hit Muhammad Ramzan on right arm. Maqbool (accused since acquitted) fired with pistol and the shot hit Muhammad Ramzan on left arm. Then all the accused made indiscriminate firing. On the same lines deposed PW-2 Muhammad Boota in his statement before the court. It is pertinent to mention here that co-accused of present appellant namely Zulfiqar and Abdul Ghaffar did not appear before the trial court after being summoned in the private complaint. They were declared P.O. after completing proceedings under section 87, Cr.P.C. They were indicted on 01.04.2011 and after recording prosecution evidence, they were also convicted and sentenced to imprisonment for life each vide judgment



dated 30.09.2011 passed by learned Additional Sessions Judge, Pakpattan against which they filed Criminal Appeal No.3044/2011. The above appeal has also been heard and decided today through separate judgment.

10. Place of occurrence was land belonging to the complainant (PW-1) where the deceased was gunned down at 01.30 a.m. night. Incident was reported in the morning at 05.30 a.m. to CW-9 Muhammad Asghar SI. Complainant appeared before him when he was present at Bonga Shams at 04.50 a.m. whereafter he proceeded to the place of occurrence and conducted preliminary investigation at the spot. He escorted deadbody to mortuary through Muhammad Hayat 9/C. Postmortem was conducted by PW-4 Dr. Muhammad Siddique at 01.00 p.m. As per his version as soon as the deadbody reached in the hospital, he conducted autopsy. Admittedly, it was night occurrence. All the eye-witnesses were close relatives of the deceased. Muhammad Asghar SI explained in cross-examination that deadbody was lying east-west, its face was downwards indicating that at night deadbody remained unattended. It is further to be noticed that as per complainant, he had purchased land measuring 4 acre due to which accused got annoyed against him and filed a pre-emption suit which was pending apart from criminal litigation between the parties which shows that main grievance of the accused was against complainant at the relevant time. According to the witnesses, accused were armed with deadly weapons but complainant and his two sons namely Muhammad Ayub and Boota did not receive a scratch during the incident nor they informed the police at night. Conduct of the complainant and his two sons was unnatural. It is evident from the ocular account that the witnesses did not make any effort to save the life of deceased, their close relative. As per statement of PW-4 Dr. Muhammad Siddique, all entry wounds are blackened and charred and the size of all the wounds was 1.5 x 1 c.m. He further explained that all the injuries were caused by one weapon from the same distance. According to him all injuries could be caused by two weapons of same nature. The ocular account in this case, therefore was not in line with medical evidence. The recovery of rifle was also inconsequential for the reason that report of Forensic Science

Laboratory (Ex.PK) was negative. Crime empties secured from the place of occurrence along with missed cartridges of .44 bore were examined and compared with the test empties prepared from the rifle .44 bore allegedly recovered at the instance of Muhammad Irshad (appellant) and it was found that crime empties had not been fired from the rifle sent to Forensic Science Laboratory. If direct evidence is weak and is found unreliable as well as un-trust worthy, conviction against the accused cannot be based on it, even if it is corroborated by supporting evidence. Presence of PW-1 and PW-2 at the place of occurrence at the relevant time was highly doubtful. Both the witnesses not only made improvements in their statements inconsistent to the stance taken by them before the police during investigation but also graduated number of accused by adding four accused persons on the charge of abetment along with two witnesses namely Muhammad Waris son of Adalat and Akbar son of Ali Muhammad. PW-3 Waris Ali made allegation of conspiracy which being unreliable was rejected by trial court. Trial court had acquitted co-accused on the same set of evidence. Sufi Nazir Ahmad co-accused (since acquitted) was also attributed a fire shot which hit on the chest of the deceased and second fire shot made by him on left knee of the deceased as statements of PW-1 Muhammad Yaqoob, father of the deceased and PW-2 Muhammad Boota, brother of the deceased. One fire shot was also attributed to Zulfiqar co-accused (since acquitted) which hit on right arm of the deceased. Eye-witness account qua the acquitted accused was disbelieved by the trial court whereas the present appellant was convicted. Ocular account being indivisible in nature, in the absence of strong corroboratory evidence coming from independent source, could not be made basis for recording conviction. Presence of main prosecution witnesses at the scene of crime was doubtful. Ocular account in cases of Qatl-i-amd played a decisive and vital role and once its intrinsic worth was accepted and believed, then rest of the evidence, both circumstantial and corroboratory in nature would be required as a matter of caution; to the contrary, once the ocular account was disbelieved, then no other evidence even of a high degree and value, would be sufficient for recording conviction on a capital charge. Probative value of the ocular account had to be seen in the light of facts and circumstances

of each case. Keeping in view the above yard stick and the given facts and circumstances of the case in hand, the conclusion we have come to is that prosecution in this case had failed to prove charge against appellant beyond reasonable doubt, benefit whereof will go to him as a matter of right.

11. Consequently, Criminal Appeal No.1758/2009 is allowed, conviction recorded by learned trial court is set aside, appellant is acquitted of the charge from this case, appellant Muhammad Irshad is in jail, he be released forthwith if not required in any case. Murder Reference No.342/2011 is answered in negative. Death sentence of appellant Muhammad Irshad is not confirmed. For above recorded reasons we see no valid ground to interfere in the acquittal recorded by trial court, criminal appeal No.1916/2009 against acquittal of respondents is, therefore, dismissed.

SL/M-85/L

Order accordingly.

**2016 P Cr. L J 1390**  
**[Lahore (Multan Bench)]**  
**Before Qazi Muhammad Amin Ahmed and Ch. Mushtaq Ahmad,**  
**JJ**  
**MUHAMMAD SADIQ alias HUSNAIN and others---Appellants**  
**Versus**  
**The STATE and others---Respondents**

Criminal Appeals Nos. 486-ATA, 520-ATA, 511-ATA, 521-ATA, 527-ATA, 542-ATA and C.S.R. No. 7 of 2014, heard on 20th January, 2015.

**Penal Code (XLV of 1860)---**

---Ss. 302, 324, 427 & 109---Anti-Terrorism Act (XXVII of 1997), S.7---Explosive Substances Act (VI of 1908), Ss.3, 4 & 6---Criminal Procedure Code (V of 1898), Ss.164 & 364---Qanun-e-Shahadat (10 of 1984), Art.164---Qatl-i-amd, attempt to commit qatl-i-amd, mischief, abetment, act of terrorism, possessing and using explosive substance---Appreciation of evidence---Confession---Place and time of the explosion was not disputed---Judicial Magistrate, recorded confession of one of accused persons, in which accused gave detail as to how explosive material was dumped at a particular place before the same was brought at the place of explosion---All necessary steps required under S.364, Cr.P.C., were taken to ensure that accused was not induced by any one to make statement, nor was compelled to confess his guilt---Accused was also told that after making statement he, would not be handed over to the Police---One of co-accused was produced before media persons, and in Press Conference he made confession about his involvement in Bomb blast, which was converted into CD, which was handed over to SHO concerned, and was taken into possession by recovery memo---Said CD was also played before High Court; in which it was noted that said accused had clearly admitted that he was involved in the Bomb blast along with other accused---Evidence collected through modern devices (CD etc.) was admissible in evidence under Art.164 of Qanun-e-Shahadat, 1984, and same could be used against accused during judicial proceedings to determine the question of criminal liability---Charges

against said two accused persons, were proved on record through reliable and admissible evidence---Conviction recorded and sentence awarded to said two accused persons by the Trial Court, were sustainable and there was no ground to interfere to their extent---Appeals of said two accused were dismissed---Case of remaining three co-accused, was distinguishable, as they neither confessed their guilt, nor there was any other cogent evidence brought on record by the prosecution to connect them with the alleged offence---Case of said three co-accused was almost identical to the case of acquitted accused persons---Prosecution had failed to prove charges against said co-accused persons---Appeal of those accused were allowed, they were acquitted of the charges, their conviction and sentences were set aside, and were ordered to be released, in circumstances.

Mehmood Khan Ghouri for Appellants.

Malik Riaz Ahmed Saghla, Deputy Prosecutor General for the State.

Malik Riaz Ahmed Saghla, Deputy Prosecutor General for Appellant (in Criminal Appeal No.542-ATA of 2014).

Date of hearing: 20th January, 2015.

## **JUDGMENT**

**CH. MUSHTAQ AHMAD, J.**---Appellants Muhammad Sadiq alias Hasnain, Muhammad Hanif alias Muavia, Wazir Ahmed, Muhammad Tariq and Bashir Ahmed alias Doctor have challenged their conviction and sentences recorded by learned Judge, Anti-Terrorism Court, D.G.Khan vide judgment dated 14.11.2014 arising out of case FIR No.384 dated 15.12.2009 registered under sections 302, 324, 427, P.P.C. read with section 7, Anti-Terrorism Act, 1997 and under sections 3 and 4 of Explosive Substances Act, 1908 at Police Station B-Division, D.G. Khan.

2. Accordingly, the appellants were convicted and sentenced as under:-

**MUHAMMAD SADIQ @ HUSNAIN**  
**MUHAMMAD HANIF @ MUAVIA**

Under sections 302/109, P.P.C. each and sentenced to Death on 26 counts to each appellant. Both the appellants were also

held liable to pay compensation of Rs.10,00,000/- each to the legal heirs of each deceased in terms of section 544-A, Cr.P.C. and in case of default to undergo further imprisonment for six months R.I. on each count.

Under section 7(a) of Anti-Terrorism Act, 1997 each and sentenced to Death to each appellant with fine of Rs.1,00,000/- each and in case of default to undergo further imprisonment for six months R.I. each.

Under section 324, P.P.C. each and sentenced to 10 years' R.I. on 57 counts to each appellant (since 57 injured PWs were examined out of 97 injured) with fine of Rs.10,000/- each on 57 counts to each injured person and in case of default of payment thereof to undergo further imprisonment for four months each.

Under section 427, P.P.C. each and sentenced to two years' R.I. each with fine of Rs.10,000/- each and in case of default of payment thereof to undergo further imprisonment for four months each.

Under section 3 of Explosive Substances Act, 1908 each and sentenced to Death on 26 counts to each appellant.

**MUHAMMAD TARIQ**

**WAZIR AHMED**

**BASHIR AHMED @ DOCTOR**

Under sections 302/109, P.P.C. each and sentenced to Imprisonment for life on 26 counts each to each appellant. They were also held liable to pay Rs.10,00,000/- each as compensation in terms of section 544-A, Cr.P.C. to the legal heirs of each deceased and in case of default to undergo further imprisonment for six months' S.I. on each count.

Under section 7(a) of Anti-Terrorism Act, 1997 each and sentenced to Imprisonment for life to each appellant. They were also held liable to pay fine of Rs.1,00,000/- each and in case of default to undergo further imprisonment for six months' S.I. on each.

Under section 324, P.P.C. each and sentenced to 10 years' R.I. on 57 counts to each appellant (since 57 injured PWs

were examined out of 97 injured) with fine of Rs.10,000/- each on 57 counts to each injured person and in case of default of payment thereof to undergo further imprisonment for four months each.

Under section 3 read with section 6 of Explosive Substances Act, 1908 each and sentenced to Imprisonment for life to each appellant.

Under section 427, P.P.C. each and sentenced to two years' R.I. each with fine of Rs.10,000/- each and in case of default of payment thereof to undergo further imprisonment for four months each.

All the sentences were ordered to be run consecutively. Benefit of section 382-B, Cr.P.C. was, however, extended to each convict.

Co-accused of the appellants, namely, Moulvi Muhammad Jamshed and Qari Asmat Ullah alias Muavia alias Safdar were acquitted by the trial court.

3. Along with these appeals there is Criminal Appeal No.542-ATA of 2014 filed by the State against acquittal of Moulvi Muhammad Jamshed and Qari Asmat Ullah alias Muavia alias Safdar, respondents Nos.1 and 2 and CSR No.07/2014 sent by the learned trial Court for confirmation of death sentences awarded to Muhammad Sadiq @ Husnain and Muhammad Hanif @ Muavia, appellants-convicts. We intend to dispose of all these matters through this single judgment.

4. The FIR (Exh.PEEEEEE) was registered on the complaint of Azhar Hussain, Inspector (PW-102). According to him on 15.12.2009 he alongwith Shamsheer Ali SI, Ali Imran SI, Nazir Ahmad ASI, Muhammad Jahangir 898/C, Muhammad Raheel 225/C, Muhammad Suleman 707/C, Saleem Nawaz 919/C, Sabir Hussain PQR, Ramzan PQR with driver Ishtiaq Ahmad 180/C of vehicle No.9663-DGL was present at Traffic Chowk in connection with duty upon rally of Shabab Milly Jamat-i-Islami where at about 2.45 p.m. he heard huge noise of the blast from southern side of Khosa Market, upon which he along with above said police officials rushed towards that direction

and witnessed 16 human bodies along with 88 injured persons lying around the Khosa Market while the market and its surrounding buildings, shops and several vehicles were found badly damaged. According to immediate information, furnished to him, a vehicle containing ammunition/ explosive substance was struck against main gate of Khosa House adjacent to Khosa Market. He informed his high ups about this occurrence, managed to shift the injured persons as well as dead bodies to DHQ Hospital and also called upon the rescue teams. After the blast, rescue 1122, Special Branch and other Heads of the Government Departments and high ups of police reached there. The residents of the locality also came there. He further reported that the unknown terrorist hit a vehicle filled with explosive material to the main gate of Khosa House to terrify the public at large.

5. PW-100 Muhammad Bilal Inspector/SHO, PW-96 Abdul Sattar Pitafi, Inspector/SHO and PW-97 Riaz Ahmed Inspector/SHO conducted the investigation of this case. Muhammad Sadiq alias Husnain, Muhammad Tariq, Wazir Ahmed and Bashir Ahmed alias Doctor were arrested on 17.1.2010 in this case whereas the date of arrest of Muhammad Hanif alias Muavia, appellant is 17.5.2010. Moulvi Muhammad Jamshed and Qari Asmat Ullah alias Muavia alias Safdar (since acquitted) were arrested on 12.6.2010 and 3.6.2010 respectively.

6. After completing the necessary formalities, the I.O. submitted report under section 173, Cr.P.C. in court on 18.3.2010 where the appellants were formally charge sheeted on 24.5.2011 to which they pleaded not guilty and claimed trial.

7. In order to prove its case the prosecution relied upon 103 witnesses along with documentary evidence before whom the accused persons made confessional statements for committing the occurrence. According to prosecution Muhammad Sadiq alias Husnain (appellant) made confessional statement recorded under section 164, Cr.P.C. by PW-88 Mr. Abdul Jabbar, Special Judicial Magistrate, D.G.Khan on 18.1.2010 whereas Muhammad Hanif alias Muavia (appellant) confessed his guilt in Press Conference got conducted by CW-1



Muhammad Kashif Mushtaq Kanjo, SSP on 20.5.2010 wherein he admitted before Electronic and Print Media that he was master mind of this occurrence i.e. bomb blast at Khosa House. The CD of this Press Conference was prepared by Adnan Khaliq, ASI who appeared as CW-2 before the trial court.

8. The accused-appellants were examined under section 342, Cr.P.C. who denied the very factum of having committed the offences under reference. The appellants, however, did not opt to record their statements on oath in terms of section 340(2), Cr.P.C. in dis-proof of the allegations against them.

9. The learned trial court after hearing the arguments of learned counsel for the parties recorded the conviction and awarded sentences to the appellants as mentioned in the opening paragraph of this judgment.

10. Contention of learned counsel for the appellants is that main stay of the prosecution is on two confessional statements, one allegedly made by Muhammad Sadiq alias Husnain and the second by Muhammad Hanif alias Muavia, appellants; that confessional statement made by appellant Muhammad Sadiq alias Husnain was neither voluntarily made nor truthful, rather the same was recorded in violation of safeguard provided to an accused facing capital charge by the superior courts of this country as well as relevant Rules and Orders of the High Court; that appellant Muhammad Hanif alias Muavia in police custody was exposed to Media where he made a statement as such it would be unsafe to place reliance upon it. Learned counsel adds that statement of appellant Muhammad Hanif is inadmissible in evidence. Further adds that statements made by the appellants are not corroborated on material points by any other piece of evidence produced by the prosecution. While relying upon the provisions of Article 43 of Qanun-e-Shahadat Order, 1984, learned counsel argued that these statements cannot be used against co-appellants, Muhammad Tariq, Wazir Ahmed and Bashir Ahmed alias Doctor. Further argued that it was not open for the trial court to proceed with the trial during the pendency of Writ Petition

No.1295/2009 related to the same case and this has caused serious prejudice to the appellants to defend them before the trial Court. Learned counsel further argued that version of the prosecution is discrepant regarding number of vehicles used in the occurrence. Further argued that recoveries have been planted against the appellants to strengthen the prosecution case; that neither any disclosure was made by any of the appellant nor did they lead to any incriminating article and lastly argued that it was not established that suicide bomber was involved in the blast as alleged by PW-90 Iftikhar Hassan.

11. On the other hand, learned Deputy Prosecutor General argued that appellant Muhammad Sadiq alias Hasnain had confessed his guilt before PW-88 Special Judicial Magistrate after his arrest in this case in which he had furnished detail regarding blast and bringing the explosive material in a vehicle; that place of dumping the explosive material was also pointed out by him during investigation; that his confession being voluntarily made is admissible piece of evidence connecting him with the charge framed against him and that the appellant Muhammad Hanif had also voluntarily confessed his guilt in a Press Conference in the presence of electronic and print media which fact was preserved/saved through CD produced during trial as Exh.P2/1 and that other appellants were implicated by Muhammad Hanif and Muhammad Sadiq in their confessional statements, hence, prosecution in this case successfully proved charge against all the accused beyond reasonable doubt.

12. We have heard the learned counsel for the appellants as well as the learned Deputy Prosecutor General appearing for the State.

13. In this case place and time of the explosion is not disputed between the parties. It is also clear from the contents of complaint (Exh.PEEEE/1) lodged by PW-102 Azhar Hussain, Inspector that no accused was nominated in it. During investigation appellants, namely, Muhammad Sadiq alias Hasnain, Muhammad Hanif alias Muavia, Muhammad Tariq, Wazir Ahmed, Bashir Ahmed alias Doctor, Moulvi Muhammad Jamshed (since acquitted) and Qari Asmat Ullah

(since acquitted) were arrested. Record in this case shows that appellant Muhammad Sadiq @ Hasnain was produced before PW-88 Mr.Abdul Jabbar, Special Judicial Magistrate, D.G. Khan for recording his confession on 18.1.2010. Learned Judicial Magistrate recorded his statement which was produced during trial as Exh.PGGGGGG and the same is available at pages 397 to 408 at Paper Book-II of this case. Perusal of above statement shows that learned Judicial Magistrate (PW-88) put as many as eight questions to the appellant Muhammad Sadiq alias Hasnain to ensure that he was neither induced to make confession nor it was the result of torture or coercion. The learned Judicial Magistrate has explained in his note that he examined the accused but no sign of injury was found on his body. In his statement appellant Muhammad Sadiq alias Husnain gave details as to how explosive material was dumped at a particular place before the same was brought at the place of explosion in a 'Dalla' driven by suicide bomber, namely, Abdullah. Record shows that thumb impressions of Muhammad Sadiq alias Hasnain were obtained on all pages of his statement. It was denied by the witness that accused was not produced by the police before him for recording his statement. On behalf of the defence it was contended with vehemence that confession could not be relied upon for recording conviction. We have gone through the statement of appellant Muhammad Sadiq alias Hasnain recorded by PW-88 and have noticed that all necessary steps required under section 364 Cr.P.C. were taken to ensure that appellant was not induced by any one to make statement nor was compelled to confess his guilt. He was also told by PW-88 that after making statement he will not be handed over to the police.

14. So far as the case of Muhammad Hanif alias Muavia is concerned his version was saved through CD (Exh.P2/1) which was played in open Court during arguments on the request of learned counsel for the parties and it was found that he had also voluntarily furnished detail of the acts committed prior to the explosion and confessed his guilt before CW-1 Muhammad Kashif Mushtaq Kanju, S.S.P.

15. Record further reveals that Muhammad Kashif Mushtaq Kanju, S.S.P appeared as CW-1 and stated that on 20.5.2010 Muhammad Hanif alias Muavia confessed his guilt before him. His statement was secured vide CD (Exh.P2/1) by CW-2 Adnan Khaliq, A.S.I. who confirmed its contents after visualizing it in open Court on 19.7.2014 when his statement was recorded. According to Muhammad Hanif alias Muavia he was the master mind of this occurrence i.e. bomb blast at Khosa House. He had planned the bomb blast with the help of his co-accused. CW-2 in cross-examination explained that Exh.P2/1 (CD) was prepared correctly by him without any addition or omission. CW-2 Adnan Khaliq, A.S.I. further deposed that on 20.5.2010 Hanif Gabol was produced before Media persons at PS B-Division, D.G. Khan and in that Press Conference he made confession about his involvement in bomb blast at Khosa House which was converted into CD. He handed over said CD to SHO, PS B-Division in presence of Mukhtiar Hussain, 533/C which was taken into possession by recovery memo Exh.PZZZZZ.

16. The above mentioned CD (Exh.P2/1) was also played before this Court on the request of learned counsel for the parties during arguments in which it was noted that Muhammad Hanif alias Muavia, appellant had clearly admitted that he was involved in the bomb blast at Khosa House, D.G. Khan along with Muhammad Sadiq alias Hasnain and others.

17. Under Article 164 of Qanun-e-Shahadat Order, 1984 it is provided as under:-

**"164. Production of evidence that has become available because of modern devices, etc.** In such cases as the Court may consider appropriate, the Court may allow to be produced any evidence that may have become available because of modern devices or techniques."

Under the law evidence collected through modern devices is admissible in evidence and the same can be used against the accused during judicial proceedings to determine the questions of criminal liability or as the case may be.

18. After going through the evidence in this case we are of considered opinion that charges against appellants Muhammad Sadiq alias Hasnain and Muhammad Hanif alias Muavia were proved on record through reliable and admissible evidence. The conviction recorded and sentences awarded to these appellants by the trial Court are sustainable and there is no valid ground to interfere to their extent. Resultantly, Criminal Appeal No.486-ATA of 2014 filed by Muhammad Sadiq alias Hasnain, appellant and Criminal Appeal No.520-ATA of 2014 filed by Muhammad Hanif alias Muavia, appellant are dismissed. Capital Sentence Reference No.07 of 2014 is answered in AFFIRMATIVE.

19. However, case of appellants Wazir Ahmed, Muhammad Tariq, Bashir Ahmed alias Doctor and acquitted accused/respondents Moulvi Muhammad Jamshed and Qari Asmat Ullah is distinguishable. They neither confessed their guilt nor there was any other cogent evidence brought on record by the prosecution to connect them with the alleged offence. It is further to be noted that case of appellants Wazir Ahmed, Muhammad Tariq and Bashir Ahmed alias Doctor was almost identical to the case of acquitted accused/respondents in Criminal Appeal No.542-ATA/2014 filed by the State. The prosecution has failed to prove charges in this case against these appellants.

20. Resultantly, Criminal Appeal No.511-ATA/2014 filed by Wazir Ahmed, appellant, Criminal Appeal No.521-ATA/2014 filed by Muhammad Tariq, appellant & Criminal Appeal No.527-ATA/2014 filed by Bashir Ahmed alias Doctor, appellant are allowed. They are acquitted of the charges. Their conviction and sentences are set aside. They shall be released from jail forthwith, if not required in any other case.

21. Simultaneously, Criminal Appeal No.542-ATA of 2014 filed by the State against acquittal of Moulvi Muhammad Jamshed and Qari Asmatullah alias Muavia alias Safdar, respondents Nos.1 and 2 is dismissed.

HBT/M-72/L

Order accordingly.

**2016 P L C (C.S.) 676**  
**[Lahore High Court]**  
**Before Ch. Mushtaq Ahmad, J**  
**PAKISTAN MEDICAL ASSOCIATION through President**  
**Versus**  
**PAKISTAN through Secretary, Ministry of National Health**  
**Services Regulations and Coordination, Islamabad and 5 others**

Writ Petition No.2281 of 2013, decided on 18th December, 2014.

**(a) Civil service---**

---Repatriation of employee (deputationist) to his parent department--  
--Aggrieved person---Scope---Registrar of Pakistan Medical and Dental Council was transferred/repatriated to his parent department without appointing any person as Registrar in his place---Contention of authorities was that petitioner/Pakistan Medical Association had no locus standi to file constitutional petition, nor it was an "aggrieved person"---Validity---Registrar of Pakistan Medical and Dental Council had been repatriated to his parent department who was on deputation---No order against the petitioner/Association had been passed in any manner and it was the Registrar of Pakistan Medical and Dental Council who was affected by the impugned order---Right which was the foundation of an application under Art.199 of the Constitution was a personal and individual right---Legal right might be statutory right or a right to be recognized by the law---Person could be said to be aggrieved only when he/she was denied of a legal right by someone who had a legal duty to perform an act with regard to such right---Justifiable right should be in existence to give jurisdiction to the High Court in the matter---Registrar of Pakistan Medical and Dental Council was the "aggrieved person" who could challenge the impugned order---Petitioner had neither locus standi to challenge the impugned notification nor it would fall within the ambit of aggrieved party---Deputationist did not have vested right to remain on the post forever or for a stipulated period---Deputationist could be ordered to be repatriated to the parent department at any time without assigning any reason---Parent department, of deputationist, was not

bound by any law to assign any reason for his repatriation or vice versa---Constitutional petition was not maintainable which was dismissed, in circumstances.

M/s. Associated Cement Companies Ltd. v. Pakistan through the Commissioner of Income Tax, Lahore Range and 7 others PLD 1978 SC 151; Hafiz Hamid Ullah v. Saifullah and others PLD 2007 SC 52; NWFP Public Service Commission and others v. Muhammad Arif and others 2011 SCMR 844; Zaheeruddin Sheikh and 30 others v. United Bank Ltd. 2002 CLC 147; Syed Mufeed Shah and another v. Principal, Khyber Medical College, Peshawar and 4 others 2003 CLC 1348; Muhammad Idrees v. Province of Punjab through Collector District Sialkot and others 2014 CLC 130; S. Masood Abbas Rizvi v. Federation of Pakistan through Secretary Establishment and others 2014 SCMR 799 and Dr. Shafi ur Rehman Afridi v. C.D.A. Islamabad through Chairman and others 2010 SCMR 378 rel.

### **(b) Constitution of Pakistan---**

---Art. 199---Constitutional jurisdiction, invocation of--- Requirements.

For a petitioner in a constitutional petition, it is essential that:-

--

- (i) he had a locus standi to invoke constitutional jurisdiction being an aggrieved person as his right was denied to be give to him
- (ii) the right was infringed and the right so infringed was justiciable right and that
- (iii) he had no alternate, adequate remedy for redressal of his grievance except a petition under Article 199 of the Constitution.

### **(c) Words and phrases---**

---"Aggrieved party"---Meaning.

Black's Law Dictionary, 9th Edition at page 1232 rel.

**(d) Civil Service---**

---Deputation---Scope---Deputationist did not have vested right to remain on the post forever or for a stipulated period.

Mujeeb-ur-Rehman Kiyani for Petitioner.

Barrister Adnan Saboor for Petitioner (in C.M. No.1666 of 2014).

Raja Shafqat Mehboob for Petitioner (in C.M. No.1693 of 2014).

Syed Qamar Hussain Sabzwari for Respondent No.5.

Shakeel-ur-Rehman Khan for Remaining Respondents.

Date of hearing: 28th November, 2014.

**JUDGMENT**

**CH. MUSHTAQ AHMAD, J.---** The present petition has been filed invoking the constitutional jurisdiction of this Court to challenge the legality of impugned office memo. and notification whereby respondent No.6 was transferred/repatriated to his parent department without appointing any person as a Registrar, in his place.

2. Briefly, the case of petitioner is that respondent No.5 is an autonomous body and has its own mechanism for raising funds and has been duly constituted and consists of some very outstanding and exceptional professionals from the field of legal, medical and dental profession. Since the appointment of respondent No.6, performance of respondent No.5 has improved with enhancement of the reputation of the institution which was at stake as respondent No.6 diligently watched the interest of the petitioner/institution. On 30th August, 2013, respondent No.1 issued Office Memo. No.F.1-5/2013-DS(Admn) of even date titled as TRANSFER/REPATRIATION OF DR. RAJA AMJAD MEHMOOD, REGISTRAR, PMDC, whereby it was ordered that services of respondent No.6 on deputation basis, were no more required and that transfer of respondent No.6 through his repatriation, was an interference and meddling in the affairs of respondent No.5 without any reasonable and lawful justification



which was bound to affect smooth functioning of respondent No.5, hence, it was prayed that impugned office memo/notification be declared as illegal, without jurisdiction, arbitrary, void ab-initio and against the interest of Doctors' community.

3. Preliminary objections have been raised by learned counsel for the contesting respondents Nos.1 and 2 that the petitioners' association had no locus standi to file petition nor it was an aggrieved person which was sine qua non for invoking the constitutional jurisdiction of this Court and that on this score petition was liable to be dismissed. It was further submitted that a deputationist did not have a vested right to remain on a post forever or for a stipulated period and could be ordered to be repatriated to the parent department at any time and on that ground, the petition was also liable to be rejected being not maintainable, before this Court.

4. Learned counsel for the petitioner, while responding to the above preliminary objections, contended that the petitioner/association was a body representing Doctors' community and the respondents Nos.1 to 4, through impugned notification, attempted to usurp the autonomy of respondent No.5 which they could not do under any circumstances, and that the actions, deeds and conduct of respondents Nos.1 to 4 militated against principles of fundamental rights as envisaged under the Constitution; that they had no authority under the law either to dictate respondent No.5 or direct it as respondent No.5 was an independent body.

5. Heard. Perused.

6. After hearing the learned counsel for the parties on the question of maintainability of this petition it is to be seen as to whether the petitioner could invoke the constitutional jurisdiction of this court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. Under Article 199(1), it is provided as under:--

"Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law--

- (a) on the application of any aggrieved party, make an order--
  - (i) directing a person performing, within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a Province or a local authority, to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do; or
  - (ii) declaring that any act done or proceeding taken within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation, a Province or a local authority has been done or taken without lawful authority and is of no legal effect; or
- (b) on the application of any person, make an order--
  - (i) directing that a person in custody within the territorial jurisdiction of the Court be brought before it so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner; or
  - (ii) requiring a person within the territorial jurisdiction of the Court holding or purporting to hold a public office to show under what authority of law he claims to hold that office; or
- (c) on the application of any aggrieved person, make an order giving such directions to any person or authority, including any government exercising any power or performing any function in, or in relation to, any territory within the jurisdiction of that Court as may be appropriate for the enforcement of any of the fundamental rights conferred by Chapter 1 of Part-II.

The words used in Article 199 (1)(a) "on the application of any aggrieved party" are important. It is to be seen whether the petitioner falls within the ambit of an "aggrieved party" or "aggrieved person". The above phrase has not been defined in Article 199 *ibid.*, therefore, in order to understand its connotation, its meaning, as described in Black's Law Dictionary, 9th edition at page 1232, is as under:--

"A party entitled to a remedy especially a party whose personal, pecuniary or property rights have been adversely

affected by another person's action or by a court's decree or judgment".

According to above meaning, it is necessary for a party to become an "aggrieved person" or "aggrieved party" to show that his personal, pecuniary or property rights have been adversely affected by another person's action or by a court's decree or judgment. The perusal of the impugned notification dated 30.08.2013 shows that respondents Nos.1 and 2 had ordered repatriation of respondent No.6 to his parent department. From the perusal of the petition, it is clear that it was the respondent No.6 who was adversely affected by the impugned order passed by respondent No.2, whereby he was ordered to be repatriated to his parent department and it was not an order against the petitioner/association in any manner. The case law on the subject, is also to be found in many reported judgments. In a case "M/s Associated Cement Companies Ltd. v. Pakistan through the Commissioner of Income Tax, Lahore Range and 7 others" (PLD 1978 SC 151), it was laid down that "writ petition can be maintained by a person provided he be an 'aggrieved person' and in order to be an aggrieved person, imperative for party to show any of his proprietary or personal right, as recognized by law, to be invaded or denied". The same question came to be considered in another case titled as "Hafiz Hamid Ullah v. Saifullah etc." (PLD 2007 SC 52), wherein it was laid down that "the aggrieved person was elaborated and it was laid down that constitutional jurisdiction of High Court under Article 199(1)(a) of the Constitution can be invoked by aggrieved person which denotes the persons who have suffered a legal grievance against whom a decision has been pronounced which has wrongfully deprived him or wrongfully refused to him something which he was legally entitled". Another case on the subject is to be found "NWFP Public Service Commission etc. v. Muhammad Arif etc." (2011 SCMR 844). After considering the case law on this point, it was laid down that "the right which is the foundation of an application under Article 199 of the Constitution, is a personal and individual right. The legal right may be statutory right or a right to be recognized by the law. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to perform

relating to the right. There must not only be a right but a justiciable right in existence, to give jurisdiction to the High Court in the matter. The reference may also be made to the cases reported in "Zaheeruddin Sheikh and 30 others v. United Bank Ltd." (2002 CLC 147), "Syed Mufeed Shah and another v. Principal, Khyber Medical College, Peshawar and 4 others" (2003 CLC 1348) and "Muhammad Idrees v. Province of Punjab through Collector District Sialkot and others" (2014 CLC 130) in this respect.

7. It is well settled that for a petitioner in a constitutional petition, it is essential that:--

(i) he had a locus standi to invoke constitutional jurisdiction being an aggrieved person as his right was denied to be give to him

(ii) the right was infringed and the right so infringed was justiciable right and that

(iii) he had no alternate, adequate remedy for redressal of his grievance except a petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

8. In the case in hand, admittedly, the respondent No.6 was ordered through impugned notification to be repatriated to his parent department. In fact he was the aggrieved person who could challenge the vires of the impugned notification but he has not come forward to challenge the same. It is further to be noticed that according to the petitioner, the impugned order had adversely affected smooth functioning of respondent No.5. Respondent No.5 is also a legal person and could sue the respondents Nos.1 to 4 in its independent capacity but respondent No.5 had also not opted to challenge the impugned notification, whereby respondent No.6 was repatriated. The petitioner/association being a third party, in my view, had no locus standi to challenge the impugned notification nor it falls within the ambit of aggrieved party.

9. Another aspect of this case is that admittedly, respondent No.6 was a deputationist and by the impugned notification he was ordered to be repatriated to his parent department. A deputationist did not

have any vested right to remain on the post forever or for a stipulated period. He could be ordered to be repatriated to the parent department at any time without assigning any reason. Parent department of deputationist was not obliged by any law to assign any reason for his repatriation or vice versa. The above view is fortified by the law laid down in "S. Masood Abbas Rizvi v. Federation of Pakistan through Secretary Establishment and others" (2014 SCMR 799) and "Dr. Shafi ur Rehman Afridi v. C.D.A. Islamabad through Chairman and others"(2010 SCMR 378).

10. For the reasons recorded above, the objections raised on behalf of the respondents, are sustainable and petition in hand is found not maintainable.

11. Resultantly, the petition in hand is hereby dismissed. Parties are left to bear their own costs as incurred by them.

ZC/P-3/L

Petition dismissed.

**PLJ 2016 Cr.C. (Lahore) 21**

**[Multan Bench Multan]**

**Present: CH. MUSHTAQ AHMAD, J.  
ASDULLAH RAFIQUE--Petitioner**

**versus**

**STATE and another--Respondents**

Crl. Misc. No. 2757-B of 2015, decided on 7.8.2015.

**Criminal Procedure Code, 1898 (V of 1898)--**

---S. 498--Pakistan Penal Code, (XLV of 1860), S. 489-F--Bail before arrest, confirmed--Repayment of amount--Cheque was dishonoured due to lack of funds in accounts--Validity--Version as contained in FIR was found incorrect during investigation--Petitioner had already joined investigation and cheque was in possession of investigating agency--Question of whether provisions of Section 489-F, PPC are attracted in instant case, will be determined at trial after recording evidence--At present stage, guilt of accused needs further probe and his case calls for further inquiry--Further offence alleged against accused does not fall within prohibitory clause. [P. 22] A

*Rana Muhammad Asif Saeed*, Advocate with Petitioner.

*Mr. Hassan Mehmood Khan Tareen* DPG for State.

*Rana Muhammad Arif Kamal Noon*, Advocate for Complainant.

Date of hearing: 7.8.2015.

**ORDER**

Petitioner Asdullah Rafique sought pre-arrest bail in case FIR No. 74 dated 03.03.2015, offence under Section 489-F, PPC, registered at Police Station City Kabirwala, District Khanewal.

2. Case was registered on the complaint of Haji Mukhtiar Hussain who reported that present petitioner had received an amount of Rs. 4,40,000/- as loan in presence of witnesses. For repayment of the amount, he issued a cheque which was presented before the bank authorities and the same was dishonoured on the ground of lack of funds in the account.

3. Heard. Perused.

4. During investigation it has come on record that the amount was not received as loan by the petitioner from the complainant and

in fact cheque in question was of some other person who was liable to pay the amount to the complainant. The version as contained in the FIR was found incorrect during investigation. Petitioner has already joined investigation and the cheque in question is in possession of the investigating agency. The question whether provisions of Section 489-F, PPC are attracted in this case, will be determined at trial after recording evidence. At present stage, guilt of petitioner needs further probe and his case calls for further inquiry. Further the offence alleged against the petitioner does not fall within prohibitory clause.

5. Resultantly, this petition is accepted and ad-interim bail already granted to petitioner by this Court is confirmed subject to furnishing fresh bail bonds in the sum of Rs. 1,00,000/- with one surety in the like amount to the satisfaction of learned trial Court.

(R.A.) Bail allowed

**PLJ 2016 Cr.C. (Lahore) 31**  
**[Multan Bench Multan]**  
**Present: CH. MUSHTAQ AHMAD, J.**  
**MUHAMMAD SHAFI and another--Appellants**

**versus**

**STATE--Respondent**

Crl. Appeal No. 393 of 1999, heard on 14.4.2015.

**Pakistan Penal Code, 1860 (XLV of 1860)--**

---Ss. 302, 324, 148 & 149--Conviction and sentence--Challenge to--  
Co-accused were acquitted--Injury was individually sufficient to  
cause death in ordinary cause of nature--No weapon was recovered--  
Evidence regarding involvement in occurrence was not relied upon by  
trial Court--Validity--Charge against accused was not proved beyond  
reasonable doubt--Appeal was allowed. [P. 33] A

*Mr. Nadeem Ahmad Tararr*, Advocate for Appellants.

*Ch. Ahmad Raza*, Addl.P.G. for State.

Complainant in person.

Date of hearing: 14.4.2015.

**JUDGMENT**

Appellants

Muhammad Shafi and Haq Nawaz *alias* Ghulam Akbar have  
challenged their conviction and sentence through this Criminal  
Appeal No. 393 of 1999. They were tried by learned Additional  
Sessions Judge, Multan alongwith co-accused  
Muhammad Sadiq, Ghulam Ali *alias* Kaloo, Muhammad Nawaz,  
Allah Dewaya and Riaz in case FIR No. 290/1998 dated 07.06.1998  
registered under Sections 302, 324, 148, 149, PPC at Police Station  
City Jalalpur Pirwala, District Multan.

2. On conclusion of trial, learned Additional Sessions  
Judge. Multan *vide* his judgment dated 28.10.1999 convicted and  
sentenced the appellants as under:--

**Muhammad Shafi appellant.**

Convicted U/S. 302(b), PPC and sentenced to undergo  
Imprisonment for life. He was also held liable to pay Rs.  
1,00,000/- as compensation under Section 544-A, Cr.P.C. to



the legal heirs of deceased. In default thereof, to further undergo simple imprisonment for six months.

**Haq Nawaz appellant.**

Convicted U/S 324, PPC and sentenced to Imprisonment for ten years (R.I). He was also held liable to pay Rs. 30,000/- as fine. He was also convicted under Section 337-F(iii), PPC and sentenced to imprisonment for three years (RI) with Rs. 5000/- as daman.

3. Co-accused Ghulam Ali *alias* Kaloo, Muhammad Nawaz, Allah Dewaya and Riaz were acquitted of the charge, whereas Muhammad Sadiq was convicted and sentenced to death *vide* same judgment. He preferred Criminal Appeal No. 398 of 1999, which was partly allowed and death sentence awarded to him was converted into imprisonment for life *vide* judgment dated 23.11.2006 passed by a Division Bench of this Court, whereas Haq Nawaz appellant, according to report dated 25.06.2011 submitted by Superintendent New Central Jail, Multan, has already been released after undergoing his sentence. So, this appeal to his extent has already become infructuous.

4. FIR was registered on the complaint made by Ameer Bakhsh. Prosecution story as contained in the FIR is that on 07.06.1998 at about 5:30 P.M, complainant, his son Riaz Ahmad, nephews Shaukat Ali and Muhammad Ajmal and one Zafar son of Mithhu were going towards Basti Hasaam to see pigeon flying contest. When they reached near square No. 385 owned by Khuda Bakhsh, Muhammad Shafi (appellant) armed with rifle, Kaalu, Muhammad Nawaz armed with Karbeen, Allah Dewaya armed with rifle, Haq Nawaz (appellant) armed with .12-bore gun, Riaz Ahmad armed with pistol .30-bore came from the side of house of Muhammad Shafi and shouted that they had come to teach lesson of informing the police. Muhammad Shafi and Muhammad Sadiq made one fire shot each with their rifles which hit Shaukat Ali at right and left sides on his chest, who fell down. Complainant and his companions attempted to run, on which Haq Nawaz made fire with his gun, which hit

Muhammad Ajmal at his back. Accused persons while making firing, fled away. Shaukat Ali succumbed to the injuries.

5. This case was investigated by Jameel Hussain SI (PW-12). After completion of investigation, report under Section 173, Cr.P.C. was submitted before trial Court. Charge against the appellant alongwith co-accused was framed, to which they pleaded not guilty and claimed trial. Prosecution in order to prove its case, produced as many as twelve witnesses. Thereafter, statements of appellants were recorded under Section 342, Cr.P.C. Appellants took the plea that they had been implicated in this case due to enmity and party faction.

6. After conclusion of trial, appellants were convicted and sentenced as mentioned above, whereas co-accused were acquitted of the charge, hence, this appeal.

7. I have heard the arguments advanced by learned counsel for the parties and gone through the record with care.

8. According to prosecution witnesses Muhammad Shafi and Muhammad Sadiq made one fire shot each with their rifles which hit Shaukat Ali (deceased) at right and left sides of his chest. Post mortem was conducted on the dead body of Shaukat Ali by PW-1 Dr. Muhammad Jalal, who noted a fire-arm wound on front at left side of chest and second fire-arm wound on the right side of chest. According to the opinion of PW-1, Injury No. 1 was individually sufficient to cause death in ordinary course of nature. Injury No. 1 on left side at chest was attributed to Muhammad Sadiq co-accused who was convicted and sentenced to death, but on appeal his sentence was converted to imprisonment for life. No weapon was recovered from him during investigation. Evidence of prosecution witnesses regarding involvement of co-accused in the alleged occurrence was not relied upon by learned trial Court; therefore, it was not safe to record conviction against appellant on the same set of evidence. Main accused Muhammad Sadiq as narrated above, had played the main role in causing death of Shaukat Ali.

9. For the reasons recorded above, I am of the view the charge against appellant Muhammad Shafi was not proved beyond reasonable doubt. Therefore, this criminal appeal is **allowed** and conviction and sentence recorded by the learned trial Court against the appellant through impugned judgment is **set aside**. Resultantly, appellant Muhammad Shafi is **acquitted of the charge**. His surety stands discharged of the liability of bail bonds.

(R.A.) Appeal allowed

**PLJ 2016 Cr.C. (Lahore) 105**  
**[Multan Bench Multan]**  
**Present: CH. MUSHTAQ AHMAD, J.**  
**JAVED AKHTAR--Appellant**  
**versus**  
**STATE--Respondent**

Crl. Appeal No. 61 and Crl. R. No. 68 of 2009,  
heard on 8.9.2015.

**Pakistan Penal Code, 1860 (XLV of 1860)--**

---S. 302(b)--Conviction and sentence--Challenge to--Blind murder--  
Last seen evidence--No direct evidence--Extra judicial confession--  
Recovery of weapon of offence--Validity--Alleged extra judicial  
confession, it is well settled by now that extra judicial confession is  
tainted piece of evidence and story of extra judicial confession is  
usually concocted just to strengthen prosecution case in cases where  
direct evidence was not available--Evidence produced in instant case  
by prosecution was not confidence inspiring and worthy of credence  
to record conviction against appellant--Law is well settled that  
accused is entitled to benefit of doubt if it arises from facts and  
circumstances of case. [P. 108] A & B

*Ch. Muhammad Saeed*, Advocate for Appellant.

*Ch. Ahmad Raza*, Addl.P.G. for State.

*Malik Muhammad Latif Khokhar*, Advocate for Complainant.

Date of hearing: 8.9.2015.

**JUDGMENT**

Appellant Javed Akhtar has challenged his conviction and sentence through Criminal Appeal No. 61 of 2009. He was tried by learned Additional Sessions Judge, Multan in case FIR No. 109/2005 dated 03.11.2005 under Section 302, PPC registered with Police Station Budhla Santt, Multan. Complainant Javed Iqbal has filed Criminal Revision No. 68 of 2009 seeking enhancement of sentence of the appellant. I propose to decide both these matters through this consolidated judgment.

2. On conclusion of trial, learned trial Court *vide* its judgment dated 24.01.2009 convicted and sentenced the appellant as under:--

Convicted U/S 302(b), PPC and sentenced to undergo Imprisonment for life. He was also held liable to pay Rs. 1,00,000/- as compensation under Section 544-A, Cr.P.C. to the legal heirs of deceased Pervez Iqbal. In default thereof, to further undergo rigorous imprisonment for six months.

Benefit under Section 382-B, Cr.P.C. was also given to the appellant.

3. Facts of the case as alleged in the FIR, are that on 03.11.2005 at about 06:30 P.M., complainant and his younger brother Pervaiz Iqbal were going to their house from Budhla Sant on their bicycles. Complainant was following his brother at some distance. When they reached near tube-well of Chaudhary Nazar Hussain *alias* Muhammad Hussain Randhawa, sound of a fire shot was heard suddenly and brother of complainant fell down from his bicycle. On raising outcry by complainant, Muhammad Akram and Akbar Ali reached the spot. They saw many small wounds at abdomen of Pervaiz Iqbal and a large wound at backside of his abdomen. Pervaiz Iqbal was shifted to hospital but he succumbed to the injuries. It has been alleged in the FIR that some unknown person had murdered Pervaiz Iqbal, brother of complainant.

4. Investigation of this case was conducted by Sakhawat Ali SI (PW-13), who submitted report under Section 173, Cr.P.C. before Court. Appellant was charge sheeted, however, he denied the allegation. Prosecution produced as many as thirteen witnesses. On completion of prosecution evidence, statement of appellant was recorded under Section 342, Cr.P.C., wherein he took the plea that he was falsely implicated in this case due to dispute over path with complainant party. He tendered copy of record of rights for the year 2006-07 in his defence evidence. Appellant did not opt to appear in the witness box as required under Section 340(2), Cr.P.C.

5. On conclusion of trial, appellant was convicted and sentenced as mentioned above, hence this criminal appeal as well as revision.

6. Learned counsel for appellant argued that it was a blind murder and appellant was implicated falsely due to his dispute over path with complainant party; that there is no direct evidence against appellant; that story of last seen and extra judicial has been concocted by complainant party; that after planting recovery of weapon of offence, empty was produced and then sent to laboratory for examination; and that, evidence produced in this case was not worthy to be made basis for awarding conviction.

7. Learned Additional Prosecutor General assisted by learned counsel for complainant argued that there was no reason for complainant to falsely implicate the appellant in this murder case. Learned counsel for complainant argued that prosecution had fully established charge against appellant, as such he was liable to be awarded maximum sentence.

8. Arguments heard and record perused.

9. FIR was registered against unknown person and appellant was implicated later on through supplementary statement. To prove charge against appellant, prosecution has relied on recovery of weapon of offence and crime empty, foot mould of appellant, last seen evidence and extra judicial confession. Sakhawat Ali SI conducted investigation of this case. He inspected the place of occurrence on the following day of occurrence and took into possession an empty and step mould of accused. Appellant was arrested on 28.11.2005 and then on 01.12.2005 he allegedly got recovered a carbine. Thereafter, empty as well as carbine were sent to Forensic Science Laboratory for comparison. Likewise, step mould was also sent to laboratory many days after arrest of accused. As per FIR, complainant was following his brother (deceased) on a bicycle and he was at small distance from him at the time of occurrence. It has been further stated in the FIR that Muhammad Akram and Akbar Ali reached the spot after the occurrence, who shifted the deceased to hospital alongwith complainant. However, none of the said witnesses has been examined by prosecution, rather PW-2 has been introduced as witness of last seen. PW-2 deposed that he saw the accused standing at the place of occurrence while he had something like weapon in his hand. If complainant was at a small distance from his brother and appellant fired at his brother while he was already

standing at the place told by PW-2, then why complainant did not see the appellant at that time. This very fact leads me to draw inference that stance of either the complainant or the PW-2 is incorrect. As regards alleged extra judicial confession, it is well settled by now that extra judicial confession is tainted piece of evidence and story of extra judicial confession is usually concocted just to strengthen prosecution case in cases where direct evidence is not available. In view of above, I am of the considered view that evidence produced in this case by prosecution was not confidence inspiring and worthy of credence to record conviction against appellant. Law is well settled that accused is entitled to benefit of doubt if it arises from the facts and circumstances of the case.

10. For what has been discussed above, this Criminal Appeal No. 61 of 2009 is allowed and conviction and sentence recorded by the learned trial Court against the appellant through impugned judgment is set aside and appellant Javed Akhtar is acquitted of the charge. His surety stands discharged of the liability of bail bonds.

11. For the reasons recorded above, criminal revision No. 68 of 2009 for enhancement of sentence of appellant is dismissed.

(R.A.) Order accordingly

**PLJ 2016 Cr.C. (Lahore) 152**  
**[Multan Bench Multan]**  
**Present: CH. MUSHTAQ AHMAD, J.**  
**MUHAMMAD WAQAS *alias* Vicky--Petitioner**  
**versus**  
**STATE and another--Respondents**

CrI. Misc. No. 6794-B of 2014, decided on 23.4.2015.

**Criminal Procedure Code, 1898 (V of 1898)--**

---S. 497--Pakistan Penal Code, (XLV of 1860), Ss. 367-A & 377--  
Bail, accepted--Sodomy was committed with student of 9<sup>th</sup> class--  
Medicolegal certificate of victim--No mark of violence on body of  
victim was noted by doctor--Question as to whether accused  
committed sodomy alongwith his co-accused who abducted victim,  
was to be determined at trial after recording evidence--Involvement of  
accused in alleged offence was a matter which needed further probe--  
Bail was allowed. [Pp. 152 & 153] A

*Khawaja Qaisar Butt*, Advocate for Petitioner.

*Ch. Ahmad Raza*, Addl.P.G. for State.

*Mr. Muhammad Nawaz Khan*, Advocate for Complainant.

Date of hearing: 23.4.2015.

**ORDER**

Through this petition, Muhammad Waqas *alias* Vicky accused has prayed for post-arrest bail in case FIR No. 463/2014 dated 21.10.2014 under Sections 367-A, 377, PPC, registered at Police Station City Layyah.

2. Allegation against the petitioner, in brief, is that he alongwith co-accused committed sodomy with Zain Javed son of the complainant, a student of 9<sup>th</sup> class.

3. Arguments heard and record perused.

4. Perusal of FIR shows that allegation of taking away Zain Javed was leveled against co-accused Jaazib Shah and Ali Maghroor. Allegation against the petitioner was that he alongwith co-accused committed sodomy with Zain Javed. Medicolegal certificate of Zain Javed shows that no



mark of violence on the body of victim was noted by the doctor. The question as to whether the petitioner committed sodomy alongwith his co-accused who abducted the victim, is to be determined at trial after recording evidence. Involvement of petitioner in the alleged offence is a matter which needs further probe.

5. For the reasons recorded above, this petition is accepted and petitioner be released on bail, subject to his furnishing bail bonds in the sum of Rs. 2,00,000/-with one surety in the like amount to the satisfaction of the trial Court.

(R.A.) Bail allowed

**PLJ 2016 Cr.C. (Lahore) 180**  
**[Multan Bench Multan]**  
**Present: CH. MUSHTAQ AHMAD, J.**  
**MALIK IQBAL HUSSAIN SAMITA--Petitioner**  
**versus**  
**STATE and 6 others--Respondents**

CrI. Rev. No. 274 of 2015, decided on 19.8.2015.

**Criminal Procedure Code, 1898 (V of 1898)--**

---S. 540--Pakistan Penal Code, (XLV of 1860), Ss. 420, 467, 468, 471 & 161--Prevention of Corruption Act, (II of 1947), S. 5(2)--Application for summoning of register moharrir alongwith record of sale-deed as witness, dismissal of--Challenge to--Application was moved by prosecution with similar prayer but trial Court dismissed application--To summon proposed witness alongwith record was sine qua non for ascertaining real facts regarding stance of parties--As such, trial Court erred while passing impugned order, which was not sustainable. [P. 181] A

*M/s. Khawaja Qaisar Butt*

*and Malik M. Majid Shahbaz Khokhar, Advocates for Petitioner.*

*Ch. Ahmad Raza, Addl.P.G. for State.*

Date of hearing: 19.8.2015.

**ORDER**

Through this petition order dated 28.07.2015 passed by learned Special Judge Anti-Corruption, Dera Ghazi Khan has been impugned, whereby an application filed by petitioner under Section 540, Cr.P.C. was dismissed.

2. Petitioner is facing trial in case FIR No. 11/2009 dated 19.08.2009 under Sections 420, 467, 468, 471, 161, PPC read with Section 5(2) of Prevention of Corruption Act, 1947 registered with Police Station Anti-Corruption, Layyah. He filed an application under Section 540, Cr.P.C. with the prayer that Registeree Moharrir of Sub-Registrar Office Kehrur alongwith record of Sale-Deed No. 587 dated 24.12.1989 be summoned as witness. His application was dismissed by learned trial Court *vide* impugned order.

3. Heard, impugned order has been perused.

4. It was alleged by prosecution that registered Sale-Deed No. 587 was a bogus document. Contention of petitioner is that said document was a genuine document registered in accordance with law and that petitioner had also obtained attested copy of said sale deed. Learned trial Court in the impugned order relied on report of record keeper on backside of application form, according to which said Sale-Deed No. 587 was nowhere available in the record. It is matter of record that an application was moved by prosecution with the similar prayer but learned trial Court dismissed said application *vide* order dated 14.02.2015. In the peculiar facts and circumstances of this case, to summon the proposed witness alongwith record was sine qua non for ascertaining real facts regarding stance of the parties. As such, learned trial Court erred while passing the impugned order, which is not sustainable.

5. For the reasons recorded above, this criminal revision is hereby allowed and impugned order is set aside. Application moved by petitioner under Section 540, Cr.P.C. is allowed. Learned trial Court shall summon Registeree Moharrir as witness alongwith record of aforementioned sale deed and parties will be provided an opportunity to cross-examine said witness.

(R.A.) Revision allowed

**PLJ 2016 Cr.C. (Lahore) 196**  
**[Multan Bench Multan]**  
**Present: CH. MUSHTAQ AHMAD, J.**  
**MUHAMMAD ZAMAN and another--Petitioners**  
**versus**  
**STATE, etc.--Respondents**

CrI. Misc. No. 1328-B of 2015, decided on 31.3.2015.

**Criminal Procedure Code, 1898 (V of 1898)--**

---S. 497--Pakistan Penal Code, (XLV of 1860), Ss. 380, 457-A & 411--Bail, accepted--Theft of cattle and house hold articles--There exists previous enmity between parties--Occurrence was reported to police after a delay of more than two months, for which no explanation had been given in FIR--Guilt of petitioners calls for further inquiry--Evidentiary value of alleged recovery will be determined at time of trial--Bail was allowed. [P. 197] A

*Khawaja Qaisar Butt*, Advocate for Petitioners.

*Ch. Ahmad Raza*, APG for State.

Date of hearing: 31.3.2015.

**ORDER**

Through this petition, Muhammad Zamaan and Abid Hussain accused have prayed for post-arrest bail in case FIR No. 141/14 dated 14.05.2014 under Sections 380, 457, 411, PPC, registered at Police Station Ghazi-Abad, District Sahiwal.

2. Allegation against the petitioners, in brief, is that they alongwith other co-accused committed theft in the house of complainant and took away cattle and house-hold articles as fully detailed in the FIR.

3. Arguments heard and record perused.

4. There exists previous enmity between the parties. Occurrence was reported to police after a delay of more than two months, for which no explanation has been given in the FIR. In the circumstances, guilt of the petitioners calls for further inquiry. Evidentiary value of the alleged recovery will be determined at the

time of trial. There is nothing on record to show that petitioners are previous record holders.

5. For the reasons recorded above, this petition is accepted and petitioners be released on bail, subject to their furnishing bail bonds in the sum of Rs. 2,00,000/- each with one surety each in the like amount to the satisfaction of the trial Court.

(R.A.) Bail allowed

**PLJ 2016 Cr.C. (Lahore) 199**  
**[Multan Bench Multan]**  
**Present: CH. MUSHTAQ AHMAD, J.**  
**UMAR FAROOQ--Appellant**  
**versus**  
**STATE--Respondent**

Crl. Appeal No. 4 of 2004, heard on 1.6.2015.

**Pakistan Penal Code, 1860 (XLV of 1860)--**

---Ss. 302 & 34--Conviction and sentence--Ocular account--No injury attributed--Main rule was attributed to co-accused--No active role was attributed to accused--Facilitated main accused and for that reason he was liable to be punished under Section 302 r/w Section 34, PPC as he shared common intention with main accused--Two co-accused who were attributed similar role, were acquitted by trial Court on same evidence--Evidence led by prosecution was not sufficient to prove charge against accused beyond reasonable doubt--On re-appraisal of evidence, prosecution had miserably failed to prove charge against accused--Appeal was allowed. [P. 201] A & B

*Khawaja Qaisar Butt*, Advocate for Appellant.

*Mr. Hassan Mahmood Khan Tareen*, D.P.G. for State.

*Mr. Muhammad Maalik Khan Langah*, Advocate for Complainant.

Date of hearing: 1.6.2015.

**JUDGMENT**

Umar Farooq convict has challenged his conviction and sentence through this Criminal Appeal No. 04 of 2004. He was tried alongwith co-accused Abdul Majeed and Muhammad Alyas by learned Additional Sessions Judge, Alipur District Muzaffargarh in case F.I.R. No. 389/2000 dated 24.12.2000 registered under Sections 302, 148, 149, PPC at Police Station City Ali Pur.

2. On conclusion of trial, appellant was convicted *vide* judgment dated 24.06.2003 and sentenced as under:-

Convicted U/S 302(b), PPC and sentenced to imprisonment for life. He was held liable to pay Rs. 1,00,000/- as compensation in terms of Section 544-A, Cr.P.C. to the legal heirs of deceased. In default, to further undergo six months imprisonment.

Both the co-accused were acquitted of the charge.

3. FIR was got registered by Muhammad Tayyab. Prosecution story as narrated in the FIR is that on 24.12.2000 at about 11:30 A.M., complainant, his brothers Muhammad Tahir and Muhammad Shahid alongwith Aamir Raees were coming to Alipur in a car from Jatoi. Car was being driven by Muhammad Shahid. Complainant alongwith his brother Muhammad Tahir were sitting on rear seat. When they reached near Kazmi hospital, all of sudden Abdul Majeed, Numan Majeed, Umar Farooq armed with pistols, Abdul Salam *alias* Babloo armed with .12-bore pistol and Muhammad Alyas armed with pistol emerged in front of car, on which car was stopped by driver. Abdul Salam *alias* Babloo fired with .12-bore pistol which hit Muhammad Tahir on his left cheek. Muhammad Shahid then drove the vehicle speedily. Accused persons made firing but no further fire shot hit anybody. Muhammad Tahir was taken to hospital in injured condition but he succumbed to the injury. Motive as alleged in the FIR is family dispute.

4. After registration of FIR, case was investigated. Report under Section 73, Cr.P.C. was submitted before trial Court where appellant alongwith co-accused were charge sheeted. They pleaded not guilty and claimed trial. Thereafter prosecution evidence was recorded. Statement of appellant was recorded under Section 342, Cr.P.C., wherein he again pleaded innocence. At conclusion of trial, appellant was convicted and sentenced as mentioned above, hence this criminal appeal.

5. Learned counsel for appellant contended that no injury to the deceased was attributed to present appellant; that main role was attributed to accused Abdul Salam (since P.O) and that on the same

evidence-accused Abdul Majeed and Muhammad Alyas were acquitted by learned trial Court, as such appellant was also entitled to acquittal.

6. Conversely, learned Deputy Prosecutor General assisted by learned counsel for complainant argued that prosecution has fully proved charge against appellant; that he though not attributed main role, was guilty of offence as he shared common intention with co-accused, as such he was rightly convicted and sentenced.

7. I have heard arguments advanced by learned counsel for the parties and gone through the record with due care.

8. Ocular account in this case was furnished by Complainant (PW-1) and Aamir Raees (PW-2). According to prosecution witnesses Tahir Mahmood (deceased) alongwith complainant and Aamir Raees (PW-2) was travelling in a car towards Alipur from Jatoi when accused came in front of car. Tahir (deceased) was sitting on rear seat towards left. According to prosecution witnesses Abdul Salam (since P.O.) came close to Tahir and fired at him and the shot hit on his left cheek. The driver then sped away the car. No active role was attributed to the present appellant. Regarding present appellant learned trial Court observed that he facilitated the main accused Abdul Salam (since P.O.) and for that reason he was liable to be punished under Section 302 read with Section 34, PPC as he shared common intention with the main accused. Two co-accused who were attributed similar role, were acquitted by the trial Court on the same evidence. In the peculiar facts and circumstances of this case, evidence led by the prosecution is not sufficient to prove charge against present appellant beyond reasonable doubt.

9. On re-appraisal of evidence, I am of the considered opinion that prosecution had miserably failed to prove charge against the appellant. Findings recorded by learned trial Court were not in line with the facts established on record. Resultantly, Criminal Appeal in hand is hereby allowed and appellant Umar Farooq is acquitted of



the charge by extending, to him benefit of doubt. His surety stands discharged of the liability of bail bonds.

(R.A.) Appeal allowed

**PLJ 2016 Cr.C. (Lahore) 201**  
**[Multan Bench, Multan]**  
**Present: CH. MUSHTAQ AHMAD, J.**  
**MUHAMMAD SALEEM *alias* BOOTA and another--Appellants**  
**versus**  
**STATE and another--Respondents**

Crl. A. No. 262 & Crl. Rev. No. 155 of 2001, heard on 31.3.2015.

**Pakistan Penal Code, 1860 (XLV of 1860)--**

---S. 302--*Qatl-e-amd*--Conviction and sentence--Injuries were caused by nails, teeth, blunt weapon and by sharp edged weapon--Sufficient to cause of death--FIR was lodged against unknown persons--No direct evidence--Relied on evidence of extra judicial confession and recovery--Reappraisal of evidence--Validity--Alleged extra judicial confession was made after about four months of occurrence--Confession of guilt in a criminal case was made by a person when he was forced by his conscious--No reason was brought on record for making alleged extra judicial confession by appellant alongwith his co-accused after lapse of such a long time--Persons before whom alleged extra judicial confession was made were not such influential persons who could help appellant in seeking pardon from family of deceased--PWs were closely related to deceased three in number--Appellant was not armed with any weapon at time of making extra judicial confession and no attempt was made by PWs to apprehend accused--While placing reliance on extra judicial confession, utmost care and caution was to be exercised--Alleged recovery of dagger was not material when main stay of prosecution case, extra judicial confession, had been disbelieved--On re-appraisal of evidence, prosecution had miserably failed to prove charge against accused--Appeal was allowed. [Pp. 205 & 206] A, B & C 2015 SCMR 155, 2012 SCMR 575, 2011 SCMR 1233, *rel.*

*Mr. Nadeem Ahmad Tarar and Malik Altaf Hussain Rawn*, Advocates for Appellants.

*Ch. Ahmad Raza*, Additional Prosecutor General for State.

*Mr. Jamshed Awan*, Advocate for Complainant.

Date of hearing: 31.03.2015

## JUDGMENT

Appellant Muhammad Saleem *alias* Boota has challenged his conviction and sentence through Criminal Appeal No. 262 of 2001. He was tried by learned Additional Sessions Judge, Multan in case FIR No. 55 dated 24.03.2000 registered under Sections 302, 34, PPC at Police Station Qadirpur Rawn, District Multan. Complainant Muhammad Akram has filed Criminal Revision No. 155 of 2001 seeking enhancement of sentence. I propose to decide both these matters through this consolidated judgment.

2. After evaluating the evidence brought on record, learned Additional Sessions Judge, Multan *vide* his judgment dated 29.03.2001 came to the conclusion that the prosecution succeeded to prove the guilt of accused Muhammad Saleem that he committed the murder of deceased Rabnawaz and charge is proved against him. Accordingly, he was convicted and sentenced as under:--

Convicted U/S 302(b), PPC and sentenced to imprisonment for life. He was held liable to pay Rs. 50,000/- as compensation in terms of Section 544-A, Cr.P.C. to the legal heirs of the deceased Rabnawaz and in case of default in payment thereof, to further undergo imprisonment for six months (S.I.).

Benefit of Section 382-B, Cr.P.C. was also extended to the appellant.

3. FIR was got registered by Muhammad Akram. Facts of the case, in brief, are that on 24.3.2000, at about 02:30 P.M, complainant alongwith Muhammad Aslam and Qaswar Abbas went to the house of Rabnawaz, brother-in-law of the complainant. They found outer door of house closed, which they opened and entered the house. Rabnawaz was lying on a cot in naked condition, whose clothes were lying near the door. A stabbed wound was found at abdomen of Rabnawaz. It was reported that murder of Rabnawaz was committed by some unknown persons with sharp edged weapon.

4. Investigation of this case was conducted by PW-11 Muhammad Shafi Inspector, who completed initial steps of investigation. He arrested the appellant (accused) alongwith co-accused Naeem and recovered dagger (P-3) on pointation of appellant. In the investigation conducted by PW-11, appellant and co-

accused were found guilty. Thereafter, investigation was conducted by Muhammad Aftab Ahmad Malik (CW-1), who agreed with the opinion given by Muhammad Shafi Inspector (PW-11).

5. After completing investigation, the Investigating Officer submitted challan in the Court concerned where the appellants along with co-accused were formally charged, to which they pleaded not guilty and claimed trial.

6. At the trial Dr. Fayyaz Khan Durrani appeared as PW-7, who conducted autopsy on the dead body of Rabnawaz on 25.03.2000 and observed the following injuries:--

1. A linear scratch 1 cm in length on right side of face just below right eye was present.
2. A linear abrasion 1.5 cm in length was present on right side of neck, 4 cm below right ear.
3. A semi circular bruise was present on left side of neck, 2 cm below angle of mandible which was teeth of upper Jaw.
4. A horizontal spindle shaped stabbed wound 4 cm x 1 cm on right side of lower abdomen 3 cm from right anterior iliac supine. There is also a vertical abrasion 4 cm long on medial side of stabbed wound. On dissection the stab after entering the skin, injured superficial structures cut spermatic cord and external iliac vessels (both vein and artery). The pelvic cavity was full of clotted blood (approximately 2 liters).
5. A bruise 2 cm x 1 ½ cm on front of left leg 9 cm below knee was present.
6. An abrasion 3 cm x 2 cm on inner side of left leg 11 cm below knee joint was present.

Injuries No. 1, 2 were caused by nails. Injury No. 3 was caused by teeth. Injuries No. 5, 6 by blunt weapon. Injury No. 4 was caused by a sharp edged weapon. Injury No. 4 was sufficient to cause death of a person in ordinary course of nature.

7. In order to prove its case, prosecution got examined 11 witnesses, whereas Muhammad Aftab Ahmad Malik was recorded as CW-1.

8. Appellant was examined under Section 342, Cr.P.C. who denied the very factum of having committed the offence under reference. In reply to the question why this case against him and why the PWs have deposed against him, appellant replied as under:--

“Deceased was having association with women of ill repute. Besides that he had reports against him, as such, on account of the above, some unknown person killed him in the darkness of night and he and his son had been made scapegoat and falsely involved in this case. He also stated that PWs deposed against him on the dictation of police.”

9. Learned counsel for appellant argued that case of the prosecution is based on alleged extra judicial confession, which is a weak type of evidence and strong corroboration is required in order to convict an accused on the basis of extra judicial confession; that the extra judicial confession was neither proved nor corroborated by any independent evidence, but the learned trial Court believing the same convicted the appellant; that even otherwise, witnesses are related inter se and their statements were not worth reliance; that recovery was planted one and even not proved by the prosecution; that no independent witness was associated in recovery proceedings.

10. Conversely, learned Additional Prosecutor General assisted by learned counsel for complainant argued that the prosecution had proved its case beyond shadow of doubt, as such learned trial Court rightly convicted the appellant; that extra judicial confession was proved by the statements of PWs as well as corroborated by recovery of weapon of offence. Further contends that guilt of the appellant had been fully proved, but he was awarded lesser punishment, hence, he was liable to be awarded death sentence.

11. I have heard arguments advanced by learned counsel for the parties and perused the record with their able assistance.

12. In the case in hand, FIR was got registered against unknown persons. There was no direct evidence against the appellant/accused. Prosecution has relied on evidence of extra judicial confession and recovery. Incident was reported by Muhammad Akram, who while appearing as PW-6 deposed about extra judicial confession made by the appellant and his co-accused (since acquitted). According to PW-6, on 21.07.2000, Saleem accused and

his son came to him at his Dera where Haq Nawaz PW and Hafiz Nazar Muhammad were also present. Appellant told that they had murdered Rabnawaz and for that they be forgiven. According to PW-6, Saleem appellant had stated the reason for murder of Rabnawaz that he had illicit relationship with his wife. Occurrence had taken place on 23.03.2000, whereas the alleged extra judicial confession was made on 21.07.2000. In cross-examination PW-6 stated that FIR was registered after investigation. He admitted that all the PWs are relatives inter se. PW-5 Haq Nawaz deposed that accused Muhammad Saleem and Nadeem had admitted that they had committed murder of Rabnawaz and that he had submitted his affidavit. In cross-examination he admitted that the deceased was his real brother. Both PW-5 and PW-6 are close relatives of the deceased.

13. Alleged extra judicial confession was made after about four months of the occurrence. Confession of guilt in a criminal case is made by a person when he is forced by his conscious. No reason was brought on record for making alleged extra judicial confession by appellant alongwith his co-accused after lapse of such a long time. The persons before whom alleged extra judicial confession was made were not such influential persons who could help the appellant in seeking pardon from the family of the deceased. The PWs were closely related to the deceased three in number. On the other hand, appellant was not armed with any weapon at the time of making extra judicial confession and no attempt was made by the PWs to apprehend the appellant/accused. Evidence of extra judicial confession, in the circumstances, could not be relied upon in a case of capital sentence. Reliance in this regard may be placed on the law laid down by apex Court in cases i.e. *“Imran alias Dully and another v. The State and others”* (2015 SCMR 155), *“Tariq Iqbal @ Tariq v. The State”* (2012 SCMR 575) and *“Hamid Nadeem v. The State”* (2011 SCMR 1233). In a case i.e. *“Imran alias Dully and another v. The State and others”* (2015 SCMR 155), the apex Court observed as under:--

“Extra judicial confession was not sufficient for recording conviction on a capital charge unless it was strongly corroborated by tangible evidence coming from unimpeachable source.”

In another case i.e. “*Hamid Nadeem v. The State*” (2011 SCMR 1233), the apex Court scanned the law on the subject and observed as under:

“Conviction can be based on extra judicial confession when it is corroborated by other reliable evidence. Extra judicial confession is regarded as weak type of evidence by itself, utmost care and caution has to be exercised in placing reliance on such confession.”

It is clear from bare reading of above cited case law that while placing reliance on extra judicial confession, utmost care and caution is to be exercised. Alleged recovery of dagger is not material when main stay of prosecution case, extra judicial confession, has been disbelieved.

14. On re-appraisal of evidence, I am of the considered opinion that prosecution had miserably failed to prove charge against the appellant. Findings recorded by learned trial Court was not in line with facts established on record. Resultantly, Criminal Appeal No. 262 of 2001 is hereby allowed and appellant Muhammad Saleem is acquitted of the charge by extending benefit of doubt. His surety stands discharged of the liability of bail bonds.

15. For the above reasons, Criminal Revision No. 155 of 2001, for enhancement of sentence filed by complainant is dismissed. (R.A.) Revision dismissed

**PLJ 2016 Cr.C. (Lahore) 241**  
**[Multan Bench Multan]**  
**Present: CH. MUSHTAQ AHMAD, J.**  
**SAJJAD AHMAD WASEEM--Petitioner**  
**versus**  
**STATE & another--Respondents**

CrI. Misc. No. 3120-B of 2015, decided on 24.8.2015.

**Criminal Procedure Code, 1898 (V of 1898)--**

---S. 498--Pakistan Penal Code, (XLV of 1860), S. 489-F--Bail before arrest, dismissal of--Cheque was issued for repayment of amount--Huge amount was involved--Commission of alleged offence--Validity--Foundational elements to constitute offence u/Section 489-F, PPC were that cheque would be issued with dishonest intent that cheque would be issued towards repayment of loan or fulfillment of an obligation and that cheque would be dishonoured--For repayment of amount cheque was issued which on being presented before bank authorities was dishonoured--Investigation was yet to be completed and no *mala fide* on part of complainant or police was pointed out--Case of pre-arrest bail was therefore, not made out--Bail was dismissed. [Pp. 242 & 243] A, B & C

*Mr. Muhammad Bilal Butt*, Advocate for Petitioner.

*Ch. Ahmad Raza*, APG for State.

*Ch. Daud Ahmad Wains*, Advocate for Complainant.

Date of hearing: 24.8.2015.

**ORDER**

Petitioner Sajjad Ahmad Waseem seeks pre-arrest bail in case FIR No. 235/2015 dated 17.04.2015 under Section 489-F, PPC, registered at Police Station Muzaffarabad, District Multan.

2. Allegation against the petitioner is that he issued a cheque for payment of Rs. 60,00,000/- which being on presentation was dishonoured by the bank authorities.

3. Heard. Perused.



4. Record reveals that during investigation, it came to light that present petitioner had issued cheque for repayment of the amount which he had received from the complainant in presence of two witnesses mentioned in the FIR. In his petition, petitioner has also stated that cheques were issued by him to the complainant but according to his version, the same were given as security during business deal with the complainant. Huge amount is involved in the case and the I.O has also stated before the Court that during investigation, petitioner was found involved in the commission of alleged offence. Learned counsel for the petitioner, during arguments referred to case titled "*Mian Allah Ditta vs. The State and others*" (2013 SCMR 51) in support of his contention that petitioner was entitled to pre-arrest bail. In the authority cited at bar, it was observed that foundational elements to constitute the offence under Section 489-F, PPC were that cheque should be issued with dishonest intent; that cheque should be issued towards repayment of a loan or fulfillment of an obligation and that cheque in question should be dishonoured. In the case in hand the amount was paid according to the complainant, to the present petitioner in presence of two witnesses. For repayment of that amount, the cheque was issued which on being presented before the bank authorities was dishonoured; hence, the authority referred by learned counsel for the petitioner, in my humble view, is not helpful to the case of petitioner. In the cited case it was noticed that an arbitrator was appointed by the parties to resolve some dispute existing between them who gave award and the cheque was issued by way of security when parties decided to settle the matter through arbitration. The facts of the cited case, thus were distinguishable from the facts of the case in hand. Investigation is yet to be completed and no *mala-fide* on the part of complainant or police is pointed out. A case of pre-arrest bail, is, therefore, not made out. Consequently, this bail petition is dismissed and ad-interim pre-arrest bail already granted to petitioner by this Court is recalled.

(R.A.) Bail dismissed

**PLJ 2016 Cr.C. (Lahore) 702 (DB)**

**[Multan Bench Multan]**

**Present: CH. MUSHTAQ AHMAD AND SARDAR AHMED NAEEM, JJ.  
GHULAM MUSTAFA--Appellant**

**versus**

**STATE and another--Respondents**

CrI. Appeal No. 420 of 2011 and M.R. No. 93 of 2011,  
heard on 23.5.2016.

**Pakistan Penal Code, 1860 (XLV of 1860)--**

---S. 302(b)--*Qatl-e-amd*--Sentence--Consecutive fire shots--Cause of death was due to haemorrhage and injuries to vital organs--Elapsed between injuries and death was five minutes--Chance witness--No person from public--Ocular account was also not in line with medical evidence--Crime empties were sent to office of FSL after arrest of accused--Medical evidence negates ocular account--Ocular testimony doubtful--Incident took place in a bazar but none from shop keepers came forward to support prosecution case--Both eye-witnesses had no house, shop or business point near place of occurrence nor they had any reasonable cause to be present with deceased--Prosecution witness in cross-examination stated that one person was apprehended by shop keepers at spot and he was handed over to police by those shop keepers--Accused left place of occurrence while brandishing pistol and it came to their knowledge that he was arrested on day of occurrence by police--Crime empties were sent to FSL after arrest of appellant, therefore, such piece of evidence in no way strengthens prosecution case--When main stay of prosecution (ocular account) is found untrust worthy and unreliable, evidence of recovery which is supporting in nature only would not advance case of prosecution--Prosecution had failed to prove its case beyond reasonable doubt against appellant--So, impugned judgment passed by trial Court is not outcome of proper appreciation of evidence brought on record. [P. 706 & 707] A, B & C

*M/s. Prince Rehan Iftikhar Sheikh and Arslan Masood Sheikh*, Advocates for Appellant.

*Mr. Riaz Ahmed Saghla*, D.P.G. for State.

Date of hearing: 23.5.2016.

## **JUDGMENT**

**Ch. Mushtaq Ahmed, J.--**We intend to dispose of above captioned criminal appeal filed by appellant Ghulam Mustafa who was convicted by learned Additional Sessions Judge, Sahiwal in case FIR No. 533 dated 14.12.2006 registered under Sections 302, PPC at Police Station City, Sahiwal *vide* impugned judgment dated 30.4.2011 and sentenced as under:

- (i) Death under Section 302(b), PPC as Tazir. He was also held liable to pay Rs.2,00,000/- as compensation to the legal heirs of both the deceased persons equally u/S. 544-A, Cr.P.C. and in default whereof to undergo further simple imprisonment for six months.

State through Murder Reference No. 93 of 2011 has sought confirmation of death sentence awarded to the appellant Ghulam Mustafa. So, both these matters are being decided through this single judgment.

2. FIR (Exh.PH/1) was registered on the statement (Exh.PH) of Shaukat Ali. complainant (PW-8) alleging therein that on 14.12.2006 at 5.30 p.m. he alongwith his brother Khadim Hussain (deceased), Irfan Faisal and Muhammad Saleem were returning back to home after buying some grocery items from City Sahiwal when at 5.30 p.m. reached near HBL, Jinnah Chowk Branch all of a sudden Ghulam Mustafa whom they knew earlier armed with .30 bore pistol came in front of them; he raised *Lalkara* to complainant's brother Khadim Hussain that today he would teach him a lesson for pursuing case of his wife *Mst.Robina Kausar* for dissolution of marriage; he made three consecutive fire shots with his pistol which hit Khadim Hussain on his right temporal region neck and on right side of his back after sustaining injuries fell on the ground; they tried to catch

hold of accused Ghulam Mustafa who extended threats to them that he would not spare them if they came forward and thereafter he decamped from the place of occurrence; injured Khadim Hussain was brought to hospital but he succumbed to the injuries on the way; complainant having Abdul Sattar and Abdul Ghaffar to guard the dead body proceeded to report the matter to police. He met Imdad Ali, S.I. (PW-11) who recorded his statement.

3. The I.O./PW-11 visited DHQ Hospital, Sahiwal and prepared injury statement (Exh.PB), inquest report (Exh.PC), handed over dead body to Bashir Ahmed, 417-C alongwith police papers for post-mortem examination. At the place of occurrence he prepared rough site-plan Exh.PL took into possession blood stained earth *vide* recovery memo Exh.PJ and also collected three crime empties of .30 bore Pistol from the place of occurrence and took into possession *vide* recovery memo Exh.PK. After post-mortem examination Bashir Ahmed, 417-C produced before him last worn clothes of deceased Jarsi (P-1), Shirt (P-2), Shalwar (P-3), Vest (P-4) which he took into possession *vide* recovery memo Exh.PF. On 18.12.2006 Draftsman produced before him scaled site-plan Exh.PE and Exh.PE/1 on which he added notes in red ink. On 19.12.2006 he arrested accused Ghulam Mustafa (appellant) and on 23.12.2006 recovered .30 bore Pistol (P-5) on his pointation which was taken into possession *vide* recovery memo Exh.PG.

PW-1 Dr. Mubasher Hussain Sherazi conducted autopsy on dead body of Khadim Hussain on 15.12.2006 at 1.30 a.m. (night) and noted following injuries:-

1. ½ cm x ½ cm entry wound on right temporal region 3cm above right ear.
2. 2cm x 1 ½ cm exit wound on left temporal region with an area of swelling 5 x 10cm.
3. 1cm x 1cm entry wound on right side and middle of neck.
4. 2cm x 2½ cm exit wound on left side of upper part of neck 3cm below occipit.
5. ½ cm x ½ cm entry wound in 5th intercostal space on lateral part of right side of chest.

6. Exit wound 1cm x 1cm with the area of swelling 5cm x 5cm around the wound on the fourth intercostal space on the left side of chest.

According to his opinion cause of death in this case was due to haemorrhage and injuries to vital organs. Injury No. 1 had injured the brain matter and meninges while Injury No. 3 had injured the neck vessel while Injury No. 5 had injured the lungs and heart and thus these all injuries had led to haemorrhage and shock and death in ordinary course of nature. The probable time that elapsed between injuries and death was five minutes whereas between death and post-mortem examination was 24 hours. Exh.PA is PMR duly signed by him.

4. After culmination of investigation, report u/S. 173, Cr.P.C. was prepared and submitted against the appellant.

5. Learned trial Court after observing all pre-trial codal formalities, indicated the appellant to which he did not plead guilty and claimed trial. Thereafter, the prosecution was directed to lead evidence in order to substantiate the charge. The prosecution in order to prove its case produced eleven witnesses in all.

6. Learned ADPP renounced PW Irfan Faisal being unnecessary. Thereafter, by tendering in evidence reports of Chemical Examiner Exh.PM, Serologist Exh.PN and the report of Forensic Science Laboratory Exh.PO closed the prosecution case on 29.3.2011.

7. Thenceforth statement of the appellant was recorded u/S. 342, Cr.P.C. wherein he denied the charge and claimed innocence. He neither opted to make statement on oath as permissible u/S. 340(2), Cr.P.C. nor produced defence evidence.

8. On the conclusion of trial appellant was convicted and sentenced as mentioned *supra*. Hence, the instant appeal.

9. Learned counsel for the appellant contended that both the eye-witnesses were chance witnesses and their presence at the place

of occurrence at the relevant time was highly doubtful; that as per version of prosecution occurrence took place in Bazar (City Sahiwal) but no person from public came forward to support prosecution version; that ocular account was also not in line with medical evidence and that report of FSL was in consequential for the reason that crime empties were sent to the office of FSL after arrest of the appellant indicating that recovery was manipulated and fabricated and that charge against the appellant was not proved by the prosecution beyond reasonable doubt.

10. Conversely learned Deputy Prosecutor General supported the impugned judgment contending that both the eye-witnesses explained their presence at the place of occurrence and the reasons why they were accompanying the deceased at the relevant time; that ocular account was corroborated by medical evidence and evidence of recovery of .30 bore Pistol as well as report of FSL further corroborates the ocular account, hence, charge was proved against the appellant beyond reasonable doubt and he was rightly convicted by the trial Court.

11. Heard. Record perused.

12. PW-8 Shaukat Ali, complainant and PW-10 Muhammad Saleem his first cousin furnished ocular account who stated that at the time of occurrence they were coming back from City Sahiwal after buying some grocery items and when they reached near HBL, Jinnah Chowk Branch suddenly appellant Ghulam Mustafa duly armed with .30 bore Pistol came and after raising *lalkara* to Khadim Hussain, brother of the complainant made three consecutive fire shots which hit the deceased.

In cross-examination PW-8 stated that place of occurrence was situated in a thickly populated area surrounded by shops, main branch of HBL was also near the place of occurrence. As per his statement all the shops were open at the time of occurrence. Further stated that traffic often blocked near the place of occurrence due to rush. According to him shop keepers came at the spot. He further deposed that none of them was cited as witness in this case. He stated

that deceased used to reside in Chak No. 88/9-L whereas he was resident of 90/9-L which was 4-5 Kilometer away from the place of occurrence. He admitted in cross-examination that PWs as well as deceased did not own any house, shop or business point near the place of occurrence. During cross-examination he further admitted that he did not produce blood stained clothes to the I.O. nor he produced blood stained Rikshaw to the I.O. in which Khadim Hussain was shifted to hospital. PW-11 Imdad Ali, S.I./I.O. in cross-examination stated that PWs did not produce before him their blood stained clothes or conveyance in which they boarded Khadim Hussain in injured condition. Same was the statement of PW-10 Muhammad Saleem. As per contents of FIR, PWs came to City Sahiwal for buying some grocery items but in cross-examination PW-10 admitted, that on that day they did not purchase anything. He stated that he did not record his statement to the police that after purchasing grocery items they were going back, however, when confronted with his statement Exh.DA it was found so recorded. In cross-examination PW-8 stated that they gave list of grocery items to the shopkeeper known as 'Butt Karyana Shop', and within no time they left the shop of Butt Brothers as he wanted to get his eye sight checked from the doctor.

From the statement of both the witnesses it is clear that incident took place in a bazar but none from the shop keepers came forward to support the prosecution case. Both the eye-witnesses had no house, shop or business point near the place of occurrence nor they had any reasonable cause to be present with the deceased. PW-10 in cross-examination stated that one person was apprehended by the shop keepers at the spot and he was handed over to police by those shop keepers. Again said that accused left the place of occurrence while brandishing the pistol and it came to their knowledge that he was arrested on the following day of occurrence by the police. This portion of statement of PW-10 clearly indicates that it was not in his knowledge who killed the deceased on the day of occurrence. Had he been present at the relevant time he would have definitely name the appellants who according to the eye-witnesses was already known to them. As per statement of PW-10 deceased used to ply Rikshaw. As per his version he and the deceased used to reside in one house in Chak No. 88/9-L. He further stated that complainant PW-8 runs a

private school as well as worked as Dispenser and used to reside in Chak No. 90/9-L and the distance between Chak No. 88/9-L and Chak No. 90/9-L was about one and half kilometer. According to him in winter season he used to open his shop at about 8.00/9.00 a.m. and closed at 8.30/9.00 p.m. As per his version occurrence took place outside the shop of one Haji Nawaz Baber where accused (appellant) met them as per chance. Admittedly both the witnesses were not residing near place of occurrence. They have also not given any cogent reason to be present at the place of occurrence. Medical evidence also negates ocular account furnished by the eye-witnesses. None of the injuries was found on back side of deceased as alleged in the FIR. According to PW-1 post-mortem examination of deceased was conducted within 24 hours as soon as he received police papers. If the time between death and post-mortem is taken into consideration it is found incompatible with the time of occurrence as given by the prosecution. So, this fact of the case further makes the ocular testimony doubtful.

The above discussion leads us to the conclusion that there are a number of circumstances that create doubt as to the veracity of testimony of prosecution witnesses whereas a single instance of this nature creating reasonable doubt is sufficient to record acquittal.

13. As regards recovery of crime empties from the spot and .30 bore Pistol (P-5) on the pointation of accused (appellant) it is worth noticing that crime empties were sent to FSL after arrest of the appellant, therefore, this piece of evidence in no way strengthens the prosecution case. Even otherwise when main stay of the prosecution (ocular account) is found untrust worthy and unreliable, evidence of recovery which is supporting in nature only would not advance the case of prosecution. On re-appraisal of evidence, we are of considered view that prosecution has failed to prove its case beyond reasonable doubt against the appellant. So, the impugned judgment passed by learned trial Court is not the outcome of proper appreciation of evidence brought on record.

14. Resultantly, we are unable to go along with the findings arrived at by learned trial Court because the evidence relied upon to



pass the impugned judgment is not only weak but suffers from a number of infirmities in as much as that evidence brought on record is neither convincing nor confidence inspiring. Recoveries effected are also not believable. So, we find that conviction recorded by learned trial Court is not sustainable. Consequently, this criminal appeal is allowed. The conviction and sentence of appellant *vide* impugned judgment dated 30.4.2011 passed by learned Additional Sessions Judge, Sahiwal is set aside. He shall be released from jail forthwith, if not required in any other case.

15. As a corollary to the above, Murder Reference No. 93 of 2011 is answered in Negative.

(R.A.) Appeal allowed

**PLJ 2016 Cr.C. (Lahore) 716 (DB)**

**[Multan Bench Multan]**

**Present: QAZI MUHAMMAD AMIN AHMED AND CH. MUSHTAQ  
AHMAD, JJ.**

**MUHAMMAD AKRAM--Appellant**

**versus**

**STATE & another--Respondents**

Crl. Appeal No. 986 of 2010 and M.R. No. 189 of 2010,  
heard on 9.5.2016.

**Pakistan Penal Code, 1860 (XLV of 1860)--**

---Ss. 302, 109 & 34--*Qatl-e-amd*--Sentence--Nominated with specific role of making fire shot--Interested witnesses--*Lalkara*--Benefit of doubt--Quantum of sentence--Ocular account--Validity--Ocular account was also corroborated by medical evidence furnished by PW who conducted autopsy on dead body of deceased and noted lacerated wound with inverted margins on right side of chest--Doctor had also recovered metallic bullet from back left side of abdomen of deceased which was handed over to PW--On re-appraisal of evidence prosecution had successfully proved charge against appellant beyond reasonable doubt--Extreme penalty of death was not warranted in instant case and alternate sentence of imprisonment for life was sufficient to meet ends of justice. [Pp. 719 & 720] A, B & C

*Prince Rehan Iftikhar Sheikh*, Advocate for Appellant.

*Mr. Muhammad Sarwar Awan*, Advocate for Complainant.

*Ch. Muhammad Kabeer*, D.P.G. for State.

Date of hearing: 9.5.2016.

## **JUDGMENT**

**Ch. Mushtaq Ahmed, J.**--Appellant Muhammad Akram has challenged his conviction and sentence through the above cited criminal appeal. He was tried alongwith two others by learned Additional Sessions Judge. Sahiwal in case FIR No. 410 dated 3.10.2009 registered under Sections 302, 109, 34, PPC at Police Station Dera Rahim, District Sahiwal. State has sought confirmation

of death sentence awarded to Muhammad Akram, appellant through Murder Reference No. 189 of 2010. We propose to dispose of both these matters through this single judgment.

2. Learned Additional Sessions Judge, Sahiwal *vide* his judgment dated 28.9.2010 convicted the appellant under Section 302(b), PPC to Death. He was also held liable to pay Rs 50,000/- as compensation to the legal heirs of deceased in terms of Section 544-A, Cr.P.C. and in case of default to further undergo simple imprisonment for six months. His co-accused, namely, Allah Wadhaya and *Mst.*Sardaran Bibi have been acquitted.

3. Brief facts as disclosed in complaint (Exh.PA) are that on 3.10.2009 at 6.30 p.m. he along with Zahoor Ahmed and Muhammad Ameen, his brother was going towards Chak No. 112/9-L Budhg Dhakku on Motorcycle Bearing Registration No. 3659-SLO whereas Muhammad Aslam and Muhammad Sharif were coming behind them on foot; when they reached near land of Malik Muhammad Asghar Dhakku in the area of Chak No. 112/9-L accused Muhammad Akram armed with .30 bore pistol, Muhammad Abbas (P.O.) armed with .30 bore Pistol, Allah Wadhaya empty handed being boarded in Tractor-Trolley came there in front of them; Allah Wadhaya raised *lalkara* to Muhammad Akram and Abbas to fire at Muhammad Ameen; in response to that Muhammad Akram (present appellant) made fire shot with his .30 bore pistol which hit on chest of Muhammad Ameen who after receiving fire shot fell on the ground; on hearing firing Muhammad Aslam and Zahoor Ahmad reached at the spot; they tried to catch hold accused persons but they ran away on tractor-trolley after making ariel firing; complainant attended his injured brother Muhammad Ameen and shifted him to hospital where he succumbed to the injuries.

Motive behind the occurrence was that father of complainant, namely, Allah Wadhaya divorced mother of complainant and wanted to transfer his land in the name of his nephew Muhammad Akram, accused; complainant party forbade Allah Wadhaya from transferring his landed property in the name of Muhammad Akram who took it ill and in order to take revenge upon abetment and instigation

of *Mst.Sardaran Bibi* (since acquitted) committed murder of *Muhammad Ameen*, deceased.

4. On the above information, I.O. investigated the case and submitted report under Section 173, Cr.P.C. Prosecution in order to prove charge produced as many as eleven witnesses. Out of them, PW-1 *Muhammad Yasin*, complainant and PW-3 *Zahoor Ahmed* furnished the ocular account. PW-11 *Fayyaz Hussain*, Inspector conducted the investigation. PW-9 *Dr. Hafeez-ur-Rehman* provided medical evidence. PW-10 *Muhammad Saeed Akhtar*, Draftsman prepared the scaled site-plan. The remaining witnesses are more or less of formal nature need not be mentioned.

5. After giving up *Allah Ditta*, *Muhammad Aslam* and *Mumtaz Ahmed*, Constable being unnecessary and tendering in evidence reports of Serologist (Exh.PS), F.S.L (Exh.PT) and Chemical Examiner (Exh.PU) besides certified copy of bail applications as Exh.PV and Exh.PV/1 closed the prosecution evidence on 14.9.2010. Thereafter statement of appellant under Section 342, Cr.P.C. was recorded in which he denied the charge and professed his innocence.

6. Learned trial Court after hearing arguments, recorded conviction and awarded sentence to the appellant as mentioned in the opening paragraph of this judgment.

7. Learned counsel for the appellant argued that the prosecution has failed to prove the charge beyond reasonable doubt; that complainant cannot take advantage of version of accused recorded under Section 342, Cr.P.C. which is never treated to be a substantial piece of evidence; that allegedly complainant party was on motorcycle at the time of occurrence but said motorcycle was never taken into possession by the I.O.; that the statements of eye-witnesses are full of contradictions, they could not establish their presence at the spot; that PW-3 *Zahoor Ahmed* was resident of far away place from the place of occurrence, hence, at the relevant time his presence is not established on record; that PW-2 was inimical towards the accused as

during cross-examination he admitted that before this occurrence accused Allah Wadhaya and *Mst. Sardaran Bibi* had involved him in a theft case; that the prosecution could not prove motive part of the occurrence beyond reasonable doubt; that fake recovery of .30 bore pistol was planted upon the appellant and that the impugned judgment is liable to be set aside and the appellant entitled to acquittal.

8. Conversely, learned law officer assisted by learned counsel for the complainant submitted that appellant was nominated with specific role in a promptly lodged FIR; that ocular account was supported by medical evidence and motive; that learned trial Court correctly appreciated the evidence and rightly convicted the appellant; that finding recorded by trial Court was not open to any exception and that the eye-witnesses fully implicated the appellant who had no occasion to falsely implicate him.

9. Arguments heard. Record perused.

10. The incident took place at 6.30 p.m. on 3.10.2009 which was reported by Muhammad Yasin (PW-1), brother of the deceased Muhammad Ameen at 8.35 p.m. on the same day in which present appellant was nominated with specific role of making fire shot with his .30 bore pistol. At the time of occurrence deceased was in the company of Muhammad Yasin, his brother and PW-3 Zahoor Ahmed. The present appellant Muhammad Akram was in the company of Allah Wadhaya co-accused who is father of complainant Muhammad Yasin and deceased Muhammad Ameen. As per version of complainant their father Allah Wadhaya had divorced their mother and thereafter he intended to transfer his land to Muhammad Akram, appellant who is nephew to which deceased took exception which resulted into incident of his death at the hands of present appellant. Accused and the eye-witnesses are closely related inter se. Fatal fire-arm injury was attributed to the present appellant. Case was also got registered with promptitude excluding chance of deliberation and consultation. Both the eye-witnesses have explained their presence at the place of occurrence alongwith the deceased. Allah Wadhaya co-accused (since acquitted) was real maternal uncle of the present

appellant and father of deceased Muhammad Ameen and complainant Muhammad Yasin. Ocular account was also corroborated by medical evidence furnished by PW-9 Dr.Hafiz-ur-Rehman who conducted autopsy on dead body of Muhammad Ameen and noted lacerated wound with inverted margins on the right side of chest. The doctor had also recovered metallic bullet from back left side of abdomen of deceased which was handed over to PW-7 Muhammad Afzal, C-526. He deposited it in the office of FSL, Lahore on 16.11.2009. A .30 bore pistol got recovered by the present appellant was also deposited by PW-7 on 14.12.2009 in the office of FSL, Lahore which was found wedded with bullet recovered from dead body at the time of post-mortem examination through report of FSL (Exh.PT). Thus prosecution successfully proved charge against the present appellant.

11. PW-3 Zahoor Ahmed though is husband of *Mst. Parveen Bibi* sister of the deceased. He denied suggestion that he is permanent resident of Chak No. 48-D, Tehsil Depalpur, District Okara as suggested by the defence. Learned trial Court acquitted Allah Wadhaya and *Mst. Sardaran Bibi* as only *Lalkara* was attributed to Allah Wadhaya whereas *Mst.Sardaran Bibi* was charged for the offence of abetment. They were extended benefit of doubt keeping in view the principle of safe administration of justice. On re-appraisal of evidence we are convinced that prosecution in this case had successfully proved charge against present appellant beyond reasonable doubt.

12. However his quantum of sentence awarded to the appellant needs reconsideration. Admittedly there was a dispute between the parties as mother of the deceased was divorced by his father Allah Wadhaya who was residing with present appellant at the relevant time and intended to transfer his land in his favour to which deceased had raised objection. In this backdrop both the parties confronted with each other and during incident a single fire shot was made by the appellant which hit the deceased. On prosecutions own showing only one fire shot was made by the appellant which hit the deceased. Keeping in view peculiar facts and circumstances of the case and evidence in totality we are of the view that extreme penalty

of death was not warranted in this case and alternate sentence of imprisonment for life was sufficient to meet the ends of justice.

13. While maintaining conviction of the appellant u/S. 302(b), PPC death penalty is converted into imprisonment for life as Tazir with benefit of Section 382-B, Cr.P.C. However, the amount of compensation shall remain intact. With this modification instant appeal is dismissed.

14. As a sequel to the above Murder Reference No. 189 of 2010 is answered in Negative. Death sentence of Muhammad Akram, appellant is not confirmed.

(R.A.) Appeal dismissed

**PLJ 2016 Cr.C. (Lahore) 732 (DB)**  
**Present: QAZI MUHAMMAD AMIN AHMED AND**  
**CH. MUSHTAQ AHMAD, JJ.**  
**AHMED ALI--Appellant**  
**versus**  
**STATE--Respondents**

CrI. A. No. 296 of 2011 and M.R. No. 194 of 2010, heard on 9.5.2016.

**Pakistan Penal Code, 1860 (XLV of 1860)--**

---S. 302 & 34--Criminal Procedure Code, (V of 1898), S. 342--*Qatl-i-amd*--Sentence--Motive--Substitution is rare phenomena--Appreciation of evidence--No animosity or ill will--Sufficient to cause death of deceased--Quantum of sentence--Modification--Medical evidence fully corroborates ocular account--Validity--In his statement recorded under Section 342, Cr.P.C., appellant confessed his guilt--Moreover, it was deceased's own conduct which prompted appellant to attack him as he contracted run away marriage with appellant's daughter--Death penalty was not warranted and alternate sentence imprisonment for life was sufficient to meet ends of justice--Death sentence of appellant was converted into imprisonment for life with benefit of Section 382-B, Cr.P.C. [P. 736] A

*Kh. Qaiser Butt*, Advocate for Appellant.

*Mr. Arif Naveed Hashmi*, Advocate for Complainant.

*Ch. Muhammad Kabeer*, D.P.G. for State.

Date of hearing: 9.5.2016.

**JUDGMENT**

**Ch. Mushtaq Ahmed, J.--**Appellant Ahmed Ali has challenged his conviction and sentence through the above cited criminal appeal. He was tried by learned Additional Sessions Judge, Sahiwal in case FIR No. 91 dated 6.4.2009 registered under Sections 302, 34, PPC at PS Fateh Sher, District Sahiwal. State has



sought confirmation of death sentence awarded to Ahmed Ali, appellant through Murder Reference No. 194 of 2010. We propose to dispose of both these matters through this single judgment.

2. Learned Additional Sessions Judge, Sahiwal *vide* his judgment dated 30.9.2010 convicted the appellant under Section 302(b), PPC to Death. He was also held liable to pay Rs. 1,00,000/- on as compensation to the legal heirs of deceased Shahid Ali in terms of Section 544-A, Cr.P.C. and in case of default to further undergo simple imprisonment for six months.

3. Brief facts as disclosed in complaint (Exh.PE) are that on 6.9.2010 he alongwith his son Shahid Ali, daughter Afshina Bibi and son in law Ghulam Farid was present in his house when at about 10.30 a.m. Ahmad Ali (present appellant) armed with .30 bore Pistol and his son Sikandar Ali armed with pistol came there on Honda Motorcycle No. SL-6890; they stopped the motorcycle in front of the house of complainant and raised *lalkara* that Shahid be taught a lesson for contracting marriage with Safina Bibi *alias* Fauzia D/o Ahmad Ali accused; complainant and other inmates of the house came at the door when Ahmed Ali, present appellant within the sight of complainant as well as other PWs started firing on Shahid Ali; one fire shot hit Shahid Ali on left side of his arm pit, second fire shot hit on his chest and third fire he received on right side of his hip (iliac crest) and he fell down; thereafter accused persons fled away from the spot; complainant alongwith PWs attended Shahid Ali but he succumbed to the injuries.

Motive behind the occurrence was that Shahid Ali, deceased contracted marriage with daughter of appellant Ahmed Ali and sister of Sikandar Ali accused about 3/4 months ago against their wishes and due to this grudge Ahmed Ali and his son Sikandar in furtherance of their common intention committed murder of the son of complainant.

4. On the above information, I.O. investigated the case and submitted under Section 173, Cr.P.C. Prosecution in order to prove charge produced as many as 10 witnesses. Out of them, PW-4 Ahmed Ali, complainant and PW-5 *Mst.* Afshina furnished the ocular account. PW-8 Allah Ditta, S.I. and PW-10 Zahoor Ahmed, S.I. are the Investigating Officers of this case. PW-1 Dr. Saeed Ahmed provided medical evidence. The remaining witnesses are official need not be mentioned.

5. After giving up Ghulam Farid being unnecessary and tendering in evidence reports of Serologist (Exh.PN), F.S.L (Exh.PO) and Chemical Examiner (Exh.PM) closed the prosecution evidence on 8.9.2010. Thereafter statement of appellant under Section 342, Cr.P.C. was recorded in which he denied the charge and professed his innocence.

6. Learned trial Court after hearing arguments, recorded conviction and awarded sentence to the appellant as mentioned in the opening paragraph of, this judgment.

7. Learned counsel for the appellant argued that the eye-witnesses are inter se related so their testimony is not truth worthy; that there is material contradictions between the statements of both eye-witnesses; that in the FIR three fire shots have been alleged against the appellant but according to MLR there were two fire-arm injuries on the person of deceased, this fact itself makes the prosecution highly doubtful; that the eye-witnesses could not establish their presence at the place of occurrence at the relevant time; that recovery of .30 bore pistol is planted upon the appellant and that it was a accidental death as one Ghulam Farid had pistol, he fired at Ahmed Ali accused which accidentally hit Shahid Ali, deceased.

8. Conversely, learned law officer assisted by learned counsel for the complainant submitted prosecution has proved its case by direct evidence furnished by PW-4 and PW-5 being inmates of the house; that it was promptly lodged FIR eliminating any chance of deliberation or consultation; that defence has failed to prove any

animosity or ill will against the appellant to false implicate him; that substitution is a rare phenomena as there was no reason for complainant to spare the real culprit and implicate appellant for the murder of his real son; that learned trial Judge after due appreciation of evidence convicted the appellant which finding is in line with medical; that ocular account was also supported by medical evidence.

9. Arguments heard. Record perused.

10. Admittedly it was a day light occurrence which took place on 6.4.2009 at 11.00 a.m. Distance of the place of occurrence from Police Station was just three furlongs. Crime was reported at 11.15 a.m. so it was a promptly lodged FIR within short span of time having complete detail *qua* names of accused with their specific role, viewing the occurrence by the witnesses as well as mode of occurrence. Ocular account. was furnished by PW-4 Ahmed Ali, (complainant) and his daughter PW-5 *Mst.*Afshina. Both the witnesses with one voice categorically and in a straight forward manner stated that on the day of occurrence Ahmed Ali, accused duly armed with .30 bore Pistol came to their house and fired at Shahid Ali, deceased within their sight due to which he died at the spot. Place of occurrence in this case was the main gate of house of complainant. So both the witnesses being inmates of the house were natural witnesses. Their testimony cannot be doubted on any stretch of imagination.

Defence put so many questions regarding receipt and locale of injuries by the deceased, mode of occurrence and their presence at the spot but both the witnesses remained firm on their stand. Medical evidence in this case was furnished by PW-1 Dr. Saeed Ahmed who conducted autopsy on dead body of Shahid Ali. He observed two entry wounds one at right side of chest and the other on right buttock of the deceased, which were sufficient to cause instantaneous death of the deceased. Same was the version of complainant in the First Information Report. Both these injuries were specifically attributed to

the appellant. So, medical evidence fully corroborates the ocular account.

11. Appellant Ahmed Ali admitted in his statement u/S. 342, Cr.P.C. that he went to the house of complainant to meet his daughter *Mst. Safina* who married with the deceased against his wishes. So motive for committing the occurrence is proved. The defence plea taken by the appellant in his statement u/S. 342, Cr.P.C. that it was accidental death is not established on record.

12. According to eye-witnesses appellant Ahmed Ali was armed with .30 bore pistol at the time of occurrence. During investigation he got recovered .30 bore Pistol (P1) which was sent to Forensic Science Laboratory on 4.5.2009 for comparison with two crime empties of .30 bore pistol collected from the place of occurrence by Investigating Officer at the time of his first visit to the place of occurrence. According to the report of FSL (Exh.PO) the crime empties were found wedded with said .30 bore pistol. So, the positive report of FSL further corroborates the ocular account. So, we are of the considered opinion that prosecution in this case has proved the charge of *Qatl-i-Amd* against Ahmed Ali, appellant.

13. As far as quantum of sentence is concerned, appellant is first offender as there is nothing on record to show his previous involvement in such like offences. In his statement recorded under Section 342, Cr.P.C., appellant confessed his guilt. Moreover, it was deceased's own conduct which prompted the appellant to attack him as he contracted run away marriage with appellant's daughter. In this backdrop, in our view, death penalty was not warranted and alternate sentence imprisonment for life was sufficient to meet the ends of justice.

Therefore, we convert death sentence of appellant Ahmad Ali into imprisonment for life with benefit of Section 382-B, Cr.P.C. However, the amount of compensation shall remain intact. With above modification, Criminal Appeal No. 296 of 2011 is dismissed.

14. As a sequel to the above, Murder Reference No. 194 of 2010 for confirmation of death sentence of Ahmed Ali, convict is answered in Negative. His death sentence is not confirmed.

(R.A.) Order accordingly

**2016 Y L R 321**  
**[Lahore]**  
**Before Ch. Mushtaq Ahmad, J**  
**Mst. YASMEEN RIAZ through Special Attorney ---Petitioner**  
**Versus**  
**RIAZ AHMAD and 7 others---Respondents**

Civil Revision No.897-D of 2014, decided on 25th November, 2014.

**Civil Procedure Code (V of 1908)---**

---O. XXIII, R. 3 & O. VII, R. 11---Specific Relief Act (I of 1877), S. 12---Suit for specific performance of agreement to sell---Compromise--- Scope--- Parties reached at compromise during pendency of suit---Plaint was rejected on the ground that plaintiff was not in possession of suit property and he had not prayed for recovery of possession as consequential relief; therefore, the suit was not maintainable--- Validity--- Parties had reached a compromise during pendency of suit---Defendants had conceded that compromise had been voluntarily made by the parties and they had no objection if suit was decreed in favour of plaintiff---Suit could be adjusted wholly or in part by any lawful agreement or compromise to the satisfaction of court---Where defendant had satisfied the plaintiff with regard to whole or any part of the subject matter of suit, court should order such agreement, compromise or satisfaction (to be recorded) and should pass decree in accordance therewith---Making a prayer for possession in a suit for specific performance was not necessary---Relief by way of delivery of possession in a suit for specific performance would spring out of contract for sale and would be incidental to main relief of specific performance granted in the suit---Both the courts below had committed illegality in exercise of jurisdiction and wrongly rejected the plaint---Impugned judgments and decrees passed by both the courts below were set aside and suit filed by the plaintiff was decreed in terms of compromise---Revision was accepted, in circumstances.

Rahim K. Sheikh v. United Bank Limited 1998 SCMR 1504;  
M/s Arokey Limited and others v. Munir Ahmed Mughal and 3 others

PLD 1982 SC 204 and Khadim Hussain and 2 others v. Waris Ali and another 2005 CLC 1144 rel.

Sheikh Iftikhar Ahmed for Petitioner.

Khurram Masood Kayani for Respondents.

## **ORDER**

**CH. MUSHTAQ AHMAD, J.**---Briefly facts of the case are that a suit for specific performance of an agreement was filed by the petitioner against Riaz Ahmed/ respondent No.1 and Muhammad Asghar, predecessor of respondents Nos.2 to 7 pleading that parties have entered into an agreement to sell for a consideration of Rs.10,00,000/- (One Million) regarding a piece of land measuring 8 Kanalas bearing Khasra Nos.197 and 198 in Mauza Dehati, District Rawalpindi on 31.1.2004; an amount of Rs.8,00,000/- was paid at the time of execution of the agreement whereas remaining was to be paid on or before 7.2.2004; that the remaining amount was also paid to respondent No.1 in the presence of witnesses; that respondent No.2/Muhammad Asghar died on 30.6.2004 and on his death mutation of inheritance was sanctioned in favour of his legal heirs (respondents Nos.2 to 7) including Khasra Nos.197 and 198. A written statement was filed in the suit and issues were also framed by the trial court in the light of pleadings of the parties. However, during pendency of the suit parties reached at a compromise which was submitted before the court as 'Mark-C'. Respondents Nos.2 to 7 conceded the claim of the petitioner and stated that the suit may be decreed as prayed for. The learned trial court while deciding the case observed that suit property was not in possession of the petitioner and he has not prayed for recovery of possession as consequential relief due to which the suit was not maintainable. Consequently plaint was rejected under Order VII Rule 11, C.P.C. vide judgment and decree dated 30.6.2012. Feeling aggrieved the petitioner filed appeal which was also dismissed by the learned Additional District Judge vide judgment and decree dated 16.5.2014. Being dis-satisfied the petitioner has approached this Court through the civil revision in hand.

2. Contention of learned counsel for the petitioner is that whole consideration amount was paid by the petitioner to respondents Nos.1 to 7 and statement of the parties were duly recorded whereby compromise deed (Mark-C) was placed on record hence, the trial court could not reject the plaint rather the suit should have been decreed according to the terms and conditions of the compromise Mark-C. He further contends that appellate court has also not considered this aspect of the case and wrongly dismissed the appeal holding that possession of the suit land was admittedly with Pak Army and that the plaint was rightly rejected by the trial court.

3. On the other hand, learned counsel representing respondents Nos.1 to 7 has submitted that the compromise Mark-C had been voluntarily made by the parties and that still respondents have no objection if the suit is decreed in favour of the petitioner.

4. Arguments heard. Record perused.

5. It is admitted between the parties in this case that during pendency of the suit parties have reached a compromise which was placed on record as Mark-C. This fact was noted by both the courts below in their judgments. Even before this Court learned counsel representing the respondents has conceded that the compromise Mark-C had been voluntarily made by the parties and that respondents have no objection if the suit is decreed in favour of the petitioner/plaintiff. Relevant provisions of law found in Order XXIII Rule 3, C.P.C. which deals with compromise of a suit. It is provided that where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the suit.

6. The above provision of law clearly shows that when the parties reached a compromise regarding the subject matter of the suit



the court shall order such compromise or satisfaction to be recorded and shall pass a decree in accordance therewith. Reference may also be made to Rahim K. Sheikh v. United Bank Limited (1998 SCMR 1504), M/s Arokey Limited and others v. Munir Ahmed Mughal and 3 others (PLD 1982 SC 204).

7. In a suit for specific performance it was not at all necessary to make a prayer for possession. It is well settled law that relief by way of delivery of possession in a suit for specific performance would spring out of contract for sale and would be incidental to main relief of specific performance granted in the suit. Reference can be made to the case titled Khadim Hussain and 2 others v. Waris Ali and another (2005 CLC 1144).

8. In the light of facts and law discussed on the subject I am of the view that both the courts below have committed illegality in exercise of jurisdiction and wrongly rejected plaint under Order VII, Rule 11, C.P.C. Consequently, the impugned judgments and decrees passed by both the courts below are set aside and the suit filed by the petitioner-plaintiff for specific performance of agreement to sell is decreed in terms of compromise deed 'Mark-C' as prayed for. Parties are left to bear their own costs.

ZC/Y-6/L

Revision allowed.

**2016 Y L R 769**  
**[Lahore]**  
**Before Ch. Mushtaq Ahmad, J**  
**MUHAMMAD SHAFI---Appellant**  
**Versus**  
**The STATE---Respondent**

Criminal Appeal No.539 and Criminal Revision No.348 of 2003,  
heard on 27th April, 2015.

**(a) Penal Code (XLV of 1860)---**

---Ss. 302(b) & 100---Qatl-i-amd---Appreciation of evidence---  
Accused had also sustained injuries during the same occurrence---  
Time and place of occurrence, was admitted by the parties---Only the  
manner in which occurrence had taken place was narrated in different  
ways by the prosecution and the defence---Trial Court, having  
concluded that the prosecution had failed to prove its case beyond  
reasonable doubt against accused, the only option remained with the  
court was that the defence version be accepted as true---Accused,  
claimed that he caused injuries to the deceased in exercise of his right  
of private defence but accused had exceeded right of private defence,  
of his person and property---Accused, who was under attack by the  
deceased, and had received five injuries at his person, his case fell  
within the four corners of general exception as enumerated in S.100,  
P.P.C.---Trial Court disbelieved prosecution version, acquitted co-  
accused persons but convicted accused under S.302(b), P.P.C., and  
sentenced for life as 'Tazir'---If prosecution evidence was disbelieved  
by the Trial Court, then the statement of accused, was to be accepted  
or rejected as a whole---Legally, it was not possible to accept the  
inculpatory part of the statement of accused, and to reject the  
exculpatory part of the same statement---Conviction and sentence  
recorded by the Trial Court against accused through impugned  
judgment, were set aside---Accused was acquitted of the charge, and  
his surety stood discharged of the liability of bail bonds.

Muhammad Asghar v. The State PLD 2008 SC 513 ref.

**(b) Penal Code (XLV of 1860)---**

----Ss. 99 & 100---Private defence, right of---Restrictions on exercise of such right---Scope---If assault, would reasonably cause the apprehension that death would, otherwise be the consequence of such assault, right of private defence of the body would extend, under the restrictions mentioned in S.99, P.P.C., to the voluntary causing of death or of any other harm to the assailant.

Abdul Razzaq for Appellant.

Hassan Mahmood Khan Tareen, Deputy Prosecutor General for the State.

Date of hearing: 27th April, 2015.

**JUDGMENT**

**CH. MUSHTAQ AHMAD, J.**---Appellant Muhammad Shafi has challenged his conviction and sentence through Criminal Appeal No.539 of 2003. He was tried by learned Additional Sessions Judge, Mian Channu along with co-accused Tahir Yousaf, Muhammad Zarif, Muhammad Irfan and Manzoor Ahmad in case FIR No.159 dated 28.05.2000 registered under sections 302, 34, P.P.C. at Police Station Sadar Mian Channu. Complainant Muhammad Aslam has filed Criminal Revision No.348 of 2003 seeking enhancement of sentence. I propose to decide both these matters through this consolidated judgment.

2. On conclusion of trial, learned Additional Sessions Judge, Mian Channu vide his judgment dated 30.06.2003 found the appellant guilty of offence. Accordingly, he was convicted and sentenced as under:--

Convicted under section 302(b), P.P.C. and sentenced to undergo Imprisonment for life. He was also held liable to pay Rs.1,00,000/- as compensation to the legal heirs of deceased Muhammad Asghar. In default thereof, to further undergo imprisonment for six months.

3. FIR was registered on the complaint made by Muhammad Aslam son of Jamal Din. Prosecution story according to FIR is that on 27.05.2000 at 11:24 P.M, complainant along with his brothers Muhammad Arshad and Muhammad Asghar went to irrigate their land. Complainant along with Muhammad Arshad went towards nearby land whereas Muhammad Asghar went to "Square (Killa) No.2" for redirecting water. Prior to that, water was irrigating land of Muhammad Arif, whom Muhammad Asghar told that he was going to divert water to his land. Muhammad Arif told him to do so and that he was also coming. In the meanwhile, Muhammad Asghar, brother of the complainant, started raising noise, on which complainant along with Muhammad Arshad attracted there and they saw in torch light that Muhammad Shafi (appellant) armed with sota, Irfan, Zarif armed with daggers, Manzoor armed with .222 bore rifle had encircled Muhammad Asghar while raising lalkara to teach him lesson. Zarif gave a blow with dagger at head of Muhammad Asghar. Irfan also gave a blow with dagger at backside of head of Muhammad Asghar, who fell down. Then Muhammad Shafi (appellant) gave sota blows at different parts of body of Muhammad Asghar. Irfan and Zarif also gave dagger blows to Muhammad Asghar. Complainant along with Muhammad Arshad tried to intervene, whom Manzoor restrained by threatening to kill. Then accused persons fled away. Muhammad Asghar succumbed to the injuries on the way to hospital.

4. Investigation was conducted by PW-8 Mamoor Ali SI. After completion of investigation, report under section 173 Cr.P.C. was submitted before trial court. Charge against the appellant along with co-accused was framed on 25.06.2002, to which they pleaded not guilty and claimed trial. Prosecution in order to prove its case, produced as many as eight witnesses, whereas statement of Dr. Irshad Hussain was recorded as CW-1.

5. Appellant in his statement recorded under section 342, Cr.P.C. again professed innocence. He took the plea that in fact deceased attacked on him and caused injuries with sota and that he in exercise of right of self defence, caused blows with sota to the deceased. It was also version of the appellant that he went to police station for lodging

FIR and was also medically examined by police, but local police in connivance with the complainant party registered this case against him and his family members.

6. After conclusion of trial, appellant was convicted and sentenced as mentioned above, whereas all the co-accused were acquitted of the charge, hence, this appeal as well as revision.

7. Contention of learned counsel for appellant is that Muhammad Shafi appellant was attacked by the deceased who also caused serious sota blows to the appellant and in exercise of right of self defence, appellant also caused injuries which resulted in death of Muhammad Asghar, as such learned trial court was not justified to hold that present appellant had exceeded right of self defence.

8. Conversely, learned Deputy Prosecutor General contended that appellant had inflicted sota blows with intention to kill Muhammad Asghar deceased and was rightly convicted by learned trial court and that the sentence awarded by the trial court should be enhanced keeping in view the facts and circumstances of the case.

9. Arguments heard and record perused.

10. Ocular account in this case was furnished by PW-5 Muhammad Aslam, who is brother of Muhammad Asghar deceased and PW-6 Muhammad Arif. Both the said PWs stated that occurrence took place at night on 27.05.2000 when they were present in the fields in order to irrigate the same. Accused namely Shafi armed with Sota along with Irfan and Zarif armed with daggers and Manzoor armed with rifle .222 bore encircled Muhammad Asghar. Zarif gave dagger blow on the head of Muhammad Asghar. Irfan also gave a blow with handle of the dagger at left side of head of Muhammad Asghar, who fell down. Accused Shafi (appellant) then gave sota blows at the backside of right hand of Muhammad Asghar. Second blow was given by Muhammad Shafi at right forearm of Muhammad Asghar and then on left elbow. After the occurrence, accused escaped.

11. Dr. Shahbaz Khan, who conducted post mortem examination on the dead body of Muhammad Asghar, appeared as PW-3. He noted seven injuries on the dead body. According to PW-3, all the injuries collectively were sufficient to cause death. Injuries were inflicted by blunt weapon except injury No.1 which was caused by some sharp edged weapon. Dr. Irshad Hussain, who had medically examined Muhammad Shafi appellant, appeared as CW-1. Five injuries were noted on the person of Muhammad Shafi appellant. In cross-examination CW-1 explained that it was not possible that the injuries would have been received by falling on the ground. According to him the injuries were result of violence and there was fracture of left radius displaced bone which was injury No.1. All the injuries were caused by blunt weapon within duration of three/four days.

12. It is pertinent to mention that appellant Muhammad Shafi was brought for medical examination by Muhammad Aashiq 787/C vide application Ex.D-E. From the statements of PW-3 and DW-1 it is evident that appellant had also sustained injuries during the same occurrence, time and place of which was admitted by the parties. Only the manner in which occurrence had taken place was narrated in different ways by the prosecution and the defence. The complainant in his statement before police had not disclosed the injuries sustained by appellant during occurrence, rather the same were concealed. Learned trial court after appreciating the evidence produced during trial concluded that the prosecution had failed to prove its case beyond reasonable doubt against the accused and the only option remains that the defence version be accepted as true. It was further noted that according to Muhammad Shafi accused (appellant) he caused injuries to Muhammad Asghar deceased in exercise of his right of private defence but it is also a fact that the deceased interfered in irrigation and the accused could approach the courts/authorities for redressal of his grievance regarding which his civil suit was pending before a court of competent jurisdiction, as such he exceeded right of private defence of his person and property.

13. As the prosecution version was disbelieved, co-accused namely Tahir Yousaf, Muhammad Zarif, Muhammad Irfan and

Manzoor Ahmad were acquitted of the charge. Appellant Muhammad Shafi was convicted under section 302(b), P.P.C. and sentenced to imprisonment for life as Tazir. It was version of appellant that at the relevant time he was irrigating his land. He noticed that flow of water in "Khaal" was somewhat low and then he proceeded towards "Nakka" between square No.51/2 and 35/22 to see any breach in the "Khaal" and when he reached at the "Nakka", he saw that the deceased was standing there having a sota in his hand and a "kassi" lying nearby and the flow of water was blocked by putting mud in front of "Nakka" and the water was over-flowing in the nearby field. When he (appellant) started removing mud with "Kassi" from the "Nakka", deceased attacked him with sota and inflicted injuries which landed at different parts of his body. Then he came out of the "Khaal" and picked up sota and caused blows with it to the deceased.

14. Law is well settled that if the prosecution evidence is disbelieved by the court, then the statement of accused is to be accepted or rejected as a whole. It is legally not possible to accept the inculpatory part of the statement of accused and to reject the exculpatory part of the same statement. Reference may be made to case titled "Muhammad Asghar v. The State" reported in PLD 2008 SC 513. Learned trial court after disbelieving the prosecution version could believe or reject version of the accused as a whole.

15. Law on the subject of right of private defence is found in section 100, P.P.C., which provides as under:--

**"100. When the right of private defence of the body extends to causing death.** The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:

First. Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Secondly. Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Thirdly. An assault with the intention of committing rape;

Fourthly. An assault with the intention of gratifying unnatural lust,.

Fifthly. An assault with the intention of kidnapping or abducting;

Sixthly. An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he be unable to have recourse to the public authorities for his release".

16. Provisions of section 100 read with section 99, P.P.C. reveal that in case of such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault, right of private defence of the body extends, under the restrictions mentioned in section 99, P.P.C. to the voluntary causing of death or of any other harm to the assailant. In the case in hand, appellant as per his version, was under attack by the deceased and as a result thereof, he received five injuries at his person, which fact is evident from statement of CW-1. In this state of affairs, case of the appellant fell within the four corners of general exception as enumerated in section 100, P.P.C.

17. In view of above discussion, this criminal appeal is allowed and conviction and sentence recorded by the learned trial court against the appellant through impugned judgment is set aside.



Resultantly, appellant Muhammad Shafi is acquitted of the charge. His surety stands discharged of the liability of bail bonds.

18. For the above reasons, Criminal Revision No.348 of 2003, for enhancement of sentence filed by complainant is dismissed.

HBT/M-137/L

Appeal allowed.

**2016 Y L R 1329**  
**[Lahore]**  
**Before Ch. Mushtaq Ahmad, J**  
**MEHDI HASSAN and another---Appellants**  
**Versus**  
**The STATE---Respondent**

Criminal Appeal No.297 and Criminal Revision No.231 of 2007,  
heard on 2nd July, 2015.

**(a) Penal Code (XLV of 1860)---**

---Ss. 302(b), 324 & 34---Qatl-i-amd, attempt to commit qatl-i-amd and common intention---Appreciation of evidence---Benefit of doubt--Complainant and prosecution witnesses stated that they had witnessed the incident under a light of bulb and that the accused and co-accused opened fire at the deceased while one of the co-accused gave butt blows on the forehead and nose of the deceased---No description of weapon were mentioned by complainant or any of the prosecution witnesses; accused remained on judicial remand but nothing was recovered from him---Electric bulb was not taken into possession---Accused persons were found innocent in the investigation---Prosecution was bound to prove its case beyond reasonable doubt and benefit of doubt was to be given to the accused as a matter of right but not as a grace, accused was acquitted, and appeal was allowed accordingly.

**(b) Qanun-e-Shahadat (10 of 1984)---**

---Art. 46---Dying declaration---Scope---Statement of deceased (then injured) in the form of dying declaration---No certificate from the doctor regarding fitness of deceased having been obtained prior to recording his statement, statement of injured was not reliable.

Mudassar Altaf Qureshi for Appellant.

Hassan Mahmood Khan Tareen, Deputy Prosecutor General for the State.

Mian Qamar-ud-Din for the Complainant.

Date of hearing: 2nd July, 2015.

## **JUDGMENT**

**CH. MUSHTAQ AHMAD, J.**---Appellant Nazir Hassan has challenged his conviction and sentence through Criminal Appeal No.297 of 2007. He was tried by learned Additional Sessions Judge, Mailsi District Vehari in a private complaint titled "Umar Hassan v. Mehdi Hassan and 3 others" for the offences under sections 302, 324, 34, P.P.C. along with co-accused Mehdi Hassan and Shamsher Shah. Complainant Umar Hassan has filed Criminal Revision No.231 of 2007 seeking enhancement of sentence of the appellant. I propose to decide both these matters through this consolidated judgment.

2. On conclusion of trial, learned trial court vide its judgment dated 25.06.2007 convicted and sentenced the appellant as under:--

Convicted under section 302(b) read with section 34, P.P.C. and sentenced to undergo Imprison-ment for life. He was also held liable to pay Rs.50,000/- as compensation under section 544-A, Cr.P.C. to the legal heirs of deceased Faiz-ul-Hassan. In default thereof, to further undergo imprisonment for six months.

Benefit under section 382-B, Cr.P.C. was also given to the appellant. Co-accused Mehdi Hassan was also convicted vide impugned judgment and he was awarded same sentence. This appeal was initially preferred by present appellant along with said Mehdi Hassan. However, during pendency of appeal Mehdi Hassan died and to his extent appeal was abated. Co-accused Shamsher Shah was acquitted of the charge vide impugned judgment.

3. Occurrence was reported to police by Umar Hassan son of Zahoor Hassan and consequently FIR No.332/2005 dated 28.11.2005 was registered under sections 324, 34, P.P.C. with Police Station City Mailsi, District Vehari. Being dissatisfied by investigation, complainant lodged private complaint above mentioned.

4. Facts of the case according to private complaint are that complainant's residence is in his land situated in square No.30 of Mauza Dhumakki. Adjacent to the house of complainant is residence of his step brother Faiz-ul-Hassan Shah. On 28.11.2005 at about 08:00 p.m., complainant was present in the house of his brother when outer door of house was knocked. Complainant told his brother Faiz-ul-Hassan not to open the door without identification, but in the meanwhile Faiz-ul-Hassan had opened the door. On outer door of house, a bulb was on. Mehdi Hassan (since dead), Nazir Hassan (appellant) and Shamsheer Shah (since acquitted) were present in front of the door while armed with firearms along with an unknown person. Two motorcycles were also parked near them. As Faiz-ul-Hassan opened the door, Mehdi Hassan made fire shot which hit Faiz-ul-Hassan at abdomen at left side. Nazir Hassan then made fire which shot hit at right side of chest of Faiz-ul-Hassan. Shamsheer Ali gave blows with butt of his firearm weapon at nose and forehead of Faiz-ul-Hassan. Complainant raised alarm, on which Shahid Hassan, nephew of complainant also attracted and witnessed the occurrence. Accused persons then fled away.

5. Motive behind the occurrence is dispute between the parties over a passage. Faiz-ul-Hassan was shifted to hospital, who succumbed to the injuries on 02.12.2005 in hospital.

6. Appellant along with co-accused were charge sheeted by learned trial court. They pleaded not guilty and claimed trial. Prosecution in order to prove its case examined eight witnesses. Statements of six witnesses were recorded as CW-1 to CW-6. Thereafter, statements of appellant and co-accused were recorded under section 342, Cr.P.C. On conclusion of trial, appellant and co-accused Mehdi Hassan were convicted and sentenced, hence this criminal appeal as well as criminal revision. Mehdi Hassan convicted died during pendency of this appeal. To his extent appeal was abated.

7. Learned counsel for appellant argued that Faiz-ul-Hassan (deceased) was murdered by some other persons on abetment of complainant, which fact was also proved during investigation, but

complainant implicated appellant and co-accused falsely; that widow of Faiz-ul-Hassan deceased lodged a private complaint regarding the same occurrence in which allegation of murder of her husband was leveled against complainant of instant case and others; that appellant along with co-accused have been shown to be armed with firearms but no description of weapons has been given; that it was a dark night occurrence and there was no source of light available at the place of occurrence; that nothing was recovered from appellant despite the fact he remained on judicial remand; that Faiz-ul-Hassan (deceased) after sustaining injuries was admitted in Nishtar Hospital Multan, where he made statement before I.O in which he nominated the appellant and co-accused as the persons who inflicted injuries to him, which statement amounts to his dying declaration; that evidence available on record was not trustworthy and confidence inspiring to record conviction, as such impugned conviction and sentence is not sustainable.

8. Conversely, learned Deputy Prosecutor General assisted by learned counsel for complainant argued that appellant along with co-accused were rightly identified by PWs in the light of bulb; that ocular account is fully corroborated by medical evidence; that there was no motive for complainant to falsely implicate the accused persons in this case. Further contended that prosecution has fully established its case against appellant beyond reasonable doubt, as such he was rightly convicted and sentenced by learned trial court.

9. I have heard arguments advanced by learned counsel for parties and gone through record with their able assistance.

10. Ocular account was furnished by PW-5 Umar Hassan (complainant) and PW-6 Shahid Hassan. They both reiterated the story as narrated in complaint. Occurrence took place at 08:00 P.M. at outer door of house of deceased. It has been alleged that appellant and co-accused were armed with firearms. However, description of weapons has not been given. According to PW-5, Shamsheer Shah (co-accused since acquitted) gave butt blows with his firearm at nose and forehead of deceased. Even then, it was not mentioned as to with

which type of firearm weapon i.e. rifle, pistol, etc, he gave butt blows. Appellant remained on judicial remand but nothing was recovered from his possession. During investigation appellant and his co-accused were found innocent. It was opined by investigating officer that Tariq Mahmood, Muhammad Saleem, Muhammad Siraj, Abdul Aziz, Muhammad Aslam and Khalid were the actual culprits. In the case in hand, prosecution case was that accused were identified in the light of a bulb which was on at relevant time at outer door of house. Electric bulb was not taken into possession by the I.O. during investigation to show that in fact there was source of light at the relevant time.

Law is well settled that prosecution is bound to prove its case beyond reasonable doubt. It is also an accepted principle of law that if in the given facts and circumstances any reasonable doubt arises in the prosecution case, benefit of the same has to be given to accused not as grace or concession but as a matter of right. Above principle is also accepted in Islamic Jurisprudence and is universally accepted principle which evolved into the theory of benefit of doubt. Prosecution version in the peculiar facts and circumstances is doubtful.

11. So far as dying declaration made by deceased before I.O. on 30.11.2005 is concerned, it is worth noticing that no certificate regarding fitness of mental condition of deceased was obtained prior to recording his statement. Explanation given by I.O. (PW-8) that fitness certificate was not obtained as no doctor was available at the time of recording said statement, is far from being satisfactory as doctors generally are available at Nishtar Hospital, Multan round the clock. Learned trial court has rightly discarded the statement of deceased from consideration.

12. On re-appraisal of evidence, I am of the considered opinion that prosecution in this case had failed to prove charge against appellant beyond reasonable doubt. Resultantly, this Criminal Appeal No.297 of 2007 is allowed and conviction and sentence recorded by the learned trial court against the appellant through impugned

judgment is set aside and appellant Nazir Hassan is acquitted of the charge. His surety stands discharged of the liability of bail bonds.

13. For the reasons recorded above, Criminal Revision No.231 of 2007 for enhancement of sentence of appellant is dismissed.

YN/M-218/L  
accepted.

Appeal

2016 Y L R 2106

[Lahore]

Before Ch. Mushtaq Ahmad, J

Mst. AYESHA MALIK---Petitioner

Versus

**S.H.O. POLICE STATION CITY JAMPUR DISTRICT**

**RAJANPUR and 4 others---Respondents**

W.P. 1144 of 2015, decided on 27th February, 2015.

**(a) Penal Code (XLV of 1860)---**

---S. 365-B---Criminal Procedure Code (V of 1898), S.561-A---Kidnapping, abducting or inducing woman to compel for marriage---Quashing of FIR---Petitioner/ alleged abductee, had sought quashing of FIR, on the ground that she being sui juris, had contracted marriage with respondent, with her free consent; and that no body had abducted her---Copy of Nikahnama, annexed with the petition, showed that Nikah was performed---Contents of petition, as well as other documents available on record, like Nikahnama and certified copy of the statement of the petitioner before the Illaqa Magistrate, showed factum of marriage between the petitioner and respondent---Petitioner, herself appeared before the court, and supported the contents of the petition; and affidavit submitted by her stating that she had contracted marriage with her free consent and without any pressure; and that she was not abducted by any body---After her admission of having contracted marriage with respondent, there remained no case, or charge to be tried---Case being fit for quashing of FIR, petition was allowed and impugned FIR, was ordered to be quashed, in circumstances.

Ghulam Muhammad v. Muzammal Khan PLD 1967 SC 317; Haq Nawaz v. Muhammad Afzal and others 1968 SCMR 1256; Malik Salman Khalid v. Shabbir Ahmad 1998 SCMR 873 and Miraj Khan v. Gull Ahmed and 3 others 2000 SCMR 122 ref.

**(b) Constitution of Pakistan---**

---Art. 199---Criminal Procedure Code (V of 1898), S.561-A---Inherent powers of High Court---Scope---High Court had inherent powers to pass such order as could be necessary to prevent abuse of process of court, or otherwise to secure the ends of justice---Phrase "ends of justice", though, had not been defined in the Cr.P.C., nor in



any other statute, but 'ends of justice' would necessarily mean the just, as administered by the courts; and not in its abstract sense---Where the continuation of process of the court would result in futile exercise and undue harassment; it would be in the fitness of things, and in the interest of justice to quash the proceedings---Abuse of process of court signified the perversion of very purpose of law and justice resulting in undue harassment---Impugned FIR was ordered to be quashed.

Ms. Farzana Kausar Rana for Petitioner.

Mian Abdul Qayyum APG with Habib Ullah, ASI.

Respondent No.2 in person.

### **ORDER**

**CH. MUSHTAQ AHMAD, J---** Through this petition, Mst. Ayesha Malik petitioner has approached this Court in constitutional jurisdiction read with provisions of Section 561-A, Cr.P.C. and has prayed as under:-

"Therefore, relying upon all above narrated submissions, it is most respectfully prayed that this writ petition may very kindly be accepted and the above mentioned FIR No.728/2014 dated 30.12.2014 Offence under section 365-B, P.P.C., Police Station City Jampur, District Rajanpur may very graciously be quashed."

The case was got registered by Muhammad Afzal respondent No.2, father of petitioner who reported that his daughter Mst. Ayesha Malik was student of Ist year. On 16.12.2014, she left for school but did not return. They started searching her. They contacted Pervez son of Sana Ullah caste Laghari and came to know that Ayesha (present petitioner) and Mst. Bushra Bibi, who were friends inter-se were missing since 16.12.2014. Above mentioned Pervez admitted that his sister-in-law Bushra Bibi brought Ayesha with her and Muhammad Sajid, his son had taken away Ayesha to Karachi and that his daughter has been enticed away by Mst. Bushra and Muhammad Sajid. On the above information case was registered and investigation conducted. The alleged abductee Mst. Ayesha, in the above background, has sought quashment of FIR on the ground that she, being sui-juris contracted marriage with her free consent and no body abducted her. It is her version that case was got registered by her father who wanted to give her hand to an old person whom she did not like nor she

wanted to get married with him according to the wishes of her father. With the petition, copy of Nikahnama (Annexure-B) is annexed showing that Nikah was performed between petitioner Mst. Ayesha and Muhammad Rahib. A certified copy of private complaint filed by her before Illaqa Magistrate Rajanpur and a certified copy of her statement dated 16.12.2014 recorded by the learned Magistrate Ist Class is also placed on the record with affidavit of petitioner affirming the contents of the petition as true and correct to the best of her knowledge and belief.

2. Respondent No.2 has appeared in person before the Court and states that the petitioner had not contracted marriage with his permission and she being under the influence of her husband, was not disclosing true facts. Hence, the present petition is liable to be rejected.

3. Heard. Perused.

4. After going through the contents of petition as well as other documents available on the record like Nikahnama and certified copy of the statement of the petitioner before the Illaqa Magistrate, it has been noticed that factum of marriage between the petitioner and Muhammad Rahib is an admitted fact in this case which even respondent No.2 is not in a position to rebut. The question arising out of the facts of this case is "whether this Court has authority under Article 199 of the Constitution read with section 561-A, Cr.P.C. to quash the FIR at this stage". It is clear from bare reading of section 561-A of Cr.P.C. that High Court has inherent powers to pass such order as may be necessary to prevent abuse of the process of any court or otherwise to secure the ends of justice. Though the phrase "ends of justice", has not been defined in the Code nor in any other statute but ends of justice would necessarily mean the justice as administered by the Courts and not in its abstract sense. Where the continuation of process of court would result in futile exercise and undue harassment, it would be in the fitness of things and in the interest of justice to quash the proceedings. Similarly, abuse of process of court signifies the perversion of very purpose of law and justice resulting in undue harassment.

5. The question of quashment of FIR came to be considered in a case titled "Ghulam Muhammad v. Muzammal Khan" (PLD 1967 SC

317) and then in another case titled "Haqnawaz v. Muhammad Afzal and others"(1968 SCMR 1256) wherein it was held that High Court was competent to quash proceedings if satisfied that false complaint has been lodged and process of court was being abused to subject accused persons to unnecessary harassment. This proposition again came for consideration before the apex Court in a case titled "Malik Salman Khalid v. Shabbir Ahmad" (1998 SCMR 873) wherein it was laid down that the inherent powers should be rarely and sparingly invoked only in the interest of justice so as to redress grievance for which considering the facts and circumstances of the case, no other procedure or remedy is available. It was further ruled that it is an extra ordinary jurisdiction which cannot over-ride provisions of the Code but cases may arise where administration of justice requires substantial justice. In such circumstances, the courts would be justified to exercise their jurisdiction to save a party from harassment and abuse of the process of the court. The above view was confirmed in a case titled "Miraj Khan v. Gull Ahmed and 3 others" (2000 SCMR 122) wherein it was held that High Court in exceptional cases can exercise jurisdiction under Section 561-A, Cr.P.C. without waiting for trial court to pass orders under Section 249-A Cr.P.C. or 265-K, Cr.P.C. if the facts of the case so warrant. By now it is well settled that main consideration to be kept in view is whether continuance of proceedings would be futile exercise, wastage of time and abuse of process of law. If on the basis of facts admitted and patent on record, no offence is made out, then it would amount to abuse of process of law to allow the prosecution to continue with the investigation or trial, as the case may be.

6. I have given thought to the facts of this case in the light of law on the subject. The petitioner herself appeared before this Court on 30.01.2015 and supported the contents of the petition and affidavit submitted by her stating that she had contracted marriage with her free consent and without any pressure and that she was not abducted by anybody. After her admission of having contracted marriage with Muhammad Rahib with free consent, there remains no case or charge to be tried, therefore, it is a fit case for quashment of FIR.

7. Consequently, this petition is allowed and impugned FIR is hereby ordered to be quashed.

HBT/A-39/L

Petition allowed.

**2016 C L C Note 26**  
**[Lahore (Rawalpindi Bench)]**  
**Before Ch. Mushtaq Ahmad, J**  
**Dr. AAQIB HABIB MALIK through Special Attorney----**  
**Petitioner**  
**Versus**  
**JUDGE FAMILY COURT and another----Respondents**

W.P.No.2694 of 2014, decided on 3rd December, 2014.

**(a) Family Courts Act (XXXV of 1964)---**

---S. 5, Sched---Constitution of Pakistan, Art. 199---  
Constitutional jurisdiction, exercise of---Scope---Suit for recovery  
of maintenance allowance, dower and dowry articles---Application  
for summoning of witnesses/scribe of receipts of dowry articles---  
Wife produced purchase receipts of dowry articles during her  
evidence---Husband/petitioner moved an application for  
summoning of witnesses/scribe of receipts produced in evidence---  
Family Court observed that objections, relevancy, admissibility  
and evidentiary value of the receipts of dowry articles would be  
decided at appropriate stage and defendant had not mentioned  
name, address and sufficient particulars of any witness to whom he  
wanted to summon through process of court; however, defendant-  
husband would be at liberty to produce any evidence/witness  
during his own evidence subject to all just and legal exceptions---  
Validity---Right of defendant-husband to produce evidence had not  
been closed by the Trial Court---Defendant-husband would be at  
liberty to produce any witness at his turn while recording  
evidence---Interim order passed by the Family Court should not be  
brought to superior courts to obtain fragmentary decisions which  
would harm the advancement of fair play and justice, curtailing  
remedies available under the law---Husband had not been  
prejudiced by the impugned order---Constitutional jurisdiction was  
not to be exercised in routine but only to foster the ends of justice-  
--Constitutional petition being not maintainable was dismissed in  
limine

Mohtarma Benazir Bhutto v. The State 1999 SCMR 1447 and  
Mushtaq Hussain Bukhari v. The State 1991 SCMR 2136 rel.

**(b) Constitution of Pakistan---**

---Art. 199--- Constitutional jurisdiction of High Court---Scope---  
Constitutional jurisdiction should not be exercised in routine but  
only to foster the ends of justice.

Mohtarma Benazir Bhutto v. The State 1999 SCMR 1447 and  
Mushtaq Hussain Bukhari v. The State 1991 SCMR 2136 rel.

Muhammad Khalid Zaman for Petitioner.

**ORDER**

**CH. MUSHTAQ AHMAD, J.**---The present petition has been filed against the impugned order dated 29.09.2014 passed by respondent No.1/Judge Family Court, Rawalpindi, whereby application of petitioner for summoning of witnesses was dismissed.

2. The facts briefly are that respondent No.2 filed a suit for recovery of dower, maintenance allowance and dowry articles against the petitioner which was pending before Judge Family Court. In evidence, on behalf of respondent No.2, purchase receipts of dowry articles were produced. The present petitioner moved application before the learned trial court for summoning of witnesses / scribe of the receipts produced in evidence.

3. Heard. Perused.

4. Record shows that the learned trial court after hearing the arguments passed impugned order dated 29.09.2014. In Para No.5, it was observed that the "objections are yet to be decided and the relevancy, admissibility and evidentiary value of the receipts of dowry articles shall be determined at appropriate stage. Moreover, the petitioner/defendant has not mentioned name, address and sufficient particulars of any witness to whom he wanted to summon through process of the court. However, the petitioner/defendant is at liberty to produce any evidence/witness during his own evidence subject to all just and legal exceptions".

5. Above observations of the learned trial court reveal that the right of petitioner to produce evidence has not been closed by the trial court. He will be at liberty to produce any witness at his turn while recording evidence. Only an interim order has been passed by the learned Judge Family Court. Law is well settled that orders passed at interlocutory stages should not be brought to superior courts to obtain fragmentary decisions as it tends to harm the advancement of fair play and justice, curtailing remedies available under the law. Reference may be made to the case "Mohtarma Benazir Bhutto v. The State" (1999 SCMR 1447) and "Mushtaq Hussain Bukhari v. The State" (1991 SCMR 2136) to fortify the above view. The case of petitioner has not been prejudiced by the impugned order. The constitutional jurisdiction is not to be exercised in routine, but only to foster the ends of justice.

6. The petition in hand is not maintainable and the same is dismissed in limine.

ZC/A-200/L Petition dismissed.

**KLR 2016 Criminal Cases 19**

**[Multan]**

*Present:* **QAZI MUHAMMAD AMIN AHMAD and CH.  
MUSHTAQ AHMED, JJ.**

**Muhammad Sardar**

*Versus*

**The State**

Criminal Appeal No. 1202 of 2010, decided on 17th September, 2015.

**NARCOTICS --- (Reduction of sentence)**

**Control of Narcotic Substances Act (XXV of 1997)---**

---Ss. 48, 9(c)---Recovery of 2500 grams charas---Charge---  
Impugned conviction/sentence of 10 years' R.I.---Reduction of  
sentence---Appellant-convict had already served half of sentence---  
Appellant was a previously non-convict---Impugned sentence was  
reduced from 10 years' R.I. to the period already undergone---  
Sentence reduced.

(Paras 5, 6)

اپیلانٹ سابقہ عدم سزا یافتہ تھا۔ نصف سزایابی بھگت چکا تھا۔ مقدمہ منشیات میں  
سزایابی میں تخفیف کر دی گئی۔

[Appellant was a previously non-convict. He had already served out  
half of impugned sentence. Sentence was reduced in narcotic case].

*For the Petitioner:* **Prince Rehan Iftikhar Sheikh, Advocate.**

*For the Respondent:* **Malik Riaz Ahmed Saghla, Deputy District  
Public Prosecutor.**

*Date of hearing:* **17th September, 2015.**

**JUDGMENT**

**CH. MUSHTAQ AHMAD, J. ---** Appellant Muhammad Sardar has challenged his conviction and sentence through the above-cited Criminal Appeal No. 1202 of 2010. He was tried by learned Additional Sessions Judge, Burewala, District Vehari in case F.I.R. No. 54, dated 9.2.2010 registered under Section 9(c) of the Control of Narcotic Substances Act, 1997 at Police Station Gaggo for the recovery of 2500 grams Charas from his possession.

2. After conclusion of the trial learned Additional Sessions Judge, Burewala *vide* his judgment dated 22.10.2010 convicted the appellant under Section 9(c) of the Control of Narcotic Substances Act, 1997, P.P.C. and sentenced to undergo 10 years' R.I. with fine of Rs. 20000/- and in case of default of payment thereof to

undergo further simple imprisonment for six months. Benefit of Section 382-B, Cr.P.C. was, however, extended to the appellant. Being aggrieved by that judgment appellant preferred this appeal.

3. Learned counsel for the appellant at the outset of hearing submitted that he would not press this appeal on merits and prayed for reduction of the sentence to the period already undergone. On the other hand learned Deputy Prosecutor General has opposed this appeal on the ground that huge quantity of contraband material was recovered from the appellant and that the prosecution has proved the charged through consistent and confidence inspiring evidence.

4. We have heard learned counsel for the parties and perused the record.

5. Learned counsel for the appellant has not challenged the conviction and sentence of appellant on merits rather contended for reduction of sentence to the period already undergone. As per record petitioner remained behind the bars from the date of arrest *i.e.* 9.2.2010 till the date of passing of impugned judgment on 22.10.2010 which comes to about seven months and after his conviction 1½ month more had elapsed when he was released on bail by suspending his sentence by this Court *vide* order dated 1.12.2011. If report submitted by Superintendent, New Central Jail, Multan on 17.10.2011 is taken into consideration alongwith remissions so far earned by him, the total period of sentence would come to four years and three months and this shows that he has to serve half of the sentence. There is nothing on record to show that he was previously convicted. In the circumstances, while maintaining the conviction of the appellant under Section 9(c) of the Control of Narcotic Substances Act, 1997 we feel it appropriate to reduce the sentence from 10 years' R.I. to the period already served out by Sardar, appellant-convict which in the peculiar facts and circumstances of the case would be sufficient to meet the ends of justice. The amount of fine is also reduced from Rs. 20,000/- to Rs. 10,000/- and in lieu of non-payment thereof to undergo simple imprisonment for three months.

6. With the above modification the instant appeal is dismissed. The appellant is on bail. He is directed to deposit the amount of fine within 30-days from the date of passing of this judgment, otherwise he shall be taken into custody and sent to jail to serve out the sentence in lieu of fine. However, surety bonds shall be released after payment of fine or on having undergone imprisonment in lieu of fine by the appellant. A copy of this judgment be sent to learned Trial Court for information.

Sentence reduced.

**2016 CLJ 789**

**Before Before Ch. Mushtaq Ahmad, J** (Rawalpindi)  
Writ Petition No. 3689 of 2010 dismissed on 9.12.2014

**RAJA MUHAMMAD GHAYAS---Petitioner**

**Versus**

**TASAWAR LIAQUAT, ETC.---Respondents**

**Rented Premises Act (Punjab Act II of 2009)---**

S. 15 Tenant who after receiving notice both from predecessor and successor landlords about transfer of rented premises fails to pay rent to successor landlord would be defaulter. His eviction concurrently ordered by Rent Tribunal and appellate authority by rightly appreciating the material on record upheld by High Court by dismissing tenant's writ petition filed to challenge such concurrent judgments of Rent Tribunal and appellate authority. (P. 791, 792)

*Sana Ullah Zahid for petitioner.*

*Tahir Ishaq Mughal for respondents.*

Date of hearing: 9.12.2014

**JUDGMENT**

**CH. MUSHTAQ AHMAD, J.---**Briefly the facts forming background of this Constitutional petition are that respondents No. 1 & 2 filed an ejectment petition against the petitioner under the provisions of Punjab Rented Premises Act, 2009 on the grounds that they have purchased the suit shop from the previous landlord of the suit shop and have become its owner and the petitioner has defaulted in payment of rent, their personal need of the suit shop and expiry of period of tenancy.



The petitioner contested the said application by filing an application for leave to contest the ejectment petition. The petitioner was granted leave. After framing issues and recording evidence, the learned Rent Tribunal accepted the ejectment petition of respondents vide impugned order dated 11.2.2010. Feeling aggrieved, both parties preferred appeals against the said order which were dismissed by the learned Additional District Judge, vide impugned judgment dated 31.7.2010. Hence, this petition.

2. The contention of learned counsel for the petitioner is that both the Courts below have not considered the provisions of Section 9n of Punjab Rented Premises Act, 2009 wherein it was provided that if a tenancy does not conform to the provisions of the Act, the Rent Tribunal shall not entertain the application under the said Act on behalf of landlord and in case the agreement between the parties does not exist in written form, which pre-requisite in this case was missing, written form, which pre-requisite in this case was missing, hence, the whole proceedings in this case were nullity in the eye of law and that the Appellate Court has also failed to consider the applicability of mandatory provisions of Section 9 of Punjab Rented Premises Act, 2009 and that the petitioner had spent huge amount from his own sources on reconstruction and renovation of the suit shop with consent and permission of the original landlord and that the findings of both the Courts below are without lawful authority and jurisdiction and result of misreading and non-reading of evidence.

3. On the other hand, learned counsel for the respondents submits that admittedly the petitioner had failed to pay the rent as required under the law; that the learned Trial Court in its order had imposed penalty

of depositing 10% of the rental value of the house pertaining to preceding year of the institution of the petition which was in accordance with the provision of section 9-B of Punjab Rented Premises Act, 2009.

Hence, the defect in the proceedings stood rectified and maintainability of proceedings before Rent Tribunal is untenable and liable to be rejected.

4. Heard. Perused.

5. In the case in hand it is an admitted fact that the present petitioner was tenant under the original owner of the shop. It is also established on record that the suit shop was purchased by the respondents against consideration. The original owner had also issued a notice to the present petitioner that the shop was transferred in the name of respondent and that she was no more owner of the suit shop. It is also admitted fact in this case that no rent was paid by the present petitioner to the respondents after they became owner of the suit shop. Perusal of the order passed by Rent Tribunal as well as Appellate Court, it is clear that the petitioner (respondent) was directed to deposit a fine of Rs. 5280/- within 15-days and the respondents had deposited the amount within stipulated period hence, the defect pointed out in the proceedings by the learned counsel for the petitioner stood cured during pendency of the proceedings before the Rent Tribunal. The learned Appellate Court has also considered the question of non-registration of the tenancy agreement.

6. Learned Courts below have exercised jurisdiction in this case correctly and have rightly appreciated the material available on

record. The impugned orders\judgments do not suffer from illegality or infirmity calling for interference in Constitutional jurisdiction.

7.Resultantly, the petition in hand is hereby dismissed. Parties are left to bear their own costs as incurred by them.

Ejectment Upheld\Writ petition Dismissed.

**2016 M L D 1884**  
**[Lahore (Rawalpindi Bench)]**  
**Before Ch. Mushtaq Ahmad, J**  
**MUHAMMAD AMANAT KHAN---Petitioner**  
**Versus**

**The STATE and another---Respondents**

CrI. Miscellaneous No.1953/B of 2014, decided on 8th January, 2015.

**Criminal Procedure Code (V of 1898)---**

---S. 497(2)---Penal Code (XLV of 1860), Ss.302, 392 & 34---  
Pakistan Arms Ordinance (XX of 1965), S.13---Qatl-i-amd, robbery,  
common intention---Possessing unlicensed arms---Bail, grant of---  
Further inquiry---Accused was not nominated in the FIR and was  
involved in the case on the statement of co-accused, who was  
nominated by the complainant in his supplementary statement---  
Accused had already been acquitted from the charge in the case---  
Mere absconsion of accused, could not be a valid ground for refusal  
of bail to him, if otherwise, he had a case for bail on merits---  
Material, collected in the case, was not sufficient to prima facie show,  
that accused had committed alleged offence---Guilt of accused  
needing further probe, his case called for further inquiry---Accused  
was released on bail, in circumstances.

Ghulam Ahmad Chishti v. The State 2013 SCMR 385; Mitho Pitafi v.  
The State 2009 SCMR 299; Allah Ditta v. The State and others 2012  
SCMR 184 and Qamar alias Mitho v. The State and others PLD 2012  
SC 222 ref.

Sami ur Rehman for Petitioner.

Ch. Qaisar Mushtaq, D.D.P.P. with Nadeem Abbas, S.I.

## **ORDER**

**CH. MUSHTAQ AHMAD, J.**---Petitioner Muhammad Amanat Khan sought post arrest bail in case FIR No.232/2011 dated 04.05.2011, for the offence under Sections 302/392/34, P.P.C., 13/20/65 A.O., registered at Police Station Hazro, District Attock as his bail petition filed before the trial court was dismissed vide order dated 27.10.2014.

2. The crime was reported by Muhammad Razaq complainant who alleged that on 04.05.2011 at 07.45 p.m., he along with his sons namely Riasat and Arif was present at his house in village Mararia. Three unknown persons entered into the house and took Bushra Bibi, his daughter in law and Maroof Jan, his mother on gun point and looted cash, gold ornaments and clothes. Two accused were of heavy weight whereas one was slim. In the meanwhile, his son Riasat came, seeing him, accused started running. Riasat caught one of the accused.

In the meanwhile, the accused fired at him and the shot hit on his chest. Riasat fell down and died. Accused escaped leaving the pistol at the place of occurrence. On the above information, case was registered. During investigation, present petitioner was arrested.

3. Learned counsel for the petitioner submits that present petitioner was not nominated in the FIR; that only evidence against the petitioner is that his co-accused Ali Akbar had implicated him during investigation; that said Ali Akbar has already been acquitted from the charge in this case and that Identification Parade, in this case, was not conducted; that mere absconion of accused was not a ground for refusal of bail; that his guilt needs further probe and his case calls for further inquiry.

4. On the other hand, learned D.D.P.P has vehemently opposed this petition on the ground that the petitioner was implicated by his co-accused namely Ali Akbar during investigation and that the petitioner was also challaned to face trial in this case, hence, he is not entitled to the concession of bail.

He placed reliance on "Ghulam Ahmad Chishti v. The State" (2013 SCM R 385).

5. Heard. Perused.

6. Admittedly, the petitioner was not nominated in the FIR. He was involved in this case on the statement of co-accused who was nominated by the complainant in his supplementary statement. Accused who was nominated in supplementary statement, had already been acquitted from the charge in this case. Mere absconion of accused could not be a valid ground for refusal of bail to him if otherwise, he had a case for bail on merits.

Reference may be made to "Mitho Pitafi v. The State" (2009 SCMR 299), "Allah Ditta v. The State and others" (2012 SCMR 184) and "Qamar alias Mitho v. The State and others" (PLD 2012 SC 222).

Material collected in this case is not sufficient to prima facie opine that petitioner had committed the alleged offence, hence, his guilt, at present stage, needs further probe and his case calls for further inquiry.

In the case cited by learned DDPP i.e. "Ghulam Ahmad Chishti v. The State" (2013 SCMR 385), the petitioner was nominated in FIR with specific role of firing with Kalashnikov at the deceased.

During the occurrence, three persons lost their lives while other three were seriously injured.

In the cited case, though, it was opined that statement of co-accused during investigation could be considered to prima facie form opinion about involvement of accused in the commission of offence but the facts of the case in hand being totally distinguishable, as noted above, hence, the case law is not applicable to the case in hand.

7. Consequently, this bail petition is allowed and petitioner be released on bail subject to furnishing bail bonds in the sum of Rs. 100,000/- (one lac rupees) with two sureties each, in the like amount, to the satisfaction of learned trial court.

HBT/M-43/L

Bail granted.

**2017 M L D 194**

**[Lahore]**

**Before Syed Shahbaz Ali Rizvi and Ch. Mushtaq Ahmad, JJ**

**MUHAMMAD ALI and another---Appellants**

**Versus**

**The STATE---Respondent**

Criminal Appeal No.2071, Criminal Revision No.1244, Murder Reference No.498 of 2012 and Criminal Misc. No.3910-M of 2013, heard on 16th February, 2016.

**Penal Code (XLV of 1860)---**

---Ss. 302, 392 & 109---Criminal Procedure Code (V of 1898), S.544-A---Qatl-i-amd, robbery; abetment---Appreciation of evidence--Enhancement of compensation awarded under S. 544-A, Cr.P.C---Condonation of delay in filing appeal against conviction---Complainant had implicated the present accused person along with his wife and the wife of his brother through his supplementary statement stating that they had committed robbery and murdered his mother on the day of the occurrence, as they had already extended threats to kill him and his brother, and that he had, therefore, registered the case against unknown under coercion and fear of the accused persons---Complainant's supplementary statement recorded several days after registration of the FIR carried no weight; rather, the same had cast serious doubt on the veracity of the version contained therein---Such supplementary statement had no evidentiary value in the eye of law---Complainant had given two different versions during the investigation and his cross-examination as to who had cut their ropes and untied them---Prosecution eye-witness had disclosed having witnessed the occurrence after 12/13 days after the occurrence---Statements of both the eye-witnesses on the face of it, were implausible and unbelievable---Statement of the prosecution witness, who had alleged to have seen and heard the accused persons while they were planning the commission of the crime and discussing their motive for the same, was also implausible and ridiculous on the face of it, and as such, the same was liable to be rejected---Conviction could not have been recorded, where the ocular account produced by



the prosecution was found intrinsically weak, contradictory, implausible and un-trust worthy---High Court, setting aside the conviction/sentences, acquitted the accused persons and dismissed the application filed for enhancement of compensation and condonation of delay in filing of the appeal---Appeal against conviction was allowed accordingly.

Khalid Javed v. The State 2003 SCMR 1419; Akhtar Ali and others v. The State 2008 SCMR 6 and Falaksher v. The State 1995 SCMR 1350 rel.

Alamgir and Sardar Khurram Latif Khan Khosa for Appellant.

Asif Javed Qureshi and Pirzada Zaroon Rashid for the Complainant.

Rana Muhammad Shafiq, Deputy District Public Prosecutor for the State.

Date of hearing: 16th February, 2016.

## **JUDGMENT**

**CH. MUSHTAQ AHMAD, J.**---This judgment will dispose of above captioned criminal appeal filed by Muhammad Ali and Muhammad Faisal appellants who were convicted by learned Additional Sessions Judge, Lahore, in case FIR No.1056 dated 20.08.2008 registered under Sections 302/392/109, P.P.C., at Police Station Shahdara, vide impugned judgment dated 08.12.2012 and sentenced as under:--

**Death as Ta'zir to both appellants** under Section 302(b), P.P.C. for causing death of Hameeda Bibi and to pay Rs.2,00,000/- each as compensation to the legal heirs of deceased as required under section 544-A, Cr.P.C. and in default of payment, further undergo S.I for six months each.

**Ten years rigorous imprisonment to both appellants** under Section 392, P.P.C., and to pay Rs.20,000/- each as fine and in default of payment, further undergo S.I for six months each.

Aggrieved by the aforesaid judgment, appellants preferred appeal, complainant Criminal Revision No.1244/2012 for enhancement of compensation amount whereas trial court sent Murder Reference No.498/2012, under section 374, Cr.P.C. for confirmation of death sentence awarded to Muhammad Ali and

Muhammad Faisal appellants. Complainant also filed Criminal Miscellaneous No.3910-M/2013 for condonation of delay in filing appeal against acquittal of co-accused. We propose to decide all the matters through this consolidated judgment.

2. Ijaz Hameed complainant got registered this case on 20.08.2008 through complaint Ex.PG/1 stating therein that on 20.08.2008 at about 05.00 p.m, he, his mother Hameeda Begum, his wife Mst. Adila, his sister in law Mst. Farhat and younger children were present in the house when four unknown persons on seeing the door open, stepped into the house whose appearances were (1) thin body wearing pant shirt height 5' 6" colour Gandami armed with pistol (2) black colour wearing Shalwar Qameez body strong height average armed with pistol (3) thin and strong body wearing pant shirt colour Gandmi, height average, armed with pistol (4) body fat and strong wearing Shalwar Qameez, height average, carrying bag in hand aged about 24 years. They closed the main gate of the house from inside and aimed their weapons at complainant party and asked inmates not to raise voice. Accused tied him with ropes and also tied his mother on the cot. When his mother tried to speak, accused mentioned at serial No.1 wearing pant shirt inflicted butt blows and tied a rope around her neck. They also tied his wife and sister in law and started searching the house. They committed robbery and then fled away from the southern door of the house. After that children raised noise upon which neighbours Sheikh Maqsood Ahmad and Yasir etc. came who cut the ropes and untied them. His neighbours readily shifted his wife, sister in law and mother to Bajwa Hospital where doctor told that his mother had already died and discharged his wife and sister in law after providing first aid to them. On checking of house, they found Rs.15,000/ and golden ornaments weighing 25 tolas valuing Rs.5,00,000/- missing. Lateron complainant through his supplementary statement dated 02.09.2008 nominated present appellants and his wife and sister in law as culprits of the occurrence and also disclosed the motive that his wife and sister in law were having strained relations with his mother and present appellants on abetment of his wife and sister in law, committed the occurrence.

3. PW-14 Shams ul Hassan SI on receiving information of the occurrence, reached Bajwa Hospital, prepared inquest report Ex.PR, sent the deadbody to mortuary for postmortem examination, prepared injury statement Ex.PT, visited the place of occurrence, prepared recovery memos, recorded statements of witnesses under Section 161, Cr.P.C. Subsequent investigation was conducted by Mukhtar Ahmad Inspector CIA (PW-19) who recorded supplementary statement of complainant and statements of PWs under Section 161, Cr.P.C., arrested appellants on 18.09.2008 and got recovered pistol P-4 on pointation of Muhammad Ali and .30 bore pistol P-8 and partial looted gold ornaments along with mobile phone and submitted report under Section 173, Cr.P.C.

4. Dr. Atfa Naheed (PW-9) conducted postmortem examination on the deadbody of Mst. Hameedan Bibi and noted three injuries on her deadbody. According to her, all the injuries were ante-mortem in nature, caused by blunt means. Cause of death was interference with respiration at the level of neck due to ligature strangulation leading to asphyxia. Time between injuries and death was within a few minutes and between death and postmortem was 16 to 24 hours.

5. Ocular account was furnished by PW-12 Ijaz Hameed complainant and PW-10 Muhammad Mushtaq. At the trial, prosecution produced 19-PWs whereas remaining were given up. Statements of appellants were recorded under Section 342, Cr.P.C. wherein they denied the charges and professed their innocence.

6. At the conclusion of trial, appellants Muhammad Ali and Muhammad Faisal were convicted and sentenced as mentioned above whereas their co-accused were acquitted. Hence, instant reference as well as appeal.

7. Learned counsel for appellants contended that present appellants were falsely implicated with mala fide intention and ulterior motive by the complainant; that incident was reported by complainant Ijaz Hameed, son of Mst. Hameeda Begum deceased who got the case registered against unknown culprits giving their

features in the body of FIR but later on changed his version; that after about two weeks he in his supplementary statement changed his version implicating present appellants along with their co-accused (since acquitted); that the ocular account in this case was not worth reliance rather it was a concocted story diametrically opposed to the version contained in FIR, hence, was liable to be rejected straightaway; that learned trial court has not correctly appreciated evidence in this case and conviction recorded against appellants is not sustainable.

8. Conversely, learned Deputy District Public Prosecutor assisted by learned counsel for the complainant has supported the impugned judgment in respect of conviction recorded against the appellants and further contended that the ocular account furnished by the complainant Ijaz Hameed as well as Muhammad Mushtaq (PW-10) was confidence inspiring and supported by recoveries of stolen ornaments and other circumstances which came to light during investigation, hence, the appellants were rightly convicted by the trial court.

9. Arguments heard. Record perused.

10. Law was put in motion by Ijaz Hameed (PW-12) son of deceased Mst. Hameeda Begum. As per his version, at 05.00 p.m on 20.08.2008, he along with his mother Mst. Hameeda Begum (deceased), wife Adila Ijaz and sister in law (Bhabhi) Mst. Farhat Shahzad were present along with children in the house No.7 situated in street No.2 Lajpat Road, Shahdra, Lahore when four unknown persons entered the house whose features duly mentioned in FIR, took the inmates on gunpoint. He was tied with ropes. His mother was also tied with ropes on a cot. His wife and sister in law were also dealt with in the same manner. The culprits kept on searching valuables and after looting went away. Thereafter, Sh. Maqsood and Yasir residents of the locality were attracted on alarm raised by children. They untied them and found Mst. Hameeda Begum dead. The neighbours shifted his mother, wife and sister in law to Bajwa Hospital but the Doctor confirmed death of his mother. On checking

the household articles golden ornaments weighing 25 tolas and cash amount of Rs.15,000/- were found missing. Investigation started on the above information after registration of the case. Record reveals that during investigation, complainant Ijaz Hameed (PW-12) made supplementary statement Ex.PQ on 02.09.2008 before PW-19 Mukhtar Ahmad Inspector, whereby he nominated present appellants along with his wife Mst. Adila Ijaz and wife of his brother namely Mst. Farhat Shahzad stating that in fact they had committed robbery and murdered his mother on the day of occurrence who had extended threats to kill him and his brother and that he got the case registered against unknown accused under coercion and fear and that his wife along with Mst. Farhat Shahzad, wife of his brother and present appellants had committed the above said occurrence. In cross-examination, PW-12 Ijaz Hameed complainant admitted that Ex.PG/1 (complaint) bears his signature and telephone number. He also admitted that during investigation, he had endorsed his version contained in complaint (Ex.PG/1). He also admitted that he gave description of unknown accused, however, he volunteered that he was threatened by Muhammad Ali and Muhammad Faisal (appellants) to get registered case against unknown persons, otherwise, they will kill his brothers. He further stated that Sh. Maqsood and Yasir had not untied them by removing ropes, rather it was done by Muhammad Mushtaq (PW-10). In cross-examination, on this point he changed his version and again stated that he did not know whether Maqsood and Yasir had cut the ropes and untied them. It is pertinent to mention her that complainant Ijaz Hameed (PW-12) was cross-examined on different dates by the defence counsel. Complainant also produced PW-10 Muhammad Mushtaq in support of his version. As per his statement, he went to the house of Mst. Hameeda Begum (deceased) who was mother in law of his daughter. When he entered into the house, he saw that Muhammad Ali and Muhammad Faisal (appellants) were present in TV Lounge of the house and were strangulating Mst. Hameeda Begum by pulling rope from both ends and she was trying to make noise. He asked the present appellants as to why they were strangulating her, but they escaped seeing him and Hameeda Begum fell down on the floor and died. In cross-examination he stated that his statement was recorded after 12/13

days of the occurrence. He further stated that after the occurrence, he went back to his house and that he raised alarm after coming out of the house when a few residents came there, as he was not feeling well, he stayed in his house. After 12/13 days, he was inquired about the incident and then he disclosed that it was witnessed by him. The statements of both the witnesses on the face of it, are implausible and unbelievable. PW4 Kaleem Haider was produced to prove conspiracy between the present appellants and their co-accused since acquitted. According to his version, on 19.08.2008 at 06.30 p.m., he was sitting along with Ghulam Hussain in McDonald Main Boulevard Gulberg Lahore where Mst. Farhat Shahzad, Adila Ijaz, Muhammad Ali and Faisal came and started talking with each other. Adila Ijaz (wife of complainant) told her brother Muhammad Ali that she got fed up with her mother in law Mst. Hameeda Begum and that she should be killed within no time on which Muhammad Ali (appellant) replied that they would not kill her with pistol bullet but with a rope and would also take away gold ornaments and amount. The above statement of PW was implausible as well as ridiculous on the face of it as such liable to be straightaway rejected. Where ocular account produced by prosecution is found intrinsically weak, contradictory, implausible and un-trust worthy, it cannot be considered against accused for recording conviction. Supplementary statement of complainant giving different version was recorded on 02.09.2008 whereas the FIR was got registered on 20.08.2008. Above supplementary statement would carry no weight; rather it has to be taken with a pinch of salt as an important factor casting serious doubt on the veracity of version contained therein. Crime was reported by complainant himself against unknown culprits and explanation furnished by him for not naming present appellant in FIR was far from being plausible. Silence of the complainant for about two weeks speaks volumes against his credibility. Such supplementary statement has no evidentiary value in the eye of law. Reference may be made to the cases titled "Khalid Javed v. The State" reported in 2003 SCMR 1419 "Akhtar Ali and others v. The State" (2008 SCMR 6) as well as case titled "Falaksher v. The State", reported in 1995 SCMR 1350. In the light of facts established on record and seeking guidance from the judgments referred above, we are of the considered opinion that ocular account

in this case was not reliable nor sufficient to sustain conviction. Prosecution in this case had failed to prove charge against appellants.

11. Consequently, Criminal Appeal No.2071/2012 is allowed, conviction recorded by learned trial court against present appellants, is set-aside, appellants Muhammad Ali and Muhammad Faisal are acquitted of the charge from this case, they be released forthwith if not required in any case. Criminal Revision No.1244/2012 filed by complainant is for enhancement of compensation amount. We see no valid ground to reverse the findings recorded by the trial court in that regard. Consequently, criminal revision No.1244/2012 filed by complainant is dismissed. CrI. Misc. No.3910-M/2013 filed by complainant for condonation of delay in filing appeal is also dismissed. Murder Reference No.498/2012 is answered in negative and death sentence awarded to appellants Muhammad Ali and Muhammad Faisal is not confirmed.

SL/M-121/L

Appeal allowed.

**2017 M L D 266**  
**[Lahore High Court]**  
**Before Qazi Muhammad Amin Ahmed and Ch. Mushtaq Ahmad,**  
**JJ**  
**MUHAMMAD AJMAL and others---Appellants**  
**Versus**  
**The STATE and another---Respondents**

Criminal Appeals Nos.12-J of 2013, 1319, 1500, 1554, Murder Reference No.308 and Criminal Revision No.1084 of 2011, heard on 15th December, 2015.

**(a) Penal Code (XLV of 1860)---**

---S. 396---Dacoity with murder---Appreciation of evidence---Benefit of doubt---Complainant, during identification parade, picked up accused as the person who made fire shot on the deceased; whereas by other witnesses, participating in the identification parade, no such role was ascribed to accused---Incident was a night occurrence, but in the FIR no source of light was mentioned; whereas in the private complaint filed subsequently, a torch light was introduced by the complainant---Improvement inconsistent with the case set up in the FIR, as well as change of role of accused qua fatal fire shot in the private complaint, cast serious doubt on the veracity of ocular testimony; and it was not safe at all to base conviction of accused on such distorted evidence---Findings of conviction recorded by the Trial Court, being not maintainable, conviction and sentence recorded by the Trial Court against accused persons through impugned judgment, were set aside---Accused were acquitted of the charge, and were ordered to be released, in circumstances.

**(b) Criminal trial---**

---Benefit of doubt---Scope---Conviction must be based on unimpeachable evidence, and certainty of guilt, and any doubt arising in the prosecution case, must be resolved in favour of accused---For giving the benefit of doubt, it was not necessary that there should be many circumstances creating doubts---Single circumstance creating reasonable doubt in a prudent mind about the guilt of accused, would



make him entitled to the benefit; not as a matter of grace and concession, but as a matter of right.

Muhammad Khan and another v. The State 1999 SCMR 1220 rel.

Tariq Pervez v. The State 1995 SCMR 1345 and Muhammad Akram v. The State 2009 SCMR 230 ref.

Ch. Abdul Ghaffar, Malik Mukhtar Hussain for Appellants (in Criminal Appeal No.1319 of 2011).

Ashraf Ali Qureshi for the Complainant.

Malik Muhammad Jaffer, Deputy Prosecutor General for the State.

Date of hearing: 15th December, 2015.

## **JUDGMENT**

**CH. MUSHTAQ AHMAD, J.**---Appellants Muhammad Ajmal, Muhammad Hussain, Muhammad Iqbal and Mumtaz have challenged their conviction and sentence through Criminal Appeal No.12-J of 2013, Criminal Appeals Nos.1319, 1500 and 1554 of 2011, respectively. They were tried by learned Additional Sessions Judge, Pakpattan in a private complaint titled "Muhammad Din v. Muhammad Ajmal and 3 others". As required under section 374, Cr.P.C., learned trial court has forwarded Murder Reference No.308 of 2011 for confirmation of death sentence of appellant Muhammad Ajmal. Muhammad Din, complainant has filed Criminal Revision No.1084 of 2011 seeking enhancement of sentence of appellants. All these matters are result of a single judgment dated 20.06.2011 given by learned trial court, as such exercise of reappraisal of the same evidence is to be carried out to reach at a proper conclusion.

2. On conclusion of trial, learned trial court vide judgment dated 20.06.2011 convicted appellants and they were sentenced as under:--

### **Appellant Muhammad Ajmal:**

Convicted under section 396, P.P.C. and sentenced to death, with fine Rs.20,000/-. In default in payment of fine, to further undergo simple imprisonment for six months. He was also directed to pay an amount of Rs.50,000/- as compensation under section 544-A, Cr.P.C. to legal heirs of deceased,

failing payment of which to further undergo simple imprisonment for three months.

**Appellant Muhammad Hussain.**

Convicted under section 396, P.P.C. and sentenced to imprisonment for life, with fine Rs.20,000/-. In default in payment of fine, to further undergo simple imprisonment for six months. He was also directed to pay an amount of Rs.50,000/- as compensation under section 544-A, Cr.P.C. to legal heirs of deceased, failing payment of which to further undergo simple imprisonment for three months.

**Appellant Muhammad Iqbal.**

Convicted under section 396, P.P.C. and sentenced to imprisonment for life, with fine Rs.20,000/-. In default in payment of fine, to further undergo simple imprisonment for six months. He was also directed to pay an amount of Rs.50,000/- as compensation under section 544-A, Cr.P.C. to legal heirs of deceased, failing payment of which to further undergo simple imprisonment for three months.

**Appellant Mumtaz.**

Convicted under section 396, P.P.C. and sentenced to imprisonment for life, with fine Rs.20,000/-. In default in payment of fine, to further undergo simple imprisonment for six months. He was also directed to pay an amount of Rs.50,000/- as compensation under section 544-A, Cr.P.C. to legal heirs of deceased, failing payment of which to further undergo simple imprisonment for three months.

Benefit under section 382(B), Cr.P.C. was awarded to appellants.

3. Muhammad Din complainant got registered FIR No.565/2010 dated 08.07.2010 under sections 302, 396, P.P.C. with police station Saddar Pakpattan. Feeling dissatisfied by the police investigation, he lodged private complaint titled "Muhammad Din v. Muhammad Ajmal and four others" regarding the same occurrence. As per contents of said complaint, on 08.07.2010 at about 09:30 p.m., complainant having a torch with him along with Ahmad Din and Ata Muhammad was going on a motorcycle Honda 100 CC driven by Ahmad Din. At about 09:30 p.m. when they reached near Bypass

Sultan Chowk, Riaz Ahmad, Muhammad Ajmal, Mumtaz, Muhammad Hussain and Muhammad Iqbal accused persons duly armed with pistols .30-bore were already present there whom the complainant and witnesses identified in torch light and motorcycle. Riaz Ahmad accused was already known to complainant whereas names of remaining accused became known to him after identification parade. Said accused persons stopped them for committing dacoity and attempted for their personal search. In the meanwhile, Munir Ahmad came there whom accused also stopped and snatched cash amount Rs.6050/- and a mobile phone set Samsung from him on gun point. When accused attempted to rob Ata Muhammad, he resisted, whereupon Muhammad Ajmal made a fire-shot which hit him on head. Ata Muhammad succumbed to the injury at the spot. Fire shots made by Mumtaz and Muhammad Hussain hit Munir Ahmad. Accused persons made indiscriminate firing in order to create terror, as a result of which their companion/accused Muhammad Iqbal sustained a firearm injury on left arm. Thereafter, accused fled away. Muhammad Yousaf was also present there at that time who witnessed the occurrence. It has been alleged that police reached the spot after receiving information of the occurrence on 15. Complainant told the occurrence to "thanedar" who obtained his signatures on a blank paper. It has been further alleged that statement of complainant was not correctly recorded by Muhammad Khalid SI who has attributed to Riaz Ahmad accused the fire shot made by Muhammad Ajmal appellants.

4. Appellants along with co-accused Riaz Ahmad (since P.O) were charged sheeted, who pleaded innocence and claimed trial. At the trial complainant himself appeared as PW-1 and got examined Ahmad Din and Munir Ahmad as PW-2 and PW-3, whereas Dr. Rizwan Hassan Chishti was examined as PW-4. Statements of nine witnesses were recorded as CW-1 to CW-9. Thereafter accused were examined under section 342, Cr.P.C. and on conclusion of trial appellants were convicted and sentenced as mentioned above.

5. Learned counsel for appellants argued that occurrence took place at dark night and was unwitnessed; that the complainant firstly got

registered FIR falsely implicating the appellants and after failing in getting favourable results of investigation, he lodged private complaint by totally changing the story; and that, findings recorded by learned trial court does not find support from the evidence on record.

6. Conversely, learned DPG assisted by learned counsel for complainant opposed the appeals stating that version of complainant was not correctly recorded by police which necessitated filing of private complaint. He further argued that eye-witnesses remained consistent on material points and their statements were corroborated by medical evidence, as such learned trial Court rightly convicted the appellants. Learned counsel for complainant in Criminal Revision No.1084 of 2011 prayed for enhancement of sentence of appellants.

7. We have heard learned counsel for the parties at length and gone through the impugned judgment as well as record with their assistance.

8. Occurrence took place on 08.07.2010, regarding which complainant at first got registered case vide FIR No.565/2010 with police station Saddar Pakpattan alleging therein that at about 09:30 p.m., he, his brother Ahmad Din and Ata Muhammad were proceeding towards Pakpattan City from their house on a motorcycle driven by Ahmad Din. When they reached near Bypass Sultan Chowk, Riaz Ahmad who was known to him previously along with five unknown persons (features detailed in the FIR) while armed with pistols .30-bore intercepted them and tried to make their personal search with intent to commit dacoity. In the meanwhile, Munir Ahmad (PW-3) came there from whom accused snatched cash and a mobile phone set, whereas Ata Muhammad his brother resisted, on which Riaz Ahmad accused made fire shot on Ata Muhammad which went through his head resulting into his death. Then unknown persons made firing at Munir Ahmad who was injured. After investigation of said FIR, complainant preferred to lodge private complaint regarding the same occurrence. It is important to mention that in the private complaint he attributed fatal fire shot to Muhammad Ajmal appellant

instead of Riaz Ahmad accused. It was stated in the complaint that Muhammad Iqbal, one of the accused (appellant herein) was injured at the spot by firing of the accused, which fact was not mentioned in the FIR. Main reason for filing private complaint according to complainant was that his version was not correctly recorded in the FIR. In this regard, it is worth noticing that FIR was recorded by Mansab Ali 483/C (CW-1) on the basis of complaint Ex.D-A sent by Muhammad Khalid SI (CW-9), who after receiving information of the occurrence visited the spot and recorded complaint on the statement of Muhammad Din complainant (PW-1). According to CW-9, he recorded statement of complainant Ex.D-A and contents were read over to him who signed the same in token of its correctness. After registration of FIR, Ghulam Mustafa Chughtai draftsman (CW-6) visited the spot and took rough notes on pointation of PWs and on the basis of which he prepared scaled site plan Ex.CW-6/A. During cross-examination CW-6 stated that during his visit PWs attributed role of firing a shot at Ata Muhammad (deceased) to Riaz Ahmad accused. Similar is the position and role of accused mentioned in the site plan Ex.CW-6/A. As one accused namely Riaz Ahmad was specifically named in the FIR and remaining were unknown, so identification parade was conducted for identifying the actual culprits under supervision of Judicial Magistrate who appeared as CW-5. During identification parade complainant Muhammad Din picked up Muhammad Ajmal accused (appellant) as the person who made fire shot on Ata Muhammad, whereas by other witnesses participating in the identification parade, no such role was ascribed to Muhammad Ajmal appellant.

9. As per contents of FIR, there was no mentioning of receiving of any firearm injury by Muhammad Iqbal accused (appellant) at the hands of his own companions during occurrence. This fact was also introduced for the first time in private complaint. Appellants in their statements recorded under section 342, Cr.P.C. stated that fake MLC of Muhammad Iqbal (appellant) was obtained by police in connivance with the complainant. In this regard it is pointed out that investigation of the FIR was conducted by Muhammad Khalid SI, who visited the spot after the occurrence and completed initial steps of investigation.

Blood stained earth was secured by CW-9 only from the place of dead body of Ata Muhammad. During cross-examination CW-9 stated that he did not observe any blood stained earth at any other place.

10. Muhammad Din complainant (PW-1) during cross-examination stated that Ghulam Rasool (CW-8) met him on the following day of occurrence and had been visiting him for seven consecutive days after the occurrence. Ghulam Rasool (CW-8) is admittedly close relative of the complainant, who according to Investigating Officer (CW-9) nominated the appellants in his statement recorded at the place of occurrence but why this fact did not come to the knowledge of complainant, is a question mark. Moreover, in the FIR, no source of light was mentioned but in the complaint a torch light was introduced by the complainant. Investigating Officer CW-9 during cross-examination stated that he was not informed about any source of light during his first visit to the place of occurrence.

11. Stance of appellants regarding their involvement in this case is that they were implicated on asking of Tahir Waheed SHO. Riaz Ahmad co-accused was nominated in the FIR with specific role of making fatal fire-shot at Ata Muhammad (deceased). Investigation was conducted on the basis of facts mentioned in the FIR. During investigation complainant did not raise objection before higher police authorities nor moved any complaint against Investigating Officer. He took somersault for the first time during identification parade when he attributed role of fatal fire shot to Muhammad Ajmal appellant. At that time other witnesses did not support complainant's version by ascribing fatal fire-shot to Muhammad Ajmal appellant. In the circumstances, stance of complainant that his statement was not correctly recorded by the police, does not sound logical. Improvements inconsistent with the case set up in the FIR as well as change of role of accused qua fatal fire-shot in the private complaint, cast serious doubt on the veracity of ocular testimony and it is not safe at all to base conviction on such distorted evidence.

12. It is settled principle of criminal justice that conviction must be based on unimpeachable evidence and certainty of guilt and any

doubt arising in the prosecution case must be resolved in favour of the accused. Reliance in this regard is placed on case titled "Muhammad Khan and another v. The State" (1999 SCMR 1220). For giving the benefit of doubt it is not necessary that there should be many circumstances creating doubts. Single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefit, not as a matter of grace and concession, but as a matter of right. Reference may be made to case titled "Tariq Pervez v. The State" (1995 SCMR 1345). The same view has been reiterated by Hon'ble Supreme Court in "Muhammad Akram v. The State" (2009 SCMR 230). For the reasons recorded above, findings of conviction recorded by learned trial court are not maintainable. Therefore, accepting all the titled criminal appeals, conviction and sentence recorded by learned trial court against appellants through impugned judgment is set aside and appellants are acquitted of the charge. They be released forthwith if not required in any other case. Murder Reference No.308 of 2011 is answered in negative.

13. For the above reasons, Criminal Revision No.1084 of 2011 is dismissed.

HBT/M-53/L Appeal accepted.

**2017 M L D 1319**  
**[Lahore (Multan Bench)]**  
**Before Ch. Mushtaq Ahmad, J**  
**ABDUL WAHEED---Petitioner**

**Versus**

**ADDITIONAL SESSIONS JUDGE and others---Respondents**

Writ Petition No.12389 of 2016, decided on 27th September, 2016.

**Criminal Procedure Code (V of 1898)---**

---S.439-A---Sessions Judge's power of revision---Scope---Order by Court of Session accepting revision petition and order passed by magistrate refusing further physical remand, was set aside---Non-granting physical remand by the Magistrate was a judicial function and complainant in a criminal case had locus standi to file revision petition being an aggrieved person---In the present case, misappropriation of huge amount was involved which fact was noted in the impugned order---No valid ground was available to interfere with impugned order under constitutional jurisdiction of High Court--  
-Constitutional petition was dismissed accordingly.

Riaz ul Haq and another v. Muhammad Naveed and another" 2005 YLR 805 rel.

Nasreen Bibi v. Nazir Ahmy and another 2001 MLD 1459; Abid Shah v. The State PLD 1992 Lah. 412; Mazhar Iqbal v. The State 1989 PCr.LJ 2241; Iqbal Hussain v. The State and another 1995 PCr.LJ 1835 and Zawar Hussain v. The State and 3 others 2009 PCr.LJ 705 ref.

Nasreen Bibi v. Nazir Ahmad and another 2001 MLD 1459 distinguished.

James Joseph and Malik Imtiaz Haider Maitla for Petitioner.

Mazhar Jamil Qureshi AAG.

Sh. Jamshed Hayat and Malik Tariq Rajwana for Respondents Nos. 5 and 6.



## ORDER

**CH. MUSHTAQ AHMAD, J.**---Through this petition validity of impugned order dated 27.08.2016 passed by learned Addl. Sessions Judge, Multan has been called in question whereby he accepted a revision petition filed by respondent No.5 and order passed by learned Judicial Magistrate refusing further physical remand was set-aside.

2. Learned counsel for petitioner submits that order passed by learned Addl. Sessions Judge was not sustainable as the revision petition against order passed by the learned Magistrate was not maintainable; that the learned Illaqa Magistrate has granted physical remand three times, total for a period of 9-days but no progress was made by the I.O. towards the recovery of the misappropriated amount; that the learned Addl. Sessions Judge/respondent No.1 has committed illegality and order passed by him is without lawful authority and of no legal effect. Learned counsel has placed reliance on cases titled "Nasreen Bibi v. Nazir Ahmad and another" (2001 MLD 1459), "Abid Shah v. The State (PLD 1992 Lah. 412) and "Mazhar Iqbal v. The State" (1989 PCr.LJ 2241).

3. The petition has been opposed on the ground that order passed by Judicial Magistrate whereby physical remand was refused was revisable by the learned Addl. Sessions Judge who found the same not in accordance with law and rightly allowed the petition and that there was no valid ground to interfere in constitutional jurisdiction by this Court. Learned counsel for respondents has placed reliance on cases titled "Riaz ul Haq and another v. Muhammad Naveed and another" (2005 YLR 805), "Iqbal Hussain v. The State and another" (1995 PCr.LJ 1835) and "Zawar Hussain v. The State and 3 others" (2009 PCr.LJ 705).

5. Heard. Perused.

6. Allegation against petitioner was that while serving as head cashier in Hussain Mills Ltd., he misappropriated huge amount of Rs.2,40,00,000/- (24 millions) which fraud was detected on checking

the accounts being maintained by him during his service. He was arrested in the case registered against him on 06.08.2016 and produced before Illaqa Magistrate on the following day requesting his physical remand. Three days physical remand was allowed which was extended twice; the I.O. applied for extension of physical remand on 16.08.2016 but the request was turned down by the learned Illaqa Magistrate on the ground that he failed to show sufficient progress during previous remand. The above order was challenged on the ground that it being a case of big fraud, the amount as well as documents were to be recovered and presence of the accused was essential for the exercise. In the cited judgment relied upon by learned counsel for the respondents i.e. "Riaz ul Haq and another v. Muhammad Naveed and another" (2005 YLR 805) it was held that order passed by Magistrate refusing to grant physical remand was a judicial function and under Section 435, Cr.P.C. learned Sessions Judge was empowered to call for record to see the illegality of the order impugned before him. Same view was expressed in other cases cited by learned counsel for respondents. However, in the case titled "Nasreen Bibi v. Nazir Ahmad and another" (2001 MLD 1459), cited by learned counsel for petitioner, it was observed that revision against order passed by Magistrate was not maintainable as it was not a judicial order and it could be challenged in constitutional jurisdiction of this Court. The case law cited by learned counsel for respondents i.e. "Riaz ul Haq and another v. Muhammad Naveed and another" (2005 YLR 805), is more pertinent to the question involved in this case, being identical on the facts. Two questions came under consideration in the case cited by learned counsel for respondents; firstly, whether order passed by the learned Judicial Magistrate refusing remand was a judicial order and secondly complainant had locus standi to file revision petition against the order passed by learned Judicial Magistrate. Regarding first question, it was observed that not granting physical remand was a judicial function and that a complainant in a criminal case had locus standi to file the revision petition being an aggrieved person. In the present case, as noted above, misappropriation of huge amount was involved which fact was noted in the impugned order passed by learned Addl. Sessions Judge. In the above backdrop, I see no valid ground to interfere with the

impugned order in constitutional jurisdiction of this Court.  
Resultantly, petition in hand is dismissed.

WA/A-110/L Petition dismissed.

**2017 M L D 1440**

**[Lahore (Multan Bench)]**

**Before Qazi Muhammad Amin Ahmad and Ch. Mushtaq Ahmad,**

**JJ**

**JAVED IQBAL and another---Appellants**

**Versus**

**The STATE and another---Respondents**

Criminal Appeal No.811 and Murder Reference No.89 of 2011, heard on 10th May, 2016.

**(a) Penal Code (XLV of 1860)---**

---Ss. 302, 324 & 34---Qatl-i-amd, attempt to commit qatl-i-amd and common intention---Appreciation of evidence---Benefit of doubt--- Prosecution case was that accused persons came at odd hours of night at the house of complainant and called the injured witness at the canal-bank---Injured witness along with others including deceased when reached at the specified place, accused persons made firing on the complainant party, son of complainant was murdered and his brother received injuries during the occurrence---Complainant furnished ocular account of the incident---Prosecution's two witnesses including the injured one came forward to strengthen the prosecution case---Another prosecution witness negated the presence of eye-witnesses at the place of occurrence at the relevant time---Said person was the prosecution's own witness who made statement to the contrary---Neither the prosecution declared said witness as hostile nor he was given-up---Accused persons were found innocent during investigation conducted by Investigating Officer---Complainant contended that accused persons were inimical towards injured witness as they had suspicion that he had developed illicit relation with their sister---Such facts cast serious doubt on the veracity of eye-witnesses qua their presence at the relevant time---Record showed that mobile number mentioned in FIR was of another person against whom it was alleged that sister of accused persons had actually developed illicit relations with him and accused persons also got registered FIR regarding abduction of their sister by the said another person---Story as narrated in the FIR and reiterated before the court appeared to be far away from reality--Facts and circumstances of the case established that testimony of eye-witnesses was not trust worthy and confidence

inspiring and created many doubts as to the veracity of prosecution story---Accused were acquitted in circumstances by setting aside conviction and sentences recorded by Trial Court.

**(b) Criminal trial---**

---Capital charge---Appreciation of evidence---Caution and care--- Caution and careful scrutiny of prosecution evidence was required in criminal dispensation of justice, particularly involving capital charge.

**(c) Penal Code (XLV of 1860)---**

---Ss. 302, 324 & 34---Qatl-i-amd, attempt to commit qatl-i-amd, common intention---Appreciation of evidence---Benefit of doubt--- Where a single instance created reasonable doubt same was sufficient to record acquittal, giving benefit thereof to the accused---Accused were acquitted in circumstances by setting aside conviction and sentences recorded by Trial Court.

Ghulam Qadir v. The State 2008 SCMR 1221 rel.

Malik Amir Manzoor Awan and Sabir for Appellant.

Muhammad Ali Shahab, Deputy Prosecutor General for the State.

Mian Tariq Arain for the Complainant.

Date of hearing: 10th May, 2016.

**JUDGMENT**

**CH. MUSHTAQ AHMAD, J.**---Appellants Javed Iqbal and Sabir along with another were tried by learned Additional Sessions Judge, Rajanpur, in case FIR No.341 dated 28.7.2009 registered under sections 302, 324, 34, P.P.C. at Police Station Fazilpur, District Rajanpur. Murder Reference No.89 of 2011 for confirmation of death sentence awarded to appellant Javed Iqbal is also before the Court. We propose to dispose of both these matters through this single judgment.

2. On conclusion of trial appellant Javed Iqbal was convicted under section 302(b), P.P.C. and sentenced to death. He was also held liable to pay Rs.1,00,000/- as compensation to the legal heirs of deceased Saif Ullah in terms of section 544-A, Cr.P.C. He was further convicted under section 324, P.P.C. and sentenced to 8-Years' R.I. Likewise appellant Sabir was convicted under section 302(b), P.P.C. and sentenced to imprisonment for life. He was also directed to pay Rs.1,00,000/- as compensation to the legal heirs of deceased in terms

of section 544, Cr.P.C. with benefit of section 382-B, Cr.P.C. vide judgment dated 21.7.2011 passed by learned Additional Sessions Judge, Rajanpur.

3. FIR (Exh.PA/1) was lodged by Abdul Ghafoor (PW-1), mentioning therein that on 28.7.2009 he along with Saeed Ahmed (step brother), Saif Ullah (son), Muhammad Ramzan (paternal cousin) and Muhammad Hanif (given up PW) were sleeping in house at Mauza Sikhaniwala when at 3.00 a.m. (night) Saeed Ahmed received missed call 03366175510 on his mobile phone on which they woke up; after a short while Javed Iqbal loudly called Saeed Ahmed to come at Canal as he had some urgent work with him; complainant asked Saeed Ahmed that at odd hours of night he should not go alone rather they would accompany him; Saeed Ahmed and Saif Ullah after a few minutes proceeded towards canal whereas complainant, Muhammad Ramzan and Muhammad Hanif followed them; as soon as they reached at Canal Qadira, Saif Ullah and Saeed Ahmed were at some distance, they saw in the light of torch Javed Iqbal and Sabir accused both armed with Pistols alongwith their companion Sabzal; when Saif Ullah and Saeed Ahmed reached near the accused persons, Javed Iqbal accused on seeing Saeed Ahmed raised lalkara to teach him a lesson for developing illicit relations with their sister Mst.Khadeja and then made fire shot with his pistol which hit Saeed Ahmed on his left foot, fire shot of Sabir hit Saif Ullah on his right elbow; Javed Iqbal again fired at Saif Ullah which hit on front side of his right flank, then accused Sabir repeated the fire shot with his pistol which hit Saeed Ahmed on his right hand then Javed Iqbal made third fire shot which hit Saeed Ahmed on upper part of left arm; Sabzal accused inflicted sota blows on the person of Saif Ullah which landed on his left shoulder and back; on seeing the PWs accused perons alongwith their weapons decamped from the place of occurrence towards western side; complainant attended his son Saif Ullah but he succumbed to the injuries. Saeed Ahmed, injured PW was shifted to Fazilpur Hospital for treatment.

Motive behind the occurrence was that accused Javed Iqbal and Sabir had suspicion that their sister Mst.Khadeja had illicit relations with Saeed Ahmed so in order to take revenge they killed Saif Ullah and caused firearm injuries to Saeed Ahmed.

4. In order to prove charge against accused 14 witnesses in all were produced, out of them PW-1 Abdul Ghafoor, complainant, PW-2 Muhammad Ramzan and injured PW-3 Saeed Ahmed provided ocular account. PW-6 Dr. Mehmood-ul-Hassan and PW-9 Dr. Jalil-ur-Rehman produced medical evidence. PW-7 Wazir Ahmed, S.I., PW-8 Ghulam Farid, Inspector/S.H.0 and PW-13 Ghulam Nabi, S.I. were the Investigating Officers of this case PW-14 Hazoor Bakhsh, Patwari prepared the scaled site plan Exh.PL. PW-11 Doda Khan, cousin of complainant also appeared as PW-11 in this case. The remaining witnesses are formal in nature need not mentioned.

5. After giving up Muhammad Hanif, Noor Muhammad, Ghulam Nabi, S.I., Zafar Iqbal and Maqsood Ahmd being unnecessary whereas Muhammad Iqbal, S.I. as won over and tendering in evidence report of Chemical Examiner and Serologist (Exh.PM and Exh.PN) closed the prosecution case on 8.7.2011. Thereafter statements of appellants under section 342, Cr.P.C. were recorded on 11.7.2011 wherein they denied the charge. In answer to a question why this case against him and why the PWs have deposed against him, both the appellants replied as under:--

"I am innocent. I have no concern whatsoever with the alleged occurrence. Actually on the night of occurrence, Mst.Khadeja after administering intoxicant to us went to meet Falak Sher and Touseef as per their programme as Falak Sher accused was having illicit relation with Mst.Khadeja. The accused in the connected case titled The State v. Touseef, etc. committed the murder of Saif Ullah and injured Saeed Ahmed PW. We were brought into senses by Doda PW and others next morning and my father told us that our sister Mst.Khadeja was missing from 2.00 a.m. night. We went out in her search and came to know about the murder of Saif Ullah and abduction of Mst.Khadeja my sister. However, instant case was falsely got registered against us being real brothers of Mst. Khadeja. Since we were involved in this case falsely so police did not register our case regarding abduction of Mst.Khadeja which later on was registered on 19.8.2009 vide FIR No.383/2009 and Mst.Khadeja is still living with Falak Sher accused. It has also come into investigation that

the Murder of Saif Ullah was committed by Touseef etc. and we were declared innocent by the police after thorough investigation and challan against Touseef etc. is pending adjudication before this Court. Touseef, etc. committed the murder of Saif Ullah and injured Saeed PW due to rivalry regarding Mst.Khadeja PWs being closely related inter se and with the deceased and being inimical towards us for the above said reasons have falsely deposed against us."

However, they did not opt to record statements under section 340(2), Cr.P.C. in disproof of the allegations levelled against them.

7. Learned counsel for the appellants argued that the eye-witnesses could not prove their presence at the place of occurrence at the relevant time beyond reasonable doubt; that the witnesses are inter se related so their testimony is not worth reliance especially in the presence of statement of PW-11 Doda Khan; that there is material contradictions among the statements of eye-witnesses qua ocular account of the occurrence; that the witnesses made dishonest improvements while appearing before the trial court which create reasonable doubt in the veracity of prosecution version and that the learned trial court has not correctly appreciated the evidence produced.

8. Conversely, learned Deputy Prosecutor General assisted by learned counsel for the complainant has opposed the contentions and argued that ocular account of the prosecution is consistent upon time, place and mode of occurrence; that there is no conflict between the medical evidence and ocular account and that learned trial court has rightly appreciated the evidence brought on record by the prosecution.

9. Arguments heard. Record perused.

10. Ocular account in this case was furnished by PW-1 Abdul Ghafoor, complainant who stated that on 28.7.2009 he along with Saeed Ahmed (step brother), Saif Ullah (his deceased son), Muhammad Ramzan (paternal cousin) and Muhammad Hanif (given up PW) were sleeping in their house when at about 3.00 a.m. (night) a miss call was received on mobile phone set of Saeed Ahmed and at the same moment Javed Iqbal accused called Saeed Ahmed with loud voice to come at canal bank as he had some urgent work with him. Since it was an odd hour of night complainant asked Saeed Ahmed to



accompany them and then Saeed Ahmed and complainant's son Saif Ullah, deceased proceeded to the canal bank whereas complainant Abdul Ghafoor alongwith his paternal cousins, namely, Muhammad Ramzan and Muhammad Hanif followed them at few paces. As soon as Saeed Ahmed and Saif Ullah reached near the accused persons, Javed Iqbal by raising lalkara fired at Saeed Ahmed with his pistol hitting on his left foot; then co-accused Sabir made fire shot hitting Saif Ullah on his right elbow, second fire of Javed Iqbal hit on right flank of Saif Ullah. Sabir, accused also fired at Saif Ullah with his pistol which hit on his right hand. Again Javed Iqbal, accused fired at Saeed Ahmed hitting on upper part of his right arm. Co-accused Sabzal also inflicted sota blows on the person of Saif Ullah, deceased which landed on his left shoulder and on back side. To support this version PW-2 Muhammad Ramzan and PW-3 Saeed Ahmed, (injured PW) came forward to strengthen the prosecution case. But if the statement of PW-11 Doda Khan is taken into consideration the presence of eye-witnesses at the place of occurrence at the relevant time is not established. PW-11 Doda Khan while appearing before the trial court stated that on 28.7.2009 he was going to offer Fajr Prayer when Shams-ud-Din alias Shamla told him that family members of Mosa were found unconscious in the house. He went to the house of Javed and Sabir both sons of Mosa and Sabzal were lying unconscious. PW-11 served them with Lemon and Pickle and they came in senses after about 2/3 hours. Then he came back to his house. The statement of this witness negates presence of eye-witnesses. He was the prosecution's own witness who made a statement to the contrary. Neither the prosecution declared this witness as hostile nor he was given up. PWE-8 Ghulam Fareed, Inspector/I.O. during cross examination also stated that according to his finding on the day of occurrence family members of Khadija Bibi (sister of appellants) were senseless due to intoxication. In this regard Doda and Maqsood had joined the investigation. He further stated that after investigation on 8.10.2009 accused Javed Iqbal and Sabir were found innocent. This fact of the case casts serious doubt on the veracity of eye-witnesses qua their presence at the relevant time. According to the complainant, appellants were inimical towards Saeed Ahmed as they had suspicion that he had developed illicit relation with their sister

Mst.Khadeja, so in such state of affair there was no occasion for the accused to come at odd hours of night at the house of complainant and then called Saeed Ahmed loudly to accompany them did not appeal to reason. During investigation it has come on record that mobile number mentioned in the FIR was of Flak Sher against whom it was alleged that Mst.Khadeja developed illicit relations and accused party had also got registered FIR No.383/2009 regarding abduction of their sister by Falak Sher, etc. So the story as narrated in the FIR and reiterated before the court appears to be far away from reality.

11. PW-3 Saeed Ahmed stated that a missed call was received by him. He further stated that he got recorded in his statement before the police that when Javed Iqbal, (appellant) called him he along with Abdul Ghafoor, Saif Ullah, Muhammad Ramzan and Muhammad Hanif woke up. According to him neither he nor Saif Ullah, deceased took any torch or weapon with them. The witness further explained that PW-2 Muhammad Ramzan was having Torch light and Soti whereas Abdul Ghafoor was armed with Soti. PW-2 Muhammad Ramzan in cross examination stated that he could not tell whether it was dark night or not. As per version of PW-2 he was not sleeping in the house of the complainant when PW-3 Saeed Ahmed received phone call. As per his version I.O. reached at the spot at about 7.15 a.m. FIR was registered at 8.15 a.m. The version of eye-witnesses that Javed and Sabir, (appellants) had suspicion that Saeed Ahmed had illicit affair with their sister Khadija is sufficient to infer that PW-3 Saeed Ahmed and Saif Ulah, deceased would not go at the place of occurrence on the asking of appellants at odd hours of night. From the statement of prosecution witnesses it is evident that they concealed real facts and disclosed half truth only. The incident did not take place in the manner as stated by them nor presence of complainant Abdul Ghafoor (PW-1) and PW-2 Muhammad Ramzan at the place of occurrence at the relevant time was established. Admittedly occurrence took place at night but it was reported to the police in the morning. As noted above PW-11 Doda Khan also negated version of the eye-witnesses. PW-8 Ghulam Fareed, Inspector/I.O. in cross examination stated that during his investigation he recorded in Daily Diary dated 4.10.2009 that Saeed Ahmed and Falak Sher had illicit

relations with Khadija (sister of appellants) and due to that reason they had enmity with each other. It also came to his knowledge that family members of Khadija were found un-conscious due to intoxication which fact was brought to his knowledge by PW-11 Doda Khan and one Maqsood who joined investigation. He further explained that he had recorded his opinion on 8.10.2009 after conducting investigation that accused Javed Iqbal and Sabir were innocent.

12. As per statement of PW-8 who conducted investigation it came to light that PW-3 Saeed Ahmed and one Falak Sher were inimical to each other as each of them had illicit liason with Khadija, sister of the present appellants. In the given facts and circumstances, as discussed above, testimony of the eye-witnesses in this case was not trust worthy and confidence inspiring. In criminal dispensation of justice, particularly involving capital charge a cautious and more careful scrutiny of prosecution evidence is required. In a case like the one in hand where testimony of eye-witnesses is itself doubtful, medical evidence would not in any way advance the case of prosecution.

13. The above discussion leads us to the conclusion that there are a number of circumstances that create doubt as to the veracity of testimony of prosecution witnesses whereas a single instance of this nature creating reasonable doubt is sufficient to record acquittal, giving benefit thereof to the accused. Reliance may be placed upon "Ghulam Qadir v. The State" (2008 SCMR 1221). On re-appraisal of evidence, we are of considered view that prosecution has failed to prove its case beyond reasonable doubt against the appellants. So, the impugned judgment passed by learned trial court is not the outcome of proper appreciation of evidence brought on record.

14. For the reasons recorded above, this criminal appeal is allowed. The conviction and sentences of appellants are set aside. They are acquitted of the charges. Appellant Javed Iqbal shall be released from jail forthwith if not required in any other. Appellant Sabir is presently on bail, his bail bonds are discharged from liability.

15. As a sequel to the above, Murder Reference No.89 of 2011 is answered in the Negative. Death sentence of Javed Iqbal, convict is not confirmed.

JK/J-10/L Appeal allowed.

**2017 M L D 1861**  
**[Lahore]**  
**Before Ch. Mushtaq Ahmad, J**  
**SHABBIR HUSSAIN---Petitioner**  
**Versus**  
**The STATE and another---Respondents**

CrI. Misc. No.12125-BC of 2013, decided on 27th July, 2015.

**Criminal Procedure Code (V of 1898)---**

---S. 497(5)---Penal Code (XLV of 1860), S.489-F---Dishonestly issuing a cheque---Petition for cancellation of bail---Principles---Cancellation of---Accused had issued a cheque for payment of amount, which on being presented to the bank, was dishonoured---In the present case accused was appearing before the court regularly after he was granted bail---Allegation that accused removed original cheque after being released on bail, was mere an accusation which was yet to be proved at trial, which did not provide sufficient grounds for cancellation of bail---Once bail was granted by a competent court, there must be strong and exceptional reasons for cancellation of the same---Grounds required for cancellation of bail, could be that order granting bail, was patently illegal, erroneous, factually incorrect, or it had resulted in miscarriage of justice---None of said grounds, was made out in the present case---Petition for cancellation of bail, was dismissed, in circumstances.

Tariq Bashir's case PLD 1995 SC 34; Subhan Khan v. The State 2002 SCMR 1797; Muhammad Akram v. Zahid Iqbal and others 2008 SCMR 1715; Zafar Iqbal v. Muhammad Anwar and others 2009 SCMR 1488 and Riaz Jafar Natiq v. Muhammad Nadeem Dar and another 2011 SCMR 1708 ref.

Ghulam Farid Sanotra for Petitioner.

Malik Muhammad Jafar DPG with Dilshad ASI for the State.

Zahid Hussain Khan for Respondent No.2.

## **ORDER**

**CH. MUSHTAQ AHMAD, J.**---This petition has been moved seeking cancellation of bail granted to respondent No.2 by learned Additional Sessions Judge, Sargodha vide order dated 20.06.2013.

2. Briefly, the facts leading to institution of present petition are that on the complaint of present petitioner, case was registered under Section 489-F, P.P.C. against respondent No.2 vide FIR No.62 dated 02.02.2013 at Police Station City Sargodha. Allegation levelled against respondent No.2 was that he had issued a cheque bearing No.2514405 dated 15.07.2012 for the payment of Rs.9,00,000/- which on being presented to the bank authorities was dishonoured. Respondent No.2 approached the court seeking pre-arrest bail which was refused to him vide order dated 08.04.2013. He then filed a petition for the same relief before this Court but the same was withdrawn. He was arrested in the case. His post arrest bail moved before trial court was dismissed vide order dated 05.06.2013 whereafter, he filed post arrest bail before Sessions Judge which was entrusted for disposal to a learned Additional Sessions Judge who vide order dated 20.06.2013 allowed the petition and granted post arrest bail to respondent No.2. In the above backdrop, seeking cancellation of bail granted to respondent No.2 has been filed.

3. Learned counsel for the petitioner has argued with emphasis that after grant of bail to respondent No.2, he tempered with prosecution evidence by removing original cheque from the record regarding which a case was also registered under Section 379, P.P.C. against him and that he has misused the concession of bail and that huge amount of Rs.9,00,000/- was involved. Hence, the learned Additional Sessions Judge had not exercised jurisdiction in favour of respondent No.2 keeping in view the law laid down by the superior courts on the subject.

4. Petition has been opposed by learned DPG assisted by learned counsel for the respondent No.2.

5. Heard. Perused.

6. The question for consideration by this Court in the light of contentions advanced by learned counsel for the parties is whether discretion in favour of respondent No.2 was correctly exercised by learned Additional Sessions Judge who granted bail to him and secondly, a case of cancellation of bail was made out in the given facts and circumstances of the case. Under Section 497(5), Cr.P.C., no doubt the court has ample powers to recall bail granted to an accused but this authority has to be exercised in the light of principles laid down by the superior courts on the subject. In the case of Tariq Bashir reported in PLD 1995 SC 34, it was laid down that Section 497, Cr.P.C. divided non bailable offences into two categories i.e.

(i) offences punishable with death, imprisonment for life or imprisonment for 10-years and

(ii) offences punishable with imprisonment for less than 10-years.

It was laid down that principle to be deduced through this provision of law is that in non-bailable offences falling in the second category (offences punishable with imprisonment for less than 10-years), grant of bail is rule and refusal an exception. In this category of cases, bail will be declined only in extra ordinary and exceptional cases. This question again came up for consideration in case of "Subhan Khan v. The State" (2002 SCMR 1797) and the above principle was reiterated. In a case titled "Muhammad Akram v. Zahid Iqbal and others" reported in 2008 SCMR 1715, this question again came for consideration. In the above cited case bail was granted in a murder case by the High Court to which complainant took exception. The Hon'ble Supreme Court held that strong and exceptional grounds were required for cancellation of bail. Court had to see as to whether bail granting order was patently illegal, erroneous, factually incorrect and had resulted in miscarriage of justice. In another case, identical to the case in hand, registered under section 489-F, P.P.C. titled as "Zafar Iqbal v. Muhammad Anwar and others" 2009 SCMR 1488, the principle laid down in Tariq Bashir's case was re-affirmed. In another case titled "Riaz Jafar Natiq v. Muhammad Nadeem Dar and another" reported in 2011 SCMR 1708, it was laid down that where a case fell within non prohibitory clause of section 497, Cr.P.C., the concession of granting bail must be favorably considered and should only be

denied in exceptional cases. The above noted case was also registered under section 489-F, P.P.C., being identical to the case in hand.

7. In the present case, it is found that respondent No.2 is appearing before trial court regularly after he was granted bail on 20.06.2013. The allegation that he removed original cheque after being released on bail, is mere an accusation against him yet to be proved at trial which does not provide sufficient grounds for cancellation of bail.

8. Judicial view is consistent on the point of cancellation of bail that once bail is granted by a competent court there must be strong and exceptional reasons for recalling the same. The grounds required for cancellation of bail may be that order granting bail was patently illegal, erroneous, factually incorrect or it had resulted in miscarriage of justice. None of the grounds mentioned above is made out in this case. Consequently, this petition is dismissed.

HBT/S-131/L Petition dismissed.

**2017 P Cr. L J 699**  
**[Lahore]**  
**Before Qazi Muhammad Amin Ahmed and Ch. Mushtaq Ahmad,**  
**JJ**  
**AURANGZAIB alias GUDDU---Appellant**  
**Versus**  
**The STATE---Respondent**

Criminal Appeal No.156-J and Murder Reference No. 213 of 2011,  
heard on 4th December, 2015.

**Penal Code (XLV of 1860)---**

---Ss. 302(b) & 201---Qatl-i-amd, causing disappearance of evidence of offence---Appreciation of evidence---Benefit of doubt---Brother of the complainant went missing in the year 2006, regarding which complainant got registered FIR, wherein he did not raise suspicion against anybody---On recovery of human skeleton, another FIR was registered under Ss.302 & 201, P.P.C., and accused was arrested on the basis of suspicion---Complainant did not raise suspicion against accused, neither in earlier FIR nor in the FIR registered after recovery of skeleton/dead body---Incident was unseen---Skeleton/dead body, had been recovered prior to arrest of accused---Nothing was recovered or discovered on pointation of accused and the fact of recovery of skeleton/dead body was already in knowledge of Police and witness---Disclosure of accused leading to pointation of place of burying dead body, was inconsequential, in circumstances---Attempt to connect accused by alleged confession made by him while in Police custody, was of no help to prosecution; same could not be used against him---Prosecution, having failed to prove charge against accused beyond reasonable doubt, conviction and sentence awarded to accused by the Trial Court, were set aside; accused was acquitted of the charge by extending him benefit of doubt, and he was released, in circumstances.



Mst. Askar Jan and others v. Muhammad Daud and others 2010 SCMR 1604 and Rehmat Elahi v. Abdul Majeed and others 2012 PCr.LJ 1529 rel.

Aiyan Tariq Bhutta and Pirzada Zaroon Rasheed for Appellant.

Malik Muhammad Jaffer, Deputy Prosecutor General for the State.

Date of hearing: 4th December, 2015.

## **JUDGMENT**

**CH. MUSHTAQ AHMAD, J---**Appellant Aurang-zaib alias Guddu has filed this criminal appeal against judgment dated 28.04.2011 passed by learned Additional Sessions Judge, Lahore, whereby he was convicted under section 302(b), P.P.C. in case FIR No.775/2006 dated 11.10.2006 registered with police station Green Town, Lahore and sentenced to death, along with compensation of Rs.10,00,000/- to be paid to the legal heirs of deceased under section 544-A, Cr.P.C. Appellant was also convicted under section 201, P.P.C. and sentenced to seven years' R.I. with fine Rs.50,000/-, in default of payment of fine, to further undergo SI for six months.

2. FIR was registered on 11.10.2006 on the complaint made by Muhammad Younas under section 365, P.P.C. regarding missing of his brother Muhammad Ashraf who was working in a factory at 54 Industrial Estate, Kot Lakhpat. On 05.03.2010, a human skeleton was recovered from a factory 54/M, regarding which FIR No.139/2010 was registered under sections 302, 201, P.P.C. with police station Green Town, Lahore. Said skeleton was identified by Muhammad Younas, complainant of FIR No.775/2006 as to be that of his brother, Muhammad Ashraf. Therefore, facts as well as documents of case FIR No.139/2010 were converted into file of FIR No.775/2006 by adding sections 302, 201, P.P.C. therein.

3. After completion of investigation, challan was submitted before trial Court, where appellant was charge sheeted, who pleaded not guilty and claimed trial. Prosecution produced twelve witnesses during trial. On conclusion of prosecution evidence, accused was examined under section 342, Cr.P.C. He took the plea that he was falsely involved in this case on the asking of factory owners as they

owed an amount of Rs.15 million to his father. On conclusion of trial, appellant was convicted and sentenced as mentioned above, hence this criminal appeal as well as murder reference.

4. Learned counsel for appellant argued that occurrence was unseen and the complainant did not raise suspicion against appellant for three years and even after the skelton/dead body had been recovered, suspicion was raised by complainant against one Ahsan Mallhi; that fact of identification of dead body is very much doubtful; that there was no motive for the appellant to kill the deceased; that there is no evidence available on record to connect the appellant with commission of alleged offence and the only piece of evidence prosecution has relied upon is alleged pointation by the appellant of place of burial of dead body. Learned counsel further argued that such pointation does not come within ambit of Article 40 of Qanun-e-Shahadat Order, 1984, as such conviction cannot be based on it.

5. On the contrary, learned DPG opposed this appeal contending that appellant was suspected to have committed murder and pointation made by appellant of the place where he buried dead body after murder of complainant's brother was proved by prosecution through cogent evidence. Further argued that prosecution has proved charge against appellant beyond any shadow of doubt, therefore findings recorded by learned trial court are in line with evidence on record.

6. We have heard learned counsel for appellant as well as learned DPG and gone through the record with their assistance.

7. It has been noticed that brother of complainant went missing in the year 2006, regarding which he got registered FIR, wherein he did not raise suspicion against anybody. On recovery of human skeleton from the factory, another FIR No.139/2010 was registered under sections 302, 201, P.P.C. and appellant was arrested on the basis of suspicion. Autopsy was conducted by PW-1 Hamid Saeed, according to whom probable duration between death and postmortem examination was three years. It is admitted position that three persons including brother of complainant were missing from the factory. Skelton was not identifiable, which according to prosecution was identified from

colour of its clothes as that of Muhammad Ashraf, brother of complainant. Investigating Officer appeared in the witness box as PW-9 who stated that three persons were missing from the factory but despite that he did not obtain DNA test. In view of above, identification of dead body in this case was a doubtful affair.

8. Complainant did not raise suspicion against appellant neither in earlier registered FIR nor in the FIR registered after recovery of skeleton/dead body. Investigating Officer (PW-9) admitted that complainant raised suspicion against another person namely Ahsan Mallhi and then against the appellant. It was prosecution version that appellant committed murder of Muhammad Ashraf just to grab money. However, this fact was not proved by producing any oral or documentary evidence. The incident was admittedly unseen and according to prosecution case even nobody had seen the deceased in the company of appellant prior to incident. The only piece of evidence to connect the appellant with commission of alleged offence is pointation by him of the place of burial of dead body. In order to judge veracity of above said piece of evidence, we must have a glance over its evidentiary value in the light of relevant provision of law. It would be pertinent to mention here that brother of complainant was missing since 2006 and a skelton was recovered in the year 2010. Till then appellant was not in picture. He was arrested on suspicion after the skelton had already been recovered. According to Investigating Officer (PW-9) appellant pursuant to his disclosure before him pointed out the place wherefrom dead body was recovered, on 05.03.2010 and in this respect he prepared memo Ex.P-F which was attested by Muhammad Sabir (PW-4) and Ghulam Hussain. Relevant provision of law relating to discovery of a fact in pursuance to disclosure made by an accused while in police custody is Article 40 of Qanun-e-Shahadat Order, 1984, which reads as under:-

"When any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as

relates distinctly to the fact thereby discovered, may be proved".

The above provision of law has been interpreted in various judicial pronouncements. In its landmark judgment in the case of "Mst. Askar Jan and others v. Muhammad Daud and others" reported in 2010 SCMR 1604, the apex Court has provided following guidelines:-

"In order to apply Article of the Order, the prosecution must establish that information given by the accused led to the discovery of some fact deposed by him and the discovery must be of some fact which the police had not previously learnt from any other source and that the knowledge of the fact was first derived from the information given by the accused".

9. We have carefully gone through in detail the facts of the case, the prosecution evidence and the arguments of learned counsel for the parties on the touchstone of principles laid down in the judgment cited supra. Skelton/dead body had been recovered prior to arrest of accused. Nothing was recovered or discovered on his pointation and the fact of recovery of skelton/dead body was already in knowledge of police and witnesses. In the circumstances, disclosure of appellant leading to pointation of place of burying dead body is inconsequential. Attempt to connect the appellant by alleged confession made by him while in police custody coupled with disclosure leading to pointation of the place of recovery of dead body is of no help to prosecution, hence the same cannot be used against him. Above referred view of the apex Court was also followed by a Division Bench of this Court in case titled "Rehmat Elahi v. Abdul Majeed and another" reported in 2012 PCr.LJ 1529.

10. For the reasons recorded above, prosecution has miserably failed to prove charge against appellant beyond reasonable doubt. Consequently, criminal appeal No.156-J of 2011 is hereby allowed and conviction and sentence awarded to appellant through impugned judgment is hereby set aside. Appellant Aurang-zaib alias Guddu is

acquitted of the charge by extending benefit of doubt to him. He be released forthwith if not required in any other case.

11. Murder Reference No.213 of 2011 is answered in negative.

HBT/A-28/L Appeal allowed.

**2017 P Cr. L J 1377**  
**[Lahore]**  
**Before Syed Shahbaz Ali Rizvi and Ch. Mushtaq Ahmad, JJ**  
**RAZIA BIBI---Appellant**  
**Versus**  
**The STATE---Respondent**

Criminal Appeals Nos. 2268, 2274 of 2011 and Murder Reference No.18 of 2012, heard on 24th February, 2016.

**(a) Criminal Procedure Code (V of 1898)---**

---S. 342---Penal Code (XLV of 1860), Ss. 302, 436 & 34---Qatl-i-amd, mischief by fire---Appreciation of evidence---No incriminating evidence against accused, consequence of---Where prosecution possessed no incriminating evidence against accused, his statement / version under S. 342, Cr.P.C. had to be believed in toto---If prosecution failed to prove its case against accused person, the accused was to be acquitted even if he had taken a plea and thereby admitted killing the deceased---Conviction recorded by the Trial Court was set aside.

**(b) Criminal Procedure Code (V of 1898)---**

---S. 342---Penal Code (XLV of 1860), Ss. 302, 436 & 34---Qatl-i-amd mischief by fire---Appreciation of evidence---Statement of accused---Exculpatory statement---Inculpatory statement---Principles---Statement of accused person recorded under S. 342, Cr.P.C. was to be accepted or rejected in its entirety---Where prosecution evidence was found to be reliable and the exculpatory part of the accused person's statement was established to be false it had to be excluded from consideration---Inculpatory part of the accused's statement may be read in support of evidence of prosecution---Statement of convict was to be believed in its entirety as ocular account had been found unreliable---Conviction recorded by Trial Court was set aside.

Mudassar Hussain Butt and Ch. Naveed Akhtar for Appellant.  
Afzal Hussain Rana for the Complainant.

Malik Muhammad Jaffar, Deputy Prosecutor General for the State.  
Date of hearing: 24th February, 2016.

## **JUDGMENT**

**CH. MUSHTAQ AHMAD, J.**---This judgment will dispose of criminal appeals Nos.2268/2011 and 2274/2011 filed by Razia Bibi appellant as well as Murder Reference No.18/2012. Appellant was convicted by learned Additional Sessions Judge, Gujranwala, in case FIR No.405 dated 04.06.2010 registered under sections 302/436/34, P.P.C. at Police Station Tatley Aali vide impugned judgment dated 14.12.2011 and sentenced as under:-

**Death as Ta'zir** under section 302(b) and to pay Rs.5,00,000/- as compensation to the legal heirs of deceased as required under section 544-A, Cr.P.C. and in default of payment, to further undergo S.I for six months.

Feeling aggrieved, appellant preferred above said appeal whereas Murder Reference No.18/2012, under section 374, Cr.P.C. for confirmation of death sentence awarded to convict Razia Bibi is also before us. We propose to decide both the matters through this consolidated judgment.

2. Prosecution case is that on 03.06.2010 at about 02.00 p.m., in the area of Umar Colony, Tatley Aali falling within the territorial jurisdiction of Police Station Tatley Aali, appellant Razia Bibi along with her co-accused (husband) Muhammad Iqbal (since acquitted) sprinkled petrol on the body of Khalid Mahmood and set him on fire due to which his body was burnt. FIR in hand was registered under sections 436/324, P.P.C. Due to precarious condition, he was referred from THQ Hospital Kamonke to Mayo Hospital, Lahore where he died on 07.06.2010 and section 302, P.P.C. was added in the FIR. Motive behind the occurrence as per complainant Muhammad Riaz (PW-1) was that Khalid Mahmood deceased sold out agricultural land to Basharat and received Rs.1,00,000/- from him. Apart from that deceased had also gold ornaments in his possession. Accused committed the murder of Khalid Mahmood deceased in order to

snatch the aforesaid amount and ornaments. The place of occurrence was stated to be the house of Mst. Razia Bibi appellant. Occurrence was witnessed by complainant Muhammad Riaz, Shahzeb and Basharat PWs.

3. PW-4 Munir Hussian SI/I.O on receiving the information about the occurrence, went to Civil Hospital Kamonke, recorded statement of injured Khalid Mahmood vide Ex.PD. On 04.06.2010 after registration of FIR, he visited place of occurrence, prepared site plan and recovery memos. On 07.06.2010 he received information about death of Khalid Mehmood at Mayo Hospital Lahore so offence under section 302, P.P.C. was added in the case. He proceeded to Mayo Hospital Lahore, took the deadbody of deceased into possession and prepared injury statement (Ex.PF) and inquest report (Ex.PH), sent the deadbody for postmortem examination. He arrested appellant Razia Bibi on 10.06.2010. On 17.07.2010 he joined Muhammad Iqbal in investigation who was found innocent in his investigation.

4. PW-8 Dr. Syed Suleman Kazmi M.O medically examined Khalid Mehmood and noted three injuries on his body on 03.06.2010. On 07.06.2010 at about 05.00 p.m., he conducted postmortem examination on the deadbody of deceased Khalid Mahmood. According to him, cause of death in this case was burn injuries, sufficient to cause death in ordinary course of nature due to sepsis and shock. Time between injury and death was approximately 88 hours and between death and postmortem was about 10 hours.

5. After submission of challan, charge was framed against appellant and her co-accused Muhammad Iqbal to which they pleaded not guilty and claimed trial. Ocular account in this case was furnished by complainant Muhammad Riaz PW-1 and Shah Zaib PW-2. Prosecution produced eight witnesses whereas Dr. Misbah Ilyas was examined as court witness. PWs Basharat Ali and Mustafa were given up being unnecessary. Statements of accused under section 342, Cr.P.C. were recorded wherein they denied the charges and professed innocence. Appellant, Razia Bibi, in response to the question why this case against her and why PWs deposed against her, stated as under:-



"I have been falsely implicated in this case. In fact, 6/7 months before the occurrence, the deceased Khalid Mahmood made a friendship with my husband because of that he often used to come to my house. He forced me to marry and developed illicit relations with me. I informed his relatives about the said fact. At the time of occurrence, I was present in my house at second storey and on my refusal to marry and keeping illicit relations with me, the deceased Khalid himself sprinkled the petrol on his body and set himself at fire. I came down to save his life but the deceased intentionally caught hold me and due to this I also suffered burn injuries. The complainant and PWs lodged false FIR against me and my husband co-accused due to personal grudge. I have no nexus with this case. I am innocent. The wife of deceased Mst. Farrah Bibi filed a private complaint against me and my husband and thereafter, she withdrew the same due to false and concocted story."

At conclusion of trial, appellant Razia Bibi was convicted and sentenced as mentioned above whereas her co-accused Muhammad Iqbal was acquitted. Hence, instant reference as well as appeal.

6. Learned counsel for appellant contended that she was innocent and falsely involved in this case due to mala fide intention; that prosecution could not prove the motive; that there were material contradictions in the evidence of eye-witnesses and ocular account did not inspire confidence; that presence of eye witnesses at the place and time of occurrence was doubtful; that PWs did not witness the occurrence but were introduced later on to falsely involve the appellant in this case; that co-accused of appellant was acquitted on the same evidence in this case and appellant was also entitled to acquittal.

7. Conversely, learned Deputy Prosecutor General has supported the impugned judgment on the ground that motive against appellant was proved one and ocular account was corroborated by medical evidence.

8. Arguments heard. Record perused.

9. Muhammad Riaz (PW-1) and Shah Zeb (PW-2) furnished ocular account of the incident which took place at the house of present appellant Mst. Razia Bibi on 03.06.2010 at 02.00 p.m. Case was registered late at night at 01.15 a.m. on the written application of Muhammad Riaz, maternal uncle of Khalid Mahmood deceased. As per prosecution case contained in FIR, on the day of occurrence at 02.00 p.m., complainant and Shah Zeb along with Basharat, brother of deceased Khalid Mahmood (given up PW), were present on a tea stall in village Tatley Aali when they, on hearing noise from the house of present appellant Razia Bibi, went running and in their sight, Muhammad Iqbal (co-accused since acquitted) husband of Razia Bibi sprinkled petrol on Khalid Mahmood whereas Razia Bibi set him on fire with match box. As per version of complainant, he along with Shah Zeb (PW-2) shifted Khalid Mahmood to Hospital at Kamonke where he was provided first aid and then referred to Lahore for further treatment. PW-8 Dr. Syed Suleman Kazmi had attended Khalid Mahmood and medically examined him. As per his statement, injured was brought by Muhammad Iqbal, husband of present appellant (co-accused since acquitted). Complainant in his cross examination stated that he was Government servant and on the day of occurrence went to his office at District Council Office, Gujranwala and came at 10/11 a.m. back at his house. He further stated that on account of his field duty, no attendance register was maintained in the office; that he remained in his house for about 30/60 minutes, when Basharat came to his house and he along with him went to Umar Colony. PW-2 Shah Zeb, who is Khala Zad of deceased, stated in cross-examination that on the day of occurrence, he was posted at Police Lines Gujranwala. On the day of occurrence, he was present in his village and was sitting on the tea stall where Riaz and Basharat also came. They heard alarm from the house of Razia and rushed towards her house and saw the occurrence. It is evident from the statements of both the witnesses that at relevant time, they were Government employees, posted at Gujranwala. The explanation put-forth by them that they gathered at a tea stall for having tea near the house of present appellant, is implausible on the face of it and is not

confidence inspiring for the reason that they being close relative inter se would have preferred having tea at their house and not at a tea stall near the house of occurrence. Moreover, Khalid Mahmood deceased was shifted by Muhammad Iqbal husband of present appellant to hospital as per statement of PW-8 Dr. Syed Suleman Kazmi, not by the witnesses. FIR was also got registered late at night with delay of 11 hours whereas police station was at a distance of one kilometer from the place of occurrence. Presence of complainant Muhammad Riaz and Shah Zeb (PW-2) at the place of occurrence was, therefore, highly a doubtful affair. It is further worth noticing that as per version of both witnesses Riaz and Shah Zeb, Iqbal husband of present appellant sprinkled petrol on Khalid Mahmood (deceased) whereas during investigation it was found that Iqbal was not even present at his house at the time of occurrence. During investigation conducted by PW-4 Munir Hussain SI, it came to light that Khalid Mahmood (deceased) himself poured petrol on his body and set himself on fire. Present appellant Razia Bibi came forward to save him and in the process, she also sustained burn injuries. Presence of both the eye-witnesses being highly doubtful and their version having been found incorrect during investigation, it was not safe to rely on their testimony. Therefore, oral account furnished by them about the incident has to be excluded from consideration. What remains to be considered, is statement of Khalid Mahmood (deceased) made by him in injured condition before the I.O at hospital which is contained Ex.PD available on record and statement of present appellant Razia Bibi recorded under section 342, Cr.P.C. in juxtaposition. Statement of Khalid Mahmood (deceased) was recorded by PW-4 Munir Hussain SI after obtaining fitness certificate from the Doctor through application Ex.PC. Perusal of Ex.PD, reveals that as per version of Khalid Mahmood, then injured, he fell in love with present appellant Razia Bibi, six months prior to the occurrence and two months prior to the incident both of them swore on Holy Qur'an to live together and on the day of occurrence, they went to purchase clothes from Kamonke on his motorcycle. After shopping, they came back at the house of Razia Bibi and after half an hour a dispute arose between them whereafter, Razia Bibi sprinkled petrol on him after taking it from his motorcycle and set him ablaze. The above version of Khalid

Mahmood (deceased) did not sound logical as he could easily avoid the situation by escaping from the house of Razia Bibi (appellant) when she was taking out petrol from his motorcycle, particularly, when she was alone in the house, as per his statement. Version of present appellant contained in her statement recorded under section 342, Cr.P.C. was as under:-

"I have been falsely implicated in this case. In fact, 6/7 months before the occurrence, the deceased Khalid Mahmood made a friendship with my husband because of that he often used to come to my house. He forced me to marry and developed illicit relations with me. I informed his relatives about the said fact. At the time of occurrence, I was present in my house at second storey and on my refusal to marry and keeping illicit relations with me, the deceased Khalid himself sprinkled the petrol on his body and set himself at fire. I came down to save his life but the deceased intentionally caught hold me and due to this I also suffered burn injuries.

Above statement of present appellant being exculpatory, could not be made basis for recording conviction against her. It is settled principle of law that where prosecution possesses no incriminating evidence against an accused, then his statement/version recorded under section 342, Cr.P.C. has to be believed in toto. In a case titled "Azhar Iqbal v. The State" (2013 SCMR 383), the above proposition came up for consideration before the apex Court. It was observed that both the courts below had rejected the version of prosecution in its entirety and had then proceeded to convict and sentence the appellant on the sole basis of his statement recorded under section 342, Cr.P.C. wherein he had advanced the plea of grave and sudden provocation. It had not been appreciated by the learned courts below that the law is quite settled by now that if the prosecution fails to prove its case against an accused person, then the accused person is to be acquitted even if he had taken a plea and had there by admitted killing the deceased. It was further observed that law is equally settled that the statement of an accused person recorded under section 342, Cr.P.C. is to be accepted or rejected in its entirety and where the prosecution's evidence is found to be reliable, and the exculpatory part of the accused person's statement is established to be false and has to be

excluded from consideration, then inculpatory part of the accused person's statement may be read in support of the evidence of the prosecution. Keeping in view the law laid down in the above referred case, the statement of present appellant was to be believed in its entirety as ocular account has been found unreliable. Reference may be made to the cases titled "Khalid Javed v. The State" (2003 SCMR 1419), "Muhammad Yaqoob v. The State" (2000 SCMR 1827) and "The State v. Muhammad Hanif" (1992 SCMR 2047).

10. After reappraisal of evidence, in the light of facts established and law on the subject, we have drawn the inference that charge against present appellant, was not proved by the prosecution. Hence, conviction recorded by the trial court in this case is liable to be set-aside. Consequently, Criminal Appeal No.2268/2011 is allowed, appellant Razia Bibi is acquitted of the charge from this case, she be released forthwith if not required in any case. Murder Reference No.18/2012 is answered in negative and death sentenced awarded to appellant is not confirmed. Criminal Appeal No.2274/2011 was also filed by appellant against her conviction, the same has become infructuous and the same is dismissed.

WA/R-14/L Appeal allowed.

**PLJ 2017 Cr.C. (Lahore) 5**  
**[Multan Bench Multan]**  
**Present: CH. MUSHTAQ AHMAD, J.**  
**GHULAM MOHI-UD-DIN--Petitioner**

**versus**

**STATE and another--Respondents**

CrI. Misc. No. 4785-B of 2016, decided on 27.9.2016.

**Criminal Procedure Code, 1898 (V of 1898)--**

---S. 497(2)--Emigration Ordinance, 1979, Ss. 17/22--Bail, accepted--  
-Further inquiry--No date, time or place was given in complaint  
when amount was paid to accused--FIR was also got registered  
with delay--Main accused who was travel agent had not been  
arrested by I.O. till today--There were sufficient grounds to  
believe that guilt of petitioner needs further probe and his case  
calls for further inquiry--Bail was accepted. [P. 6] A

*Mr. Muhammad Ajmal Kanju*, Advocate for Petitioner.

*Mr. Mushtaq Ahmad Chohan*, Standing Counsel for State.

Date of hearing: 27.9.2016.

**ORDER**

Petitioner seeks post arrest bail in case FIR No. 234 dated 15.07.2016, offence under Sections 17/22 E.O, registered at Police Station FIA Circle Multan.

2. Allegation against the petitioner is that he received an amount of Rs. 4,50,000/- from the complainant on the pretext of providing visa of his son to send him Saudi Arabia but the petitioner provided him a fake visa, hence, this case.

3. Heard. Perused.

4. Perusal of FIR reveals that no date, time or place was given in the complaint when the amount was paid to the petitioner. Complaint was also got registered with delay. Main accused Muhammad Hussain who was the Travel Agent has not been arrested

by the Investigating Officer till today. From the perusal of the available material, it can be noted that there are sufficient grounds to believe that the guilt of the petitioner needs further probe and his case calls for further inquiry.

5. In the light of circumstances mentioned above, this petition is accepted. Petitioner is allowed bail subject to his furnishing bail bonds in the sum of Rs. 2,00,000/- with one surety in the like amount to the satisfaction of learned trial Court.

(A.A.K.)      Bail accepted

**PLJ 2017 Cr.C. (Lahore) 13 (DB)**

**[Multan Bench Multan]**

**Present: QAZI MUHAMMAD AMIN AHMAD AND CH. MUSHTAQ  
AHMAD, JJ.**

**MUHAMMAD SARWAR and others--Appellants**

**versus**

**STATE and others--Respondents**

Crl. A. No. 190 of 2010 and Crl. Rev. No. 38 of 2010,  
M.R. No. 86 of 2010, heard on 7.9.2016.

**Pakistan Penal Code, 1860 (XLV of 1860)--**

----S. 302(b)--Conviction and sentence--Challenge to--Modification in sentence--Quantum of sentence--Bone of contention-- Possession of agricultural land--Appellant firstly entered into agreement to sell with complainant's father after receiving as earnest money and later on, he resiled qua execution of any agreement to sell--A civil suit was filed by complainant's father in Civil Court for its execution in which deceased was one of marginal witnesses--Appellant often used to pressurize deceased not to appear in suit as witness and on his refusal to do so appellant committed his murder--During cross-examination defence put motive to witnesses but remained consistent on their point of view--According to eye-witnesses appellant was armed with .12 bore gun at time of occurrence--During investigation he got recovered .12 bore gun which was not sent to F.S.L. as crime empties collected from place of occurrence were allegedly destroyed by I.O. who was also arrayed as one of accused in complaint but trial Court did not summon him--Anyhow in presence of direct and confidence inspiring ocular account besides positive reports of chemical examiner and serologist non matching of recovered weapon does not adversely affect prosecution version--Before occurrence only civil litigation was pending between parties--Moreover, single fire shot was attributed to appellant--Extreme penalty of death is not justified in given facts and circumstances of case to appellant--While maintaining the



conviction of appellant u/S. 302(b) as tazir and convert the sentence of death into imprisonment for life--Appeal was dismissed. [P. 18] A, B & C

*Mr. Abdul Salam Alvi*, Advocate for Appellant.

*M/s. Khawaja Qaiser Butt, Rana Shakeel Ahmed and Faisal Aziz Chaudhry*, Advocates for Complainant.

*Malik Riaz Ahmed Saghla*, D.P.G. for State.

Date of hearing: 7.9.2016.

## **JUDGMENT**

**Ch. Mushtaq Ahmad, J.--**Appellant Muhammad Sarwar has challenged his conviction and sentence through the above cited criminal appeal. He was tried alongwith eight others by learned Additional Sessions Judge. Sahiwal in private complaint (Exh.PB) filed by *Mst. Naziran Bibi*, complainant (PW-1) under Sections 302, 324, 148, 149, 201, PPC arising out of State case FIR No. 70 dated 11.3.2007 registered under Sections 302, 324, 148, 149, PPC at Police Station Chichawatni, District Sahiwal. State has sought confirmation of death sentence awarded to Muhammad Sarwar, appellant through Murder Reference No. 86 of 2010 whereas *Mst. Naziran Bibi*, complainant has filed Criminal Revision No. 138 of 2010 for enhancement of compensation against Respondents No. 1. We propose to dispose of all these matters through this consolidated judgment.

2. Learned Additional Sessions Judge, Sahiwal *vide* judgment dated 16.2.2010 convicted the appellant under Section 302(b), PPC and sentenced to Death. He was also held liable to pay Rs. 4,00,000/- as compensation to the legal heirs of deceased in terms of Section 544-A, Cr.P.C. and in case of default to further undergo simple imprisonment for six months. His co-accused, namely, Zulfiqar, Muhammad Afzal, Muhammad Mansha, Noor Ahmed, Muhammad Zafar, Muhammad Ashraf, Muhammad Nawaz and Iftikhar *alias* Bhutta have been acquitted.

3. Brief facts as disclosed in complaint (Exh.PB) are that *Mst. Naziran Bibi* (complainant) alongwith her father *Muhammad Ali*, brother *Saleh Muhammad* and husband *Munir Ahmed (deceased)* on 11.3.2007 at 6.00 a.m. (*morning*) was going to irrigate their land situated in Chak No. 108/12-L; that when they reached on the road situated in between Squares No. 49 & 50, they were way laid by accused *Muhammad Sarwar (present appellant)* duly armed with .12 bore gun. *Zulfiqar* armed with .12 bore gun, *Afzal*, *Zafar*, *Muhammad Ashraf Nawaz*, *Muhammad Mansha* and *Noor Muhammad* all armed with Pistols; *Sarwar* accused raised *Lalkara* that he would teach them a lesson for sowing wheat crop and irrigating the land; that complainant's husband *Munir Ahmed* tried to run away but accused *Zulfiqar* and *Iftikhar* caught him by arms while *Muhammad Afzal* and *Nawaz* accused hold him from his legs, then, *Muhammad Sarwar* accused fired at with .12 bore gun which hit *Munir Ahmed* below his right armpit who got injured and fell on the ground; that accused persons then made straight firing at PWs but they saved their lives hiding in a nearby water-course, on seeing the people accused persons while raising *Lalkaras* fled away from the place of occurrence alongwith their weapons. Accused persons left their motorcycle bearing Registration No. MNQ-7569 at the spot.

Motive for the occurrence was that 7/8 years prior to the incident complainant's father *Muhammad Ali* had purchased one and a half acre of agricultural land from *Muhammad Sarwar*, his mother and others from a joint *Khata*; that again *Muhammad Sarwar* sold two *kanals* and 14 *marlas* land to complainant's father through agreement to sell to which deceased husband of the complainant was an attesting witness; that at the time of execution of agreement to sell accused *Muhammad Sarwar* received, Rs. 1,00,000/- as earnest money from her father *Muhammad Ali* (given up PW).

Later on, he resiled from the agreement as a result of which complainant's father filed civil suit against *Muhammad Sarwar* who off and on used to pressurize deceased *Munir Ahmed* to desist from

giving evidence and when he refused to do so, appellant committed his murder.

4. On the above information, I.O./CW-5 investigated the case and submitted report under Section 173, Cr.P.C. Prosecution in order to prove charge produced as many as eight witnesses. PW-1 *Mst. Naziran Bibi*, complainant and PW-2 *Saleh Muhammad* furnished ocular account. CW-5 *Muhammad Zafar, S. I.* and CW-6 *Shahid Farooq, S. I.* were the Investigating Officers of this case. PW-3 *Dr. Abdul Aziz* conducted autopsy on dead body of *Munir Ahmed* and observed one fire-arm punctured wound measuring 4cm x 4cm going deep on back and mid of outer most part of right chest measuring 14cm from vertebral column. It was entry wound. Corresponding laceration was present on shirt and Jersey of the deceased. He opined that death in this case was caused due to shock and haemorrhage under Injury No. 1 which was sufficient to cause death in ordinary course of nature. Probable time that elapsed between injury and death was immediate and between death and post-mortem was 4 to 6 hours. CW-1 *Muhammad Aslam Patwari* prepared scaled site-plan Exh.CW-1/A. The remaining witnesses more or less of formal nature need not be mentioned.

5. On 18.1.2010 after tendering in evidence reports of Chemical Examiner and Serologist (Exh.PH & Exh.PJ) prosecution closed its evidence. Thereafter statement of accused under Section 342, Cr.P.C. was recorded in which present appellant denied the charge and professed his innocence.

6. Learned trial Court after hearing arguments, recorded conviction and awarded sentence to the appellant as mentioned in the opening paragraph of this judgment.

7. Learned counsel for the appellant argued that witnesses were not present at the place of occurrence; that ocular account was not corroborated by medical evidence nor motive was proved against the appellant on record and that co-accused were acquitted on the same set of evidence, therefore, charge was not proved beyond

reasonable doubt against the present appellant; that in fact complainant party already wanted to take forcible possession of agricultural land which was in possession of appellant who had gone to irrigate his land on motorcycle whereas the complainant party assaulted him to take forcible possession of the land; that in fact deceased wanted to inflict a sota blow on head of appellant but PW Saleh Muhammad who had a gun at the relevant time made fire shot upon him which unfortunately hit the deceased on his back near armpit who was very close to the said PW and that learned trial Court has not correctly appreciated the evidence brought on record.

8. Conversely, learned law officer assisted by learned counsel for the complainant submitted that local police gave undue favour to co-accused declaring them innocent so the complainant was forced to file private complaint; that learned trial Judge after due appreciation of evidence produced by the prosecution convicted the accused which finding is not open to any exception; that the eye-witnesses have fully implicated the accused who had no animosity or enmity with the appellant; that the appellant after committing the offence deliberately and intentionally disappeared to face trial; that ocular account is duly supported by medical evidence and that positive reports of Chemical Examine and that of Serologist further corroborate the version of prosecution.

9. Arguments heard. Record perused.

10. It is a case where date, time and venue of the occurrence is not disputed. Incident took place in broad day light. Both the parties were residents of same locality so the issue of mis-identification is not involved in this case. The role attributed to the present appellant was that he made fire shot with .12 bore gun (P7) hitting on back near armpit of Munir Ahmed, deceased. The aforesaid version was duly supported by PW-1 *Mst. Nazeeran Bibi* complainant/widow of deceased and PW-2 Saleh Muhammad, brother-in-law while appearing before the trial Court. Both the eye-witnesses were cross-examined at length by putting different questions regarding receipt and locale of injury by the deceased,

mode of occurrence and their presence at the spot. Both the PWs remained consistent while furnishing ocular account of the occurrence. During cross-examination defence failed to shatter their testimony on material features of the case. PW-3 Dr. Abdul Aziz who provided medical evidence observed one fire-arm punctured entry wound measuring 4cm x 4cm going deep on back and mide of outer most pan of right chest measuring 14cm of deceased Munir Ahmed. It was specifically, attributed to the present appellant, which was sufficient to cause instantaneous death of the deceased. So, medical evidence fully corroborates the ocular account. During trial appellant took the stance that it was a case of accidental fire shot but the trial Court did not believe the same. In this regard defence put different questions to the eye-witnesses but nothing could be brought on record to favour the appellant. The ocular account was further corroborated by CW-5 Muhammad Zafar, S. I./Investigating Officer who prepared injury statement Exh.PG. During cross-examination he stated that injury on the deceased was located on the back, side slightly near the right armpit. So, we are of the considered opinion that prosecution in this case has proved the charge of *Qatl-i-Amd* against Muhammad Sarwar, appellant.

11. The bone of contention in this case was possession of agricultural land measuring 2 *kanals* and 14 *marlas* against which present appellant firstly entered into agreement to sell with complainant's father Muhammad Ali (*given up PW*) after receiving Rs. 1,00,000/- as earnest money and later on, he resiled qua execution of any agreement to sell. As a result thereof a civil suit was filed by complainant's father Muhammad Ali in civil Court for its execution in which deceased was one of the marginal witnesses. It has come in evidence that appellant often used to pressurize the deceased not to appear in the said suit as witness and on his refusal to do so appellant committed his murder. During cross-examination defence put motive to the witnesses but they remained consistent on their point of view. So, finding of trial Court qua motive is upheld.

12. Record shows that after occurrence appellant remained fugitive from law from 11.3.2007 to 23.8.2007. Although

abscondence by itself has no value in absence of any other evidence, but it can be used as corroborative piece of evidence in the presence of substantive piece of evidence. Appellant also left his motorcycle (P8) at the place of occurrence which was taken into possession by CW-5/I.O. *vide* recovery memo. Exh.PD. Moreover the plea taken by the appellant during trial in his statement under Section 342, Cr.P.C. was not established. Bald suggestions put to the prosecution witnesses regarding defence version were not supported by any cogent evidence.

13. According to eye-witnesses appellant Muhammad Sarwar was armed with .12 bore gun at the time of occurrence. During investigation he got recovered .12 bore gun (P7) which was not sent to Forensic Science Laboratory as the crime empties collected from the place of occurrence were allegedly destroyed by the I.O./CW-5 who was also arrayed as one of the accused in complaint (Exh.PB) but learned trial Court did not summon him. Anyhow in the presence of direct and confidence inspiring ocular account besides positive reports of Chemical Examiner and Serologist the non matching of recovered weapon does not adversely affect the prosecution version.

14. So far as quantum of sentence is concerned it is to be noticed that before the said occurrence only civil litigation was pending between the parties. Moreover, single fire shot was attributed to present appellant. He did not repeat the same. In our opinion extreme penalty of death is not justified in the given facts and circumstances of the case to the appellant. Consequently, while maintaining the conviction of appellant Muhammad Sarwar under Section 302(b), PPC as Tazir we convert the sentence of death into Imprisonment for life. Subject to above modification this appeal is dismissed.

15. Resultantly, death sentence awarded to appellant Muhammad Sarwar is not confirmed. Murder Reference No 86 of 2.010 is answered in Negative.

16. No ground for enhancement of compensation is made out. Consequently Criminal Revision No. 138 of 2010 is dismissed.

(A.A.K.) Appeal dismissed

**PLJ 2017 Cr.C. (Lahore) 19**  
**[Multan Bench Multan]**  
**Present: CH. MUSHTAQ AHMAD, J.**  
**MUHAMMAD IBRAHIM--Petitioner**  
**versus**  
**STATE and another--Respondents**

CrI. Misc. No. 2373-B of 2016, decided on 21.9.2016.

**Criminal Procedure, 1898 (V of 1898)--**

---S. 497(2)--Pakistan Penal Code, (XLV of 1860), Ss. 302/34/109--  
Bail, grant of--Further inquiry--Qatl-e-amd--Nominated  
petitioner alongwith two male persons two accused wife of  
deceased while taking totally different stance and alleged that  
he alongwith came out from their house for prayer when they saw  
petitioner armed with .30 bore pistol, and co-accused armed with  
.30 bore pistol standing near cot of deceased and accused made  
fire shot which resulted into death of deceased--So, prosecution  
has taken totally a different stance in conflict with FIR case which  
makes his version doubtful--Case of petitioner *prima facie* falls  
within ambit of further inquiry--Bail was accepted. [P. 20] A

*Kh. Qaiser Butt*, Advocate for Petitioner.

*Ch. Ahmad Raza*, Addl.A.G. for State.

*Sh. Muhammad Aslam and Mr.*

*M. Asghar Hayat Haraj*, Advocates for Complainant.

Date of hearing: 21.9.2016.

**ORDER**

Muhammad Ibrahim petitioner seeks post arrest bail in case F.I.R No. 321 dated 08.10.2014, under Sections 302/109/34, P.P.C. registered at Police Station Mehmood Kot, District Muzaffargarh.

2. Briefly stated the facts of case are that on 8.10.2014 at 5.30 a.m. two unknown accused committed murder of Muhammad Siddique brother of complainant and later on present petitioner was involved in this case on the basis of supplementary statements of the complainant and PWs.



3. Arguments heard. Record perused.

4. Record shows that initially FIR was registered with the allegation that on 08.10.2014 in the early morning at 5.30 a.m. he heard a voice of fire shot; on this he alongwith Muhammad Musa and Hafiz Khadim Hussain came out and they saw two unknown persons running towards sugarcane field. They found that Muhammad Siddique who fell in blood after sustaining fire-arm injury on left side of his head and died at the spot. On the same day, on the basis of supplementary statements of complainant and PWs present petitioner alongwith two accused were implicated in this case with specific weapons and role was also assigned to them. After registration of case, investigation was conducted but the complainant being disagreed filed a private complaint.

5. In complaint case filed by complainant, he nominated present petitioner alongwith two accused Niaz and *Mst.* Najma Bibi wife of the deceased while taking totally different stance and alleged that he alongwith Muhammad Musa and Hafiz Khadim Hussain came out from their house for prayer when they saw the present petitioner Muhammad Ibrahim armed with .30 bore pistol, Muhammad Niaz armed with .30 bore pistol standing near cot of Muhammad Siddique deceased and present petitioner made fire shot which resulted into death of Muhammad Siddique deceased. So, complainant has taken totally a different stance in conflict with FIR case which makes his version doubtful. In view of above, case of the petitioner *prima facie* falls within the ambit of further inquiry.

6. In the light of circumstances indicated above, this petition is accepted and petitioner is allowed bail subject to his furnishing bail bonds in the sum of Rs. 2,00,000/- with one surety in the like amount to the satisfaction of learned trial Court.

(A.A.K.)      Bail accepted

**PLJ 2017 Cr.C. (Lahore) 57 (DB)**  
**[Multan Bench Multan]**  
**Present: QAZI MUHAMMAD AMIN AHMED AND**  
**CH. MUSHTAQ AHMAD, JJ.**  
**MUHAMMAD IRFAN--Appellant**  
**versus**  
**STATE--Respondents**

Crl. A. No. 728-J of 2010 and M.R. No. 74 of 2010, heard on 5.9.2016.

**Pakistan Penal Code, 1860 (XLV of 1860)--**

---S. 302(b)--Conviction and sentence--Challenge to--Modification in sentence--Quantum of sentence--According to eye-witnesses appellant was armed with .30 bore pistol at time of occurrence--During investigation he got recovered pistol which was sent to F.S.L. for comparison with two empties collected from place of occurrence by I.O. at time of his first visit of place of occurrence--According to report of FSL crime empties were found wedded with said pistol--Similarly report of serologist regarding blood stained earth was also found positive--Ocular account was further corroborated by recovery of weapon--Prosecution has proved charge of *Qatl-i-Amd* against appellant--So far as quantum of sentence that motive is not established on record--As per statement of deceased forbade appellant to visit his poultry farm and two days prior to occurrence appellant came to poultry farm and on gun point appellant warned his servant to remain mum, however, he told deceased about his visit to poultry farm but PW in his statement right from first day till recording of his statement not uttered a single word about motive--So such part of occurrence remained shrouded in mystery--A case of, mitigation is made out--While maintaining conviction recorded against appellant under Sections 302(b) and 337-F(v), PPC as Tazir, convert sentence of death into imprisonment for life--Appeal was dismissed. [Pp. 60 & 61] A & B

*Prince Rehan Iftikhar Sheikh*, Advocate for Appellant.

*Ch. Muhammad Sharif*, Advocate for Complainant.

*Mr. Riaz Ahmed Saghla*, Deputy Prosecutor General for State.  
Date of hearing: 5.9.2016

## **JUDGMENT**

**Ch. Mushtaq Ahmad, J.--**Having received guilty verdict on the charge of homicide and causing fire-arm injury to PW-2 Master Abdul Qadoos, Muhammad Irfan, appellant has challenged his conviction and sentence through the above cited criminal appeal. He was tried by learned Additional Sessions Judge, Multan in case FIR No. 143 dated 7.4.2009 under Sections 302, 337-F(v), PPC registered at Police Station Qadirpur Raan, Multan. Besides this appeal learned trial Court has sent Murder Reference No. 74 of 2010 for confirmation of death sentence awarded to the appellant. We propose to dispose of both these matters through this single judgment.

2. Learned Additional Sessions Judge, Multan *vide* judgment dated 21.1.2010 convicted the appellant under Section 302(b), PPC and sentenced to Death. He was held liable to pay Rs. 1,00,000/- as compensation to the legal heirs of deceased Abdul Haq in terms of Section 544-A, Cr.P.C. and in default thereof to undergo further simple imprisonment for six months. He was also convicted u/S. 337-F(v), P.P.C. to 5-Years R.I. and pay Daman of Rs. 30,000/- for causing fire-arm injury to Master Abdul Qadoos, injured PW-2.

3. Complaint (Exh.PA) was lodged by Inamul Haq *alias* Nomi (PW-1) son of Abdul Haq (deceased). He reported to Bashir Ahmed, S.I. (PW-12) stating therein that on 6.4.2009 at 11.00 p.m. (night) he alongwith his father came at their poultry farm situated near Pul Churianwali Qadirpur Raan, Multan from where he proceeded to purchase some commodities leaving his father Abdul Haq in the company of his uncle Master Abdul Qadoos, Khalid, Muhammad Waseem and Muhammad Ramzan; that all of a sudden he heard noise in the poultry farm, he came back and entered the room where he saw Muhammad Irfan (present appellant) duly armed with .30 bore Pistol quarrelling with his father and uncle Master Abdul Qadoos; that within his sight he fired at his father with

pistol which hit on left flank of his father whereas second fire shot by him hit Master Abdul Qasood on his right elbow; that complainant's father succumbed to the injury at the spot whereas Master Abdul Qadoos was injured; that PWs tried to apprehend the accused but he ran away towards Mauza Bagh brandishing his weapon in the air. On above information instant case was registered at 12.20 a.m. (night).

4. Police investigated the case and submitted report under Section 173, Cr.P.C. Prosecution in order to prove charge produced as many as twelve witnesses. PW-1 Inamul Haq *alias* Nomi, complainant and injured PW-2 Master Abdul Qadoos provided ocular account. PW-5 Muhammad Bilal, C-315 is the recovery witness of .30 bore Pistol (P4). PW-12 Bashir, S. I. conducted the investigation of this case. PW-8 Dr. Mukhtar Ahmad conducted autopsy on dead body of Abdul Haq and observed one entry wound on back of left chest and on outer side 15cm on left of midline 35cm below left shoulder girdle level. In his opinion cause of death was Injury No. 1 resulting in excessive hemorrhage which led to shock which was sufficient to cause death in ordinary course of nature. Probable time between injury and death was about 15 to 30 minutes whereas between death and post-mortem report was 12 to 24 hours. PW-7 Dr. Shahid Mehmood medically examined Master Abdul Qadoos (PW-2).

5. After tendering in evidence reports of Chemical Examiner Exh.PN, Serologist Exh.PO and FSL Exh.PQ prosecution evidence was closed on 13.1.2010. Thereafter statement of accused under Section 342, Cr.P.C. was recorded in which he simply denied the charge and professed his innocence.

6. Learned trial Court after hearing arguments, recorded conviction and awarded sentence to the appellant Muhammad Irfan as mentioned in the opening paragraph of this judgment.

witness occurrence; that PWs could not identify the culprit in the dark night; that appellant was falsely implicated in this case and

that prosecution in this case had failed to prove charge against the appellant beyond reasonable doubt, therefore, he was entitled to clean acquittal.

8. Conversely learned law officer assisted by learned counsel for the complainant has opposed this appeal contending that presence of eye-witnesses was well explained; that the incident was promptly reported to the police and it being a case of single accused there was no chance of false implication particularly when the injured PW Master Abdul Qadoos (PW-2) had received fire-arm injury at the hands of present appellant from a close range and he could easily identify the appellant during occurrence; that ocular account was fully corroborated by medical evidence as well as report of FSL and that appeal was liable to be dismissed.

9. Arguments heard. Record perused.

10. Incident took place on 6.4.2009 at about 11.00 p.m. thereafter within an hour occurrence was reported to the police and statement (Exh.PA) of Inamul Haq *alias* Nomi, complainant was recorded at 12.05 a.m. on the same night. In police diary it is mentioned that Rapt No. 29 was lodged at about 12.20 p.m. meaning thereby that it was a promptly lodged F.I.R. excluding possibility of false implication. It is a case in which single accused was nominated with specific role. The presence of PW-1 and PW-2 at the time of occurrence was well explained in the prosecution evidence. The role attributed to the appellant was that he made fire shot with his .30 bore pistol (P4) hitting on left flank of Abdul Haq, deceased due to which he died at the spot whereas the second fire shot hit PW-2 Master Abdul Qadoos on his right elbow who got injured. The aforesaid version was duly reiterated by the eye-witnesses i.e. PW-1 Inamul Haq *alias* Nomi, complainant and PW-2 Master Abdul Qadoos while appearing before the trial Court. Both the witnesses were cross-examined regarding receipt of injury by the deceased, mode of occurrence and their presence at the spot but the witnesses remained consistent while furnishing ocular account of the occurrence. PW-8 Dr. Mukhtar Ahmad conducted autopsy and noted

one entry wound on back of left chest which was specifically attributed to the appellant and according to opinion of PW-8 it was sufficient to cause death of the deceased. Likewise PW-7 Dr. Shahid Mehmood Bokhari examined injured Master Abdul Qadoos (PW-2) and observed two injuries on his right elbow which too was attributed to the present appellant. So, ocular account was corroborated by medical evidence.

11. According to eye-witnesses appellant Muhammad Irfan was armed with .30 bore pistol at the time of occurrence. During investigation he got recovered pistol (P4) which was sent to Forensic Science Laboratory for comparison with two empties collected from the place of occurrence by Investigating Officer at the time of his first visit of the place of occurrence. According to the report of FSL (Exh.PQ) the crime empties were found wedded with said pistol. Similarly the report of Serologist (Exh.PO) regarding blood stained earth was also found positive. In this way, ocular account was further corroborated by recovery of weapon. So, we are of the considered opinion that prosecution in this case has proved the charge of *Qatl-i-Amd* against Muhammad Irfan, appellant.

12. So far as quantum of sentence is concerned it is on record that motive is not established on record. As per statement of PW-2 deceased forbade the appellant to visit his poultry farm and two days prior to the occurrence appellant came to the poultry farm and on gun point appellant warned his servant to remain mum, however, he told the deceased about his visit to poultry farm but PW-1 in his statement right from the first day till the recording of his statement not uttered a single word about motive. So this part of the occurrence remained shrouded in mystery. In our view a case of mitigation is made out. Consequently, while maintaining the conviction recorded against appellant under Sections 302(b) and 337-F(v), PPC as Tazir, we convert the sentence of Death into Imprisonment for life with benefit of Section 382-B, Cr.P.C. Subject to above modification this appeal is dismissed.

13. Resultantly, death sentence awarded to appellant Muhammad Irfan is not confirmed. Murder Reference No. 74 of 2010 is answered in Negative.

(A.A.K.)      Appeal dismissed

**PLJ 2017 Cr.C. (Lahore) 62 (DB)**  
**[Multan Bench Multan]**  
**Present: QAZI MUHAMMAD AMIN AHMED AND**  
**CH. MUSHTAQ AHMED, JJ.**  
**SAFDAR HUSSAIN--Appellant**  
**versus**  
**STATE--Respondent**

Crl. A. No. 475 of 2010, M.R. No. 122 of 2010, heard on 27.9.2016.

**Pakistan Penal Code, 1860 (XLV of 1860)--**

---S. 302(b)--Conviction and sentence--Challenge to--Quantum of sentence--Sentence was altered--Accused who was husband of deceased lady was adamant to bring her home as she came to house of her parents after having dispute with accused on account of his secretly solemnizing marriage--Accused also gave her beating due to which eight days prior to occurrence she left house of accused alongwith her two minor children--Except statement of PW complainant there is no evidence available on record to support allegations qua maltreatment to deceased by appellant, depriving her from gold ornaments and solemnizing second marriage without her consent--Regarding motive PW did not utter a single word--Accused was father of his two children left by deceased--Appellant was inclined to take his wife to his home but she refused, it aggravated situation which ultimately led to unfortunate incident--Death penalty was not warranted and alternate sentence of imprisonment for life was sufficient to meet ends of justice--Court was inclined to convert death sentence of appellant on two counts into imprisonment for life on each count--However, remaining sentences under Sections 324, 337-A(i), PPC alongwith amounts of compensation shall remain intact--All sentences shall run concurrently with benefit of Section 382-B, Cr.P.C.--Appeal was dismissed. [Pp. 66 & 67] A

*Mr. Mehroz Aziz Khan Niazi, Advocate for Appellant.*

*Malik Riaz Ahmed Saghla, Deputy Prosecutor General for State.*



*Rana Muhammad Nadeem Kanju*, Advocate for Complainant.

Date of hearing: 27.9.2016

## **JUDGMENT**

**Ch. Mushtaq Ahmad, J.--**Appellant Safdar Hussain has challenged his conviction and sentence through the above cited criminal appeal. He alongwith two others was tried by learned Additional Sessions Judge, Lodhran in private complaint filed by Jafar Hussain Shah under Sections 302, 324, 109, 34, PPC arising out of State case *vide* FIR No. 114 dated 11.4.2007 registered under Sections 302, 324, PPC at PS City, Lodhran. State has sought confirmation of death sentence awarded to the appellant through Murder Reference No. 122 of 2010. We propose to dispose of both these matters through this consolidated judgment.

2. Learned Additional Sessions Judge, Lodhran *vide* his judgment dated 26.4.2010 convicted the appellant under Section 302(b), PPC as Ta'zir and sentenced to Death on two counts for causing *Qatl-i-Amd* of two daughters of complainant, namely, Khadija Bibi and Siddiqa Bibi with payment of Rs. 4,00,000/- as compensation to the legal heirs of both deceased in terms of Section 544-A, Cr.P.C. He was also convicted u/S. 324, PPC and sentenced to 10-Years R.I. with fine of Rs. 50,000/- for launching murderous assault on the life of injured PW-3 Qamar Hussain. He was further convicted u/S. 337-A(i), PPC and sentenced to 3-Years R.I. as Ta'zir with Daman of Rs. 50,000/- for causing injury declared as 'Ghair Jaifah' on the person of PW-3. The remaining accused, namely, Ali Raza and Mureed Hussain were acquitted by extending them benefit of doubt.

3. Brief facts as disclosed in private complaint (Exh.PB) are that on 6.3.2007 he alongwith Abid Hussain was in Lodhran City while his daughters, namely, Khadija Bibi (pregnant of 18 to 20 weeks) and Siddiqa Bibi alongwith her brother Qamar Hussain came for shopping in Lodhran City to whom complainant and said Abid Hussain saw while de-boarding from Mazda Van; that they too started walking behind them at a distance of 50/60 feet; that on the same day at 12.30 p.m. as soon as they reached near main gate of Girls College, Lodhran whereas complainant and Abid Hussain were

also reached there near stadium gate when all of a sudden Safdar Hussain and Raza Ali both armed with Pistols emerged from broken wall of stadium; that Safdar Hussain fired at complainant's son Qamar Hussain which hit on his left arm and he fell down. When Siddiq Bibi (deceased) tried to run away appellant repeated fire shot which hit on her back and she too fell on the ground. Then, Safdar Hussain, (appellant) started indiscriminate firing out of which some fire shots hit Khadija Bibi (deceased) on left side of her neck near eye, on right arm and chest. After receiving multiple fire shots she also fell on the ground smeared in blood. The entire occurrence was witnessed by PW-2 and PW-4 from main door of the stadium. Thereafter accused decamped from the place of occurrence with their weapons.

4. On the above information, I.O. investigated the case and submitted report under Section 173, Cr.P.C. However being dissatisfied over police investigation Jafar Hussain, complainant filed private complaint. Prosecution in order to prove charge produced as many as 10 witnesses.

5. After tendering in evidence reports of F.S.L (Exh.PN) prosecution closed its evidence on 19.4.2010. Thereafter statement of appellant under Section 342, Cr.P.C. was recorded in which he simply denied the charge and professed his innocence.

6. Learned trial Court after hearing arguments, recorded conviction and awarded sentence to the appellant as mentioned in the opening paragraph of this judgment.

7. Learned counsel for the appellant argued that the prosecution failed to prove the motive; that there is material contradictions between ocular account and the medical evidence; that complainant made dishonest improvements in the private complaint just to cover the lacunas; that the story introduced in State case was entirely different as alleged in the private complaint coupled with the fact that he graduated number of accused from one to three; that the eye-witnesses could not establish their presence at the place of occurrence at the relevant time and that recovery of .30 bore pistol is planted upon the appellant.

8. Conversely, learned law officer assisted by learned counsel for the complainant submitted that prosecution has proved its

case by direct evidence furnished by the eye-witnesses including injured PW-3 Qamar Hussain; that defence has failed to prove any animosity or ill will against the appellant to falsely implicate him; that learned trial Judge after due appreciation of evidence convicted the appellant which finding is in line with ocular account supported by medical evidence. So, this appeal is liable to be dismissed.

9. Arguments heard. Record perused.

10. Ocular account was furnished by PW-2 Jafar Hussain Shah, (complainant), injured PW-3 Qamar Hussain and PW-4 Syed Abid Hussain Shah. All the three witnesses with one voice categorically and in a straight forward manner stated that on the day of occurrence at 12.30 p.m. Safdar Hussain, accused duly armed with .30 bore Pistol emerged from broken wall of Stadium near Girls College, Lodhran and fired at PW-3 Qamar Hussain which hit on his left arm and he fell down. When Siddiqa Bibi (deceased) tried to run away appellant repeated fire shot which hit on her back and she too fell on the ground. Then, Safdar Hussain, appellant started indiscriminate firing out of which some fire shots hit Khadija Bibi (deceased) on left side of her neck near eye, on right arm and chest. After receiving multiple fire shots she also fell on the ground smeared in blood. The entire occurrence was witnessed by PW-2 and PW-4 from main door of the stadium. Thereafter accused decamped from the place of occurrence with his weapon. No doubt it was a day light occurrence. Present appellant was son-in-law of complainant so mistaken of identity is not involved in this case. All the three witnesses including injured PW-3 who was the star witness of the incident explained their presence at the place of occurrence at the relevant time. PW-3 in his examination chief stated that on the fateful day he alongwith sisters, Khajida and Siddiqa came to Lodhran City for purchasing articles and when they were crossing the main gate of Girls College, Lodhran present appellant open fire upon them due to which his both sisters had died whereas he got injured. At that time PW-2 and PW-4 were at a distance of 50 feet from the deceased from where they witnessed the incident. So, their testimony cannot be doubted on any stretch of imagination. Defence put so many questions regarding receipt and

locale of injuries received by both the deceased, mode of occurrence and their presence at the spot but the witnesses remained firm on their stand. During arguments learned counsel for the appellant raised objection that all witnesses were closely related although occurrence took place in a broad day light among so many people but none came forward to support prosecution version. In this case two ladies were murdered on a public road whereas the third one got injured by the appellant in such like heinous offences people often avoid to become witness on the cost of enmity with accused persons. So, mere relationship of witnesses is insufficient to discard their testimony unless element of enmity with the accused to falsely implicate is brought on record. Medical evidence in this case was furnished, by PW-11 Dr.Shahida Zareen who on 6.3.2007 conducted autopsy on dead body of Siddiq Bibi and found one entry wound from back of the deceased making its exit from front of chest. She opined that it was a bullet injury which was sufficient to cause death of the deceased. This injury was specifically attributed to the present appellant. On the same day at 3.30 p.m. PW-11 conducted autopsy on dead body of Khadija Bibi (wife of present appellant) and observed same injuries as alleged by the prosecution witnesses in their statements as well as in complaint (Exh.PB). Doctor further opined that deceased lady was pregnant about 18-20 weeks and on dissection uterus foetus of about 18 weeks was recovered from her body as dead. All these injuries were specifically attributed to the appellant. During cross-examination she stated that deceased Khadija was fired by more than one persons according to duration of causing injuries and its time but to the very next she denied the suggestion that she had stated so just to strengthen the prosecution case. On the same date PW-8 Dr.Riaz Ahmed examined injured Qamar Hussain and observed three injuries out of them Injury No. 2 was on back of left elbow which too was attributed to the present appellant. Same was the deposition of eye-witnesses. So, medical evidence is in line with ocular account.

11. During interrogation appellant got recovered .30 bore Pistol (P1) but in absence of crime empties the report of FSL is in consequential. However, injury statements as well as inquest reports

of both deceased ladies fully corroborate prosecution case qua date, time and venue of the occurrence.

12. As far as quantum of sentence is concerned, it has come in evidence that present appellant who was husband of deceased lady Khadija Bibi was adamant to bring her home as she came to the house of her parents after having dispute with appellant on account of his secretly solemnizing marriage with one Manzooran Mai. Besides this, appellant also gave her beating due to which eight days prior to the occurrence she left the house of appellant alongwith her two minor children. Except statement of PW-2 complainant there is no evidence available on record to support allegations qua maltreatment to Khadija Bibi by the appellant, depriving her from gold ornaments and solemnizing second marriage without her consent. Regarding motive PW-3 Qamar Hussain Shah did not utter a single word. Moreover, appellant is father of his two children left by deceased Khadija Bibi. Record further shows that appellant was inclined to take his wife Khadija Bibi to his home but she refused, it aggravated the situation which ultimately led to unfortunate incident. In this backdrop, in our view, death penalty was not warranted and alternate sentence of imprisonment for life was sufficient to meet the ends of justice. Therefore, we are inclined to convert death sentence of appellant on two counts into imprisonment for life on each count. However, remaining sentences under Sections 324, 337-A(i), PPC alongwith amounts of compensation shall remain intact. All the sentences shall run concurrently with benefit of Section 382-B, Cr.P.C. With above modification, Criminal Appeal No. 475 of 2010 is **dismissed**.

13. As a sequel to the above, Murder Reference No. 122 of 2010 for confirmation of death sentence on two counts to convict Safdar Hussain is answered in Negative.

(A.A.K.) Appeal dismissed

**PLJ 2017 Cr.C. (Lahore) 74 (DB)**  
**[Multan Bench Multan]**  
**Present: QAZI MUHAMMAD AMIN AHMAD AND**  
**CH. MUSHTAQ AHMAD, JJ.**  
**IFTIKHAR alias Puppi and another--Appellants**  
**versus**  
**STATE--Respondent**

Crl. A. No. 374-J of 2011 and M.R. No. 118 of 2010,  
heard on 3.10.2016.

**Pakistan Penal Code, 1860 (XLV of 1860)--**

----Ss. 302(b) & 394--Conviction and sentence--Challenge to--  
Offence of robbery--Firstly, they were charged on account of  
committing robbery by snatching motorcycle, cash amount and  
gold ring and voluntarily causing hurt to deceased an offence  
punishable under Section 394, PPC and secondly, that they  
committed *Qatl-e-Amd* of deceased in furtherance of common  
intention by causing grievous hurt through fire-arm weapon--After  
recording evidence trial judge proceeded to decide case--  
Appellants were found connected with offence by which they were  
charged u/S. 302/34, PPC of committing *Qatl-e-Amd* of deceased--  
In operative part of judgment trial Court only convicted appellant  
for committing murder of deceased under Section 302(b), PPC and  
sentenced him to death--Impugned judgment is silent about  
criminal liability of appellant--Neither he was acquitted on charge  
of *Qatl-e-Amd* of deceased nor convicted--It was required under  
law (Section 367, Cr.P.C.) either to acquit or convict appellant--  
Community of intention as contemplated u/S. 34, PPC was an  
important question which has been left undecided--Impugned  
judgment was set aside and case was remanded. [Pp. 75 &  
76] A & B

*M/s* *Prince Rehan Iftikhar Sheikh*  
*and Rana Jehanzaib, Advocates for Appellants.*

*Malik Riaz Ahmed Saghla*, Deputy Prosecutor General for State.

*Mahr Zauq Muhammad Sipra*, Advocate for Complainant.

Date of hearing: 3.10.2016

## **JUDGMENT**

**Ch. Mushtaq Ahmad, J.--**Iftikhar *alias* Puppi and Nasir, appellants have challenged their conviction and sentences through the above cited criminal appeal. They were tried in case FIR No. 430 dated 8.12.2009 under Sections 302, 394, PPC registered at Police Station Saddar Chichawatni, District Sahiwal. On culmination of trial, learned Additional Sessions Judge, Chichawatni *vide* judgment dated 19.4.2010 convicted and sentenced the appellants as under:--

### **IFTIKHAR ALIAS PUPPI**

Convicted u/S. 302(b), PPC and sentenced him to Death for committing *Qatl-e-Amd* of Muhammad Ashraf, deceased with payment of Rs. 5,00,000/- to legal heirs of deceased in terms of Section 544-A, Cr.P.C. and in the event of default thereof to undergo further simple imprisonment for six months.

Convicted u/S. 394, PPC and sentenced to Imprisonment for life with fine of Rs. 50,000/- and in the event of default thereof to undergo further simple imprisonment for six months with benefit of Section 382-B, Cr.P.C.

### **NASIR ALI**

Convicted u/S. 394, PPC and sentenced to Imprisonment for life with fine of Rs. 50,000/- and in the event of default thereof to undergo further simple imprisonment for six months with benefit of Section 382-B, Cr.P.C.

2. State has also preferred Murder Reference No. 118 of 2010 for confirmation of death sentence awarded to the convict Iftikhar *alias* Puppi. We propose to dispose of both these matters through this consolidated judgment.

3. During arguments it has been noticed that present appellants were indicted on 22.1.2010 by learned Additional Sessions Judge, Chichawatni. Firstly, they were charged on account of committing robbery by snatching motorcycle, cash amount and gold ring and voluntarily causing hurt to Muhammad Ashraf an offence punishable under Section 394, PPC and secondly, that they committed *Qatl-e-Amd* of Muhammad Ashraf in furtherance of common intention by causing grievous hurt through fire-arm weapon. After recording evidence learned trial Judge proceeded to decide the case *vide* impugned judgment dated 19.4.2010. Present appellants were found connected with the offence by which they were charged u/S. 302/34, PPC of committing *Qatl-e-Amd* of Muhammad Ashraf. In the operative part of judgment learned trial Court only convicted appellant Iftikhar *alias* Puppi for committing murder of Muhammad Ashraf, deceased under Section 302(b), PPC and sentenced him to death with a direction to pay compensation of Rs. 5,00,000/- to legal heirs of deceased under Section 544-A, Cr.P.C. The impugned judgment is silent about criminal liability of appellant Nasir Ali. Neither he was acquitted on the charge of *Qatl-e-Amd* of Muhammad Ashraf nor convicted.

4. On the above point, impugned judgment is vague. It was required under the law (Section 367, Cr.P.C.) either to acquit or convict the appellant Nasir Ali. Community of intention as contemplated u/S. 34, PPC was an important question which has been left undecided.

5. As a sequel to the above, impugned judgment dated 19.4.2010 passed by learned Additional Sessions Judge, Chichawatni is set aside and case is remanded to the trial Court for re-writing of judgment keeping in view the above noted aspect of the case after providing an opportunity of hearing to the parties within three months from receipt of certified copy of this judgment along with record.



6. Consequently, death sentence awarded to convict Iftikhar *alias* Puppi is not confirmed. Murder Reference No. 118 of 2010 is answered in Negative.

(A.A.K.) Case remanded

**PLJ 2017 Cr.C. (Lahore) 133**  
**[Multan Bench Multan]**  
**Present: CH. MUSHTAQ AHMAD, J.**  
**MUHAMMAD HAROON--Petitioner**  
**versus**  
**STATE & another--Respondents**

CrI. Misc. No. 2397-B of 2016, decided on 20.6.2016.

**Criminal Procedure Code, 1898 (V of 1898)--**

---S. 497--Pakistan, Penal Code, (XLV of 1860), Ss. 33-A(i) & (iii), 337(Lii) & 34--Bail, grant of--Further inquiry--Painful swelling on nasal cavity--Delay of--**Held:** Delay of 20-days in lodging FIR remained unexplained on part of prosecution--Accused had already joined investigation and was no more required for purpose of investigation--Guilt of accused needs further probe and his case calls for further inquiry--Bail was allowed. [P. 134] A

*Rana Asif Saeed*, Advocate for Petitioner.

*Mr. Ahmad Raza Ch.* APG for State.

*Mr. Arab Hassan Asif*, Advocate for Complainant.

Date of hearing: 20.6.2016.

**ORDER**

Petitioner Muhammad Haroon sought post arrest bail in case FIR No. 276 dated 21.11.2014, offence under Sections 337-A(i), A(iii), L(ii)/34, PPC, registered at Police Station Abdul Hakeem, District Khanewal.

2. Allegation in brief against petitioner is that he gave fist blow on the nose of complainant resulting into fracture thereof.

3. Heard. Perused.

4. It is evident from the contents of FIR that only one fist blow on the nose of complainant was attributed to present petitioner. In the MLC of complainant, Injury No. 2 was noted as

painful swelling on nasal cavity, it was 1 cm from base of nose. Delay of 20-days in lodging the FIR remained unexplained on the part of prosecution. Petitioner has already joined investigation and is no more required for the purpose of investigation. From the material available on record, guilt of petitioner needs further probe and his case calls for further inquiry. Resultantly, this petition is allowed and petitioner shall be released on bail subject to his furnishing bail bonds in the sum of Rs. 1,00,000/- with one-surety in the like amount to the satisfaction of learned trial Court.

(R.A.) Bail allowed

**PLJ 2017 Cr.C. (Lahore) 139 (DB)**

**[Multan Bench Multan]**

**Present: QAZI MUHAMMAD AMIN AHMAD AND CH. MUSHTAQ  
AHMAD, JJ.**

**RIAZ ALI--Appellant**

**versus**

**STATE and another--Respondents**

Crl. Appeal No. 927 of 2011 and M.R. No. 146 of 2010,  
heard on 14.11.2016.

**Pakistan Penal Code, 1860 (XLV of 1860)--**

---Ss. 302(b) & 34--*Qatl-e-amd*--Sentence--Re-appraisal of  
evidence--Ocular account--Recoveries and motive--Repeated fire  
shots--Ocular account coupled with motive--Question of--Whether  
presence of eye-witnesses at spot was established and whether  
testimony was credible and believable--Validity--Prosecution  
witnesses were not present at place of occurrence at relevant time,  
rendering their testimony unworthy of reliance--All PWs produced  
by prosecution were closely related to complainant--It is true that  
evidence of a close relative cannot be discarded merely on ground  
of relationship with deceased or complainant provided it rings true  
and finds support from an independent source but in instant case  
ocular account is in contradiction with medical evidence--  
Evidence produced by prosecution could not be made basis for  
recording conviction--Prosecution stood failed to prove charge  
against accused beyond reasonable doubt--Appeal was  
allowed. [P. 142] A, B & C

*M/s. M. Ali Ahmad Buzdar and Muhammad Rehman  
Khokhar, Advocate for Appellant.*

*Malik Riaz Ahmad Sagla, D.P.G. for State.*

*Peer Qamar-ul-Husnain Chishti, Advocate for Complainant.*

Date of hearing: 14.11.2016.

#### **JUDGMENT**

**Ch. Mushtaq Ahmad, J.--**Appellant Riaz Ali was tried by learned  
Additional Sessions Judge, Burewala in case FIR No. 173 dated  
11.07.1997 under Sections 302, 34, PPC; registered at Police Station  
Saddar Burewala District Vehari.

2. On conclusion of trial, he was convicted and sentenced as under:  
Convicted u/S. 302(b) read with Section 34, PPC and sentenced  
to **death** on three counts with payment of Rs. 1,00,000/- on three

accounts under Section 544-A, Cr.P.C. to be payable to the legal heirs of each deceased and in case of default in payment thereof, to further undergo simple imprisonment for six months on each count.

3. As per FIR, case of prosecution is that Rasheed Ahmad complainant used to drive a Rickshaw on rent. On 11.07.1997, at about 07.00 P.M., he returned home from Burewala city and parked his rickshaw at the corner of house. Manzoor Ali s/o Khushi Muhammad Ansari (co-accused since acquitted) came there alongwith herd of goats and gave abuses to complainant for closing the passage by parking his rickshaw on the road. Complainant responded in the same tone. Manzoor holding the complainant from collar, slapped him. On complainant's hue and cry, his brothers Riaz Ahmad, Rehmat Ali, father Mehar Din and cousin Muhammad Sharif reached there and they gave fist as well as kick blows to Manzoor Ahmad, who rushed to his house. Maqsood Ali armed with rifle .12-bore double barrel, Manzoor Ali armed with a sota, Riaz Ali (appellant) armed with a pistol and Khushi Muhammad armed with rifle .7 MM came there. Maznoor Ali raised *lalkara* to teach lesson to them for insulting him. On that, Khushi. Muhammad shot a fire with his rifle .7 MM and that hit on the neck of Riaz Ahmad. Riaz Ali (appellant) fired with his pistol and shot hit on neck and below the right ear of Riaz Ahmad who fell down and died at the spot. Maqsood Ali shot a fire with his rifle .12-bore and that landed on the chest of Muhammad Sharif son of Noor Din. He made second fire and pellets hit the chest above left ribs and left shoulder of Muhammad Sharif who also died at the spot. Riaz Ali fired shot with his pistol which hit on back side of left shoulder of complainant's father Mehar Din. Khushi Muhammad fired a shot with his rifle .7MM and that hit above left ribs of Mehar Din. Maqsood Ali made fire with his rifle .12-bore which hit above left ribs on chest of Mehar Din who got injured. On hearing the report of firing, Muhammad Akram son of Muhammad Yaqub reached at the spot. Accused persons returned home alongwith their respective weapons. Complainant, Muhammad Akram and Anjad Javed Lumberdar attended Mehar Din injured and brought him to Civil Hospital, Burewala but he succumbed to injuries. Rehmat Ali was left to guard the dead bodies of Riaz Ahmad and Muhammad Sharif whereas Muhammad Akram son of

Muhammad Yaquub was left with the dead body of Mehar Din whereas the complainant alongwith Amjad Javed proceeded to report the occurrence to the police. Motive for the occurrence was above narrated quarrel between Manzoor Ali co-accused and complainant, due to which accused committed intentional murder of the complainant's brother, father and cousin.

4. After completing investigation, challan was submitted before learned trial Court. Charge was framed against the appellant, to which he pleaded not guilty and claimed trial. Thereafter, prosecution evidence was recorded, statement of appellant was recorded under Section 342, Cr.P.C., in which he pleaded innocence and on conclusion of trial he was convicted and sentenced as mentioned above, hence, this appeal as well as murder reference.

5. We have given consideration to the arguments advanced by learned counsel for the parties and learned DPG and have perused the record with their assistance.

6. Perusal of record shows that prosecution case hinges upon evidence consisting of ocular account furnished by PW-5 Rasheed complainant, Rehmat Ali PW-6 and Muhammad Akram PW-7, medical evidence furnished by PW-2 Dr. Amjad Shakeel, recoveries and motive. Main role is that of ocular account coupled with motive, so we would like to discuss it by making careful appraisal to draw conclusion as to whether presence of eye-witnesses at the spot at the relevant time was established by the prosecution and whether their testimony was credible and believable. As per prosecution story, complainant PW-5 and his brother Rehmat Ali witnessed the appellant and his co-accused making repeated fire shots at their father Mehar Din, brother Riaz Ahmad and cousin Muhammad Sharif who all succumbed to the injuries. Motive for the occurrence, according to prosecution case, was a quarrel between complainant and Manzoor (co-accused since acquitted), who feeling insulted, came alongwith his family members (co-accused) for taking revenge. Prime target of the assailants for that motive would have been complainant, who according to prosecution story, was present but quite surprisingly he was not attacked by any of the assailants and remained spectating the whole occurrence. PW-6 Rehmat Ali, real brother of the complainant, was also not attacked upon which is too astonishing. Had the

complainant, against whom was the motive, been present at the spot at relevant time, there would be no reason for assailants to let him go untouched while murdering his three relatives. According to prosecution story occurrence took place in the street; however, Muhammad Din 150/C who escorted the dead bodies for autopsy to the mortuary, in cross-examination stated that two dead bodies were lying in Courtyard of house of Khushi Muhammad co-accused and one dead body was lying in bazar, which deposition falsifies the prosecution story. Time of occurrence as per prosecution was 07:00 p.m., whereas PW-1 stated that they received information of the occurrence at 05:00 p.m. and reached the spot at 05:30 p.m. Detail of the fires made by each assailant was given in the FIR, but said detail of injuries was not in consonance with medical evidence *qua* locale of injuries and distance of making fires, rather there is conflict between ocular account and medical evidence. Above noted facts and circumstances lead us to infer that complainant PW-5 and Rehmat Ali PW-6 were not present at the place of occurrence at relevant time, rendering their testimony unworthy of reliance. PW-7 Muhammad Akram as per FIR reached the place of occurrence on hearing report of firing, as such he could not be considered as an eye-witness. All the private witnesses produced by prosecution in this case are closely related to complainant. It is true that evidence of a close relative cannot be discarded merely on the ground of relationship with the deceased or complainant provided it rings true and finds support from an independent source but in the instant case ocular account is in contradiction with medical evidence. In this backdrop, evidence produced by prosecution could not be made basis for recording conviction.

7. On re-appraisal of evidence, conclusion we have come to is that prosecution stood failed to prove charge against appellant beyond reasonable doubt. Consequently, this Criminal Appeal 927 of 2011 is **allowed** and conviction as well as sentence awarded to appellant Riaz Ali through impugned judgment is set aside. Appellant be released forthwith if not required in any other case. Murder Reference No. 146 of 2010 is answered in **negative**.

(R.A.) Appeal allowed

**PLJ 2017 Cr.C. (Lahore) 256 (DB)**  
**[Multan Bench Multan]**  
**Present: CH. MUSHTAQ AHMAD AND SHAHID MUBEEN, JJ.**  
**NADEEM AMJAD--Petitioner**  
**versus**  
**STATE & another--Respondents**

CrI. Misc. No. 4151-B of 2016, decided on 31.8.2016.

**Criminal Procedure Code, 1898 (V of 1898)--**

---S. 497--Drugs Act, (XXXI of 1976), Ss. 23 & 27--Bail, grant of-- Allegation of--Spurious medicines in his medical store-- Admittedly offence with which petitioner has been charged entails punishment upto five years not falling within prohibitory clause of Section 497, Cr.P.C. sample parcels of recovered medicines sent to office of Government Analyst, were found of standard quality-- So, in presence of positive report of Chemical Analyst of Drug Testing Laboratory, guilt of petitioner requires farther probe and his case calls for further enquiry--During investigation neither present petitioner was found owner of shop nor any license for selling medicines/drugs was issued in his name--Status of present petitioner is to be determined by trial Court after recording of evidence--Petitioner has made out a case for grant of post arrest bail--Bail was granted. [P. 257] A

*M/s. Ch. Umer Hayat and Muhammad Bilal Butt*, Advocates for Petitioner.

*Syed Nadeem Haider Rizvi*, DDPP for State.

Date of hearing: 31.8.2016.

**ORDER**

Petitioner Nadeem Amjad was booked in case FIR No. 123 dated 26.7.2016 registered under Sections 23, 27 of Drugs Act, 1976 at Police Station Harram Gate, Multan on the report of Usman Ghani, Drug Inspector, Mumtazabad, Multan for keeping spurious medicines in his medical store known as M/s. Care and Cure Pharmacy situated at Shadman Road, Multan.



2. Heard. Record perused.

3. Admittedly the offence with which the petitioner has been charged entails punishment upto five years not falling within the prohibitory clause of Section 497, Cr.P.C. The sample parcels of recovered medicines sent to the office of Government Analyst, Multan were found of standard quality. So, in presence of positive report of Chemical Analyst of Drug Testing Laboratory, Punjab, Multan guilt of the petitioner requires farther probe and his case calls for further enquiry. During investigation neither present petitioner was found owner of the shop nor any license for selling medicines/drugs was issued in his name. In the circumstances, status of present petitioner is to be determined by the trial Court after recording of evidence. At this stage petitioner has made out a case for the grant of post arrest bail.

4. For the reasons recorded above, we are inclined to allow to this petition and the petitioner is directed to be released on bail subject to his furnishing bail bonds in the sum of Rs. 1,00,000/- with one surely in the like amount to the satisfaction of the trial Court.

(A.A.K.)      Bail granted

**PLJ 2017 Cr.C. (Lahore) 415 (DB)**  
**[Multan Bench Multan]**  
**Present: QAZI MUHAMMAD AMIN AHMED AND**  
**CH. MUSHTAQ AHMAD, JJ.**  
**MUHAMMAD SHAHID--Appellant**  
**versus**  
**STATE and another--Respondents**

CrI. A. No. 659 of 2012 & M.R. No. 16 of 2011, heard on 3.11.2016.

**Pakistan Penal Code, 1860 (XLV of 1860)--**

---S. 302(b)--Conviction and sentence--Challenge to--After being massively burnt, injured could not be in a position to make statement in detail--There is no original statement of complainant available on record--PW ASI had recorded statement of deceased, when he was brought to him injured condition, but original complaint was not produced before Court during trial and this fact was duly noted in statement of PW by trial Court--In absence of original complaint that deceased had made statement before PW particularly, when there is no explanation as to where was original complaint--State of affairs, FIR could not be treated as dying declaration to be made basis for recording conviction--Evidence produced by prosecution was not sufficient to connect appellant with commission of offence, as such conviction was not sustainable--Prosecution failed to prove charge against appellant beyond reasonable doubt--Appeal was accepted. [P. 419] A

*Khawaja Qaiser Butt*, Advocate for Appellant.

*Mian Mehmood Ahmad*, Advocate for Complainant.

*Malik Riaz Ahmad Sagla*, Deputy Prosecutor General for

State.

Date of hearing: 3.11.2016.

**JUDGMENT**

**Ch. Mushtaq Ahmad, J.--**Appellant Muhammad Shahid has challenged his conviction and sentence through Criminal Appeal No.

659 of 2012. He was tried by learned Additional Sessions Judge, Alipur in case FIR No. 396/2008 dated 11.11,2008 under Sections 302, 324 PPC registered at Police Station City Alipur. Murder Reference No. 16 of 2011 has been sent by learned trial Court for confirmation or otherwise of death sentence of the appellant. Both these matters shall be disposed of through, this single judgment as the same arise out of judgment dated 23.12.2010 passed by learned trial Court.

2. Appellant was convicted *vide* impugned judgment and sentenced as under:

Convicted under Section 302(b) PPC and sentenced to **death** alongwith payment of Rs. 1,00,000/- as compensation under Section 544-A Cr.P.C. to legal heirs of deceased and in case of default in payment thereof, to further undergo six months SI.

3. FIR was registered on the statement of Muhammad Javed (deceased), who alleged that he had a washerman shop near General Bus Stand. Muhammad Shahid (appellant) was allowed by the complainant to run a fruit shop in front of his shop. On 11.11.2008 Complainant was busy in ironing clothes at his shop when appellant entered the shop from street and pouring petrol on the complamant in a pepsi bottle, set him on fire, due to which his both arms, chest and legs etc. were burnt alongwith cash and mobile phone which were in his pocket. In the meanwhile, Muhammad Rafique (PW-6) and his son Muhammad Tahir alongwith other neighbourers attracted to the spot who witnessed the occurrence, however, complainant's body got burnt despite attempt of the witnesses to rescue him. Complainant later on died in hospital on 19.11.2008.

4. After investigation challan was submitted before trial Court, where appellant was charged. He pleaded not guilty and claimed trial. Thereafter prosecution evidence was recorded and on closure of prosecution evidence appellant was examined under

Section 342 Cr.P.C wherein he took the plea of false implication. On conclusion of trial, appellant was convicted and, sentenced as mentioned above *vide* impugned judgment, hence this appeal as well as Murder Reference.

5. Contention of learned counsel for appellant is that presence of eye-witnesses at the place of occurrence at relevant time is not established on record; that statement of the deceased on which FIR was registered, does not fulfill criteria of dying declaration specified in Qanun-e-Shahadat Order 1984 that none of the witnesses who escorted the deceased to hospital was produced by prosecution except Muhammad Rafique PW-6, whose statement on the face of it is not believable and also lacks corroboration; that recovery was planted one and fact of recovery of burnt currency notes which were in pocket of deceased at the time of occurrence, makes the case doubtful; that testimony of PW-6 Muhammad Rafique was not confidence inspiring and it could not be made basis for recording conviction.

6. Conversely, learned counsel for complainant assisted by learned DRG opposed the appeal contending that presence of PWs at the place of occurrence at relevant time was fully established who were also present at the time of recording statement of the deceased on the basis of which FIR was registered and it could be treated as dying declaration and that findings of conviction recorded by learned trial Court were in line with the facts established on record.

7. We have considered arguments of learned counsel for the parties as well as learned DPG and perused the record with their assistance.

8. Prosecution evidence consists of ocular account furnished by PW-6 Muhammad Rafique, Statement of deceased on which case registered, medical evidence and recoveries. FIR was registered initially under Section 324 PPC on the statement of Muhammad Javed (deceased) which was recorded by Muhammad Hussain ASI (PW-7) when deceased was being shifted to hospital in injured condition after the occurrence. As per FIR, when

appellant while pouring petrol set complainant on fire Muhammad Rafique (PW-6), his son Muhammad Tahir and many others were attracted to the spot who attempted to rescue the deceased but till then complainant's body was burnt; they shifted him to hospital while in injured condition and on the way to Hospital Muhammad Hussain ASI (PW-7) recorded his statement. PW-6 Muhammad Rafique who is star witness of the occurrence, stated that after the occurrence accused/appellant ran towards Police Station and he kept on chasing him but remained unsuccessful to apprehend him. He further stated that he informed the police about incident at that time but he was directed by Moharrir to take-care of the injured promising that police will follow him. In the next sentence PW-6 stated that it was not Moharrir. rather a constable was informed by him. PW-6 in cross-examination explained that it took about ten to fifteen minutes in chasing the appellant and returning to the place of occurrence. Meaning thereby, other residents who gathered at the spot, remained waiting for PW-6 and did not shift the injured to hospital till his arrival, which fact does not sound logical. PW-6 also stated that his shop was near the place of occurrence, which fact was falsified by Investigating Officer PW-7 who stated in cross-examination that Muhammad Rafique (PW-6) had no shop near the place of occurrence rather he was present there for purchasing some items. PW-6 further stated that his statement was not recorded during investigation. In cross-examination it was stated by PW-6 that he shifted the injured to hospital with the help of Muhammad Tahir (given up PW), Jamshed *alias* Billa and Imran, but none of the above said persons was examined by prosecution. According to PW-6 FIR was registered by police after four days of the occurrence and that too after protest by people, however, date of registration of FIR as mentioned therein suggests otherwise. PW-7 Investigating officer stated that he inspected the place of occurrence, on 14.11.2008 when currency notes and one *paaincha* of *shalwar* of deceased were taken into possession by him through recovery statement prepared on 18.11.2008, Statement of PW-6 in that regard differs from that of PW-7 as to date of recovery of said articles which according to PW-6 was 18.11.2008. Above discussion makes presence of PW-6 at the place of occurrence at relevant time a highly

doubtful affair, as such his testimony is not worth reliance. Muhammad Javed injured was medically examined by PW-1 Dr. Sana Ullah, who observed as under:

I have examined the body with fully conscious having burn with both upper limbs, front having chest and abdomen and even upper both thighs. Referred to Nishtar Hospital, Multan for further treatment.

Injured/complainant succumbed to the injuries after about seven days of the occurrence, thereafter, autopsy was conducted by him on 19.11.2008 who noted as under:

The dead body was lying on Charpai covered with two Chadars one was Checkdar and the other was white. His body was swell up with foul smell due to burn. There were Escharatomy incision one on each side of chest. The burn of the body is involving up to neck, both upper limbs, chest and abdomen, anteriorly and posteriorly, Perineum lower limbs up to knee. Almost more than 80% deep burn. Whole body was almost septic. Rigor mortis was present slightly.

After being massively burnt, as noted above, injured could not be in a position to make statement in detail and thereafter affix thumb impression after understanding the same. Moreover, there is no original statement of the complainant available on record. PW-7 Muhammad Hussain ASI had recorded statement of deceased, when he was brought to him injured condition, but original complaint was not produced before the Court during trial and this fact was duly noted in statement of PW-7 by the learned trial Court. In absence of original complaint it can not be said that deceased had made statement before PW-7 particularly, when there is no explanation as to where was the original complaint. In the above noted state of affairs, FIR could not be treated as dying declaration to be made basis for recording conviction. In view of what has been discussed above, evidence produced by prosecution was not sufficient to connect the

appellant with commission of offence, as such conviction was not sustainable.

9. For the reasons recorded above, prosecution failed to prove charge against appellant beyond reasonable doubt. Therefore, accepting Criminal Appeal No. 659 of 2012 conviction and sentence recorded by learned trial Court against appellant Muhammad Shahid through impugned judgment is set aside and he is acquitted of the charge. He be released forthwith if not required in any other case. Murder Reference No. 16 of 2011 is answered in **negative**.

(A.A.K.) Appeal accepted

**PLJ 2017 Lahore 438**

**Present: CH. MUSHTAQ AHMAD, J.  
ASMAT ULLAH KHAN--Petitioner  
versus**

**ANSAR JAVED and 4 others--Respondents**

W.P. No. 15227 of 2010, decided on 18.1.2017.

**Constitution of Pakistan, 1973--**

---Art. 199--Criminal Procedure Code, (V of 1898), S. 173--  
Constitutional petition--Administrative order--Revision was not  
competent--No legal effect as criminal revision against order  
passed by magistrate disagreeing with report of police for  
cancellation of case--Recommendation for discharge--Validity--  
Revision against order passed by magistrate refusing discharge of  
accused was not competent, hence, impugned order was passed by  
ASJ who had no jurisdiction--Order passed by magistrate on  
report submitted by investigating officer u/S. 173, Cr P.C., could  
not be challenged in petition. [P. 439] A  
& B

*Mr. Akhtar Javed*, Advocate for Petitioner.

*Ch. Iftikhar Iqbal Ahmad*, Asstt. A.G. for State.

Date of hearing: 18.1.2017.

**ORDER**

Through this petition vires of order dated 12.03.2010 passed by learned Addl. Sessions Judge, Sargodha have been challenged on the ground that the order impugned herein was without lawful authority and of no legal effect as criminal revision against order passed by the Illaqa Magistrate disagreeing with the report of police for cancellation of case, was not competent.

2. Briefly, the facts leading to present petition are that on complaint lodged by petitioner, a case *vide* FIR No. 297 dated 12.10.2007 u/S. 365, 148,149,109 PPC at Police Station Sahiwal District Sargodha was registered. After investigation, a report was submitted before Illaqa Magistrate recommending the case for discharge of the accused which was disagreed *vide* order dated 02.05.2009. Respondents/accused feeling aggrieved filed revision which came up for hearing before learned Addl. Sessions



Judge, Sargodha on 12.03.2010 which was allowed and order passed by learned Illaqa Magistrate whereby he refused to discharge the accused, was set-aside, hence this petition.

3. Learned counsel contended that order passed by the Magistrate was an administrative order against which revision was not competent, hence, the impugned order passed without jurisdiction was liable to be set-aside. Learned counsel has placed reliance on cases titled "*Asif Muhammad Sulehri v. ASJ Sialkot and 6 others*" (2016 P Cr. LJ 1783), "*Sakhawat Ali v. The State and another*" (2003 YLR 245), "*Hussain Ahmad v. Mst. Irshad Bibi and others*" (1997 SCMR 1503) and "*Bahadar and another V The State and another*" (PLD 1985 SC 62).

4. Learned AAG has, however, supported the impugned judgment and opposed this petition.

5. Heard. Perused.

6. The main contention of learned counsel for petitioner was that revision petition against order passed by learned Illaqa Magistrate refusing discharge of the accused was not competent, hence, the impugned order was passed by learned Addl. Sessions Judge who had no jurisdiction in the matter. It is evident from the record that on the complaint lodged by present petitioner, case was registered. Statements of the witnesses were also recorded which were available on file. Learned Illaqa Magistrate did not agree with the report submitted by police/investigating agency and refused to discharge the accused and cancel the FIR. In the case laws cited by learned counsel for petitioner, it was held that the order passed by the Illaqa Magistrate on the report submitted by investigating officer u/S. 173 Cr.P.C, could not be challenged in revision petition. The contention advanced by learned counsel for petitioner is supported by the law laid down on the subject.

7. In the above backdrop, this petition is **allowed**; and impugned order passed by learned Addl. Sessions Judge is set-saide.

(R.A.) Petition allowed

**PLJ 2017 Cr.C. (Lahore) 800 (DB)**

**[Multan Bench Multan]**

***Present:* CH. MUSHTAQ AHMAD AND TARIQ IFTIKHAR AHMAD,**

**JJ.**

**MUHAMMAD ISHAQ--Appellant**

**versus**

**STATE & another--Respondents**

CrI. Appeal No. 781-ATA of 2016, heard on 29.5.2017.

**Telegraph Act, 1885 (XIII of 1885)--**

---S. 25-D--Anti-Terrorism Act, (XXVII of 1997), S. 7(h)--  
Conviction and sentence--Challenge to--Allegation of--Appellant  
made obnoxious telephonic call at police service centre, Rescue  
15--None of them uttered a single word that present appellant was  
member of any terrorist group or organization invoked in terrorist  
activities--What was his purpose to make fake call prosecution  
evidence is silent--Admittedly appellant was not named in First  
Information Report--Neither SIM in question was in his name nor  
same was recovered from his possession during investigation--  
There is no forensic report qua comparison of voice report which  
might have established that aforesaid call was made by present  
appellant--During cross-examination this witness not only  
massively deviated from his previous statement got recorded under  
Section 161, Cr.P.C. but also admitted that accused was his  
relative--PW, Inspector was one of members of JIT who  
conducted investigation of this case--In cross-examination he  
stated that he did not investigate as to what was actual amount due  
towards accused present appellant--However, he stated that father  
of PW made application to S.H.O., Police Station for recovery of  
Rs. 2,00,000/- from accused--This fact negates version of PW that  
appellant received Rs. 3,50,000/---Testimony of prosecution  
witnesses was un-reliable--Position taken by appellant  
in defence was that brother of PW was his friend who abducted a  
girl before registration of instant case--As hs was against this act  
so he managed to return aforesaid lady to her father--Brother of  
PW got annoyed and later on involved him in this case falsely this

fact was not denied by PW while appearing before Court who in cross-examination admitted that a girl was abducted by his brother--Even I.O. fortified this fact--He stated that during investigation it came into his knowledge that brother of PW abducted a girl from Basti Malook prior to registration of instant F.I.R., however, he did not investigate that matter--In this scenario, if versions of both sides are put in juxta position stance taken by defence appears to be more plausible--On re-appraisal of evidence that prosecution has failed to prove charge against appellant--Criminal appeal was allowed.

[Pp. 803 & 804] A, B & C

*Mr. Muhammad Aamir Khan Bhutta*, Advocate for Appellants.

*Mirza Abid Majeed*, Deputy Prosecutor General for State.

Date of hearing: 29.5.2017

#### **JUDGMENT**

**Ch. Mushtaq Ahmad, J.**--Muhammad Ishaq, appellant was returned guilty verdict in case F.I.R No. 313 dated 10.5.2014 registered under Section 25-D of Telegraph Act, 1885 read with Section 7 of Anti-Terrorism Act, 1997 at Police Station Chehlyak, District Multan.

2. After having gone through the evidence brought on record and hearing the parties, learned Judge, Anti Terrorism Court No. II, Multan *vide* his judgment dated 2.11.2016 convicted and sentenced the appellant as under:--

1. Convicted u/S. 25-D of Telegraph Act, 1885, PPC and sentenced to 3-Years R.I. with fine of Rs. 3000/- and in the event of default to undergo further simple imprisonment for 15-days.
2. Convicted u/S. 7(h) of Anti Terrorism Act, 1997 and sentenced to 05 Years R.I. with fine of Rs. 5000/- and in the event of default to undergo further simple imprisonment for one month.  
Benefit of Section 382-B, Cr.P.C.was extended to the appellant.

3. Prosecution case was that on 10.5.2014 Ali Hassan Gillani, the then S.I. (complainant) was present at Ghanta Ghar Chowk, Multan alongwith four other police officials where he received information that a call was received through service counter 15 by Operator Kashif Javed 2256-C from mobile phone No. 0304-7889106 wherein caller told that a bomb was going to blast within half an hour in District Courts, Multan, said information was passed on to CPO, Multan in order to take protective measures; that upon this information all the police officials reached at the spot alongwith Bomb Disposal Squad, Fire Brigade, Rescue 1122 Ambulance and reserved police officials of Special Branch; that a thorough search was conducted at the spot but no bomb was detected and that due to the said false information provided by accused about bomb blast a sense of fear and insecurity was created amongst the Judges, Lawyers, general public and Government servants who were working there.

4. Prosecution in order to prove its case got examined nine witnesses. After giving up PWs, namely, Muhammad Ashraf 404-C, Pervaiz Ahmad 4695-C, Abdul Ghaffar and Muhammad Ishfaq 4320/HC, Muhammad Latif Inspector and Ashraf Wahla, Inspector being unnecessary prosecution closed its case on 26.10.2016. Thereafter statement of accused under Section 342, Cr.P.C. was recorded in which he denied the charge.

5. Learned trial Court after hearing arguments of learned counsel for the parties recorded conviction and awarded sentence to the appellant as mentioned in the opening paragraph of this judgment.

6. Contention of learned counsel for the appellant is that alleged SIM from which call was made on 15 was not in the name of the appellant father it was registered in the name of one Qaiser Iqbal who was not associated with the investigation for the reasons best known to the prosecution; that none of the witnesses claimed that appellant was member of any terrorist group or organization or his name was included in 4th schedule; that despite

registration of F.I.R, Joint Investigation Team constituted for the purpose of investigation did not complete its investigation even after lapse of two years of the incident which fact is sufficient to make the prosecution case highly doubtful and that the judgment passed by learned learned trial Court is the result of mis-reading and non-reading of evidence which resulted in miscarriage of justice, hence, appellant may be acquitted.

7. Contentions have been opposed. It has been argued that appellant got issued SIM in the name of Qaiser Iqbal with the help of his CNIC and thereafter by using the said SIM he made call to rescue one five regarding fake information of bomb blast in District Courts Multan; that during investigation record of CDR of mobile phone and SIM was taken into possession by the I.O. along with record of one five center which was compatible to each other and that learned trial Court after considering all aspects of the case rightly convicted the appellant.

8. Arguments heard. Record perused.

9. Appellant was charged on the allegation that on 10.5.2014 at about 9.50 a.m. through mobile phone 0304-7889106 he made obnoxious telephonic call at Police Service Centre Rescue 15, Multan attended by Operator Kashif Javed, 2256-C (PW-2) that within half an hour a bomb is going to blast in the premises of District Courts, Multan, so they should adopt safeguards, if possible. On this information Ali Hassan Gillani, the then S.I. (PW-7) alongwith four other police constables reached at the spot and informed the relevant agencies including Rescue 1122, Bomb Disposal Squad, Fire Brigade, etc. A thorough search was conducted but no bomb was detected in the said premises

10. PW-7 Ali Hassan Gillani Inspector, PW-2 Kashif Javed 2256-C, PW-4 Zafar Iqbal and PW-8 Bashir Ahmed, Inspector/I.O are the main witnesses of this case. None of them uttered a single word that present appellant was member of any terrorist group or organization involved in terrorist activities. What

was his purpose to make fake call prosecution evidence is silent. Admittedly appellant was not named in the First Information Report. Neither the SIM in question was in his name nor the same was recovered from his possession during investigation. There is no forensic report qua comparison of voice report which might have established that aforesaid call was made by the present appellant. Record shows that appellant was never enlisted in 4th Schedule of ATA, 1997 regarding anti State activities. It is amazing to note that after registration of F.I.R a Joint Investigation Team was constituted to investigate the matter but JIT could not trace out the accused for about two years. No plausible explanation is available on record to justify delay in concluding the investigation. Record further shows that SIM from which appellant allegedly made obnoxious call was in the name of Qaiser Iqbal brother of Zafar Iqbal who appeared before the trial Court as PW-4. He stated that appellant received Rs. 3,50,000/- for sending his brother Qaiser Iqbal abroad alongwith his CNIC. However, he could not fulfill his promise and ultimately through intervention of Tunchayat' returned Rs. 2,00,000/-. During cross-examination this witness not only massively deviated from his previous statement got recorded under Section 161, Cr.P.C. but also admitted that accused was his relative. PW-8 Bashir Ahmed, Inspector was one of the members of JIT who conducted investigation of this case. In cross-examination he stated that he did not investigate as to what was the actual amount due towards the accused Muhammad Ishaq (present appellant). However, he stated that father of PW-4 Zafar Iqbal made application to the S.H.O., Police Station Chehlyak for recovery of Rs. 2,00,000/- from accused Ishaq. This fact negates the version of PW-4 that appellant received Rs. 3,50,000/-. In the backdrop of above noted facts testimony of prosecution witnesses was un-reliable.

11. Position taken by the appellant in defence was that Qaiser Iqbal was his friend who abducted a girl before registration of instant case. As hs was against this act so he managed to return the aforesaid lady to her father. Qaiser Iqbal got annoyed and later on involved him in this case falsely. This fact was not denied by PW-4 Zafar Iqbal while appearing before the Court who in

cross-examination admitted that a girl was abducted by his brother Qaiser Iqbal. Even I.O. fortified this fact. He stated that during investigation it came into his knowledge that Qaiser Iqbal abducted a girl from Basti Malook prior to the registration of instant F.I.R., however, he did not investigate that matter. In this scenario, if the versions of both sides are put in juxta position the stance taken by the defence appears to be more plausible. On re-appraisal of evidence we have come to the conclusion that prosecution has failed to prove charge against the appellant. Resultantly, this criminal appeal is allowed. The conviction and sentence of the appellants is set aside. He is acquitted of the charges. He shall be released from jail forthwith if not required in any other case.

(A.A.K.)      Appeal allowed

**2017 Y L R 436**

**[Lahore]**

**Before Syed Shahbaz Ali Rizvi and Ch. Mushtaq Ahmad, JJ**

**TALIB HUSSAIN and another---Appellants**

**Versus**

**The STATE and another---Respondents**

Criminal Appeal No.425 of 2012/BWP, Murder Reference No.4 of 2013/BWP and PSLA No.3 of 2013/BWP, heard on 7th March, 2016.

**(a) Penal Code (XLV of 1860)---**

---Ss. 302, 109 & 34---Qatl-i-amd, abetment of qatl-i-amd, common intention--Appreciation of evidence---Complainant had stated that he along with two others were going to the village in order to search his son and one relative who had gone there to see their friend at 9:00 p.m., but did not return till 2:00 a.m.---Complainant party was at some distance from the said village that they saw both(deceased) accompanied by an unknown girl (deceased) coming on a motor cycle---Two persons appeared and made indiscriminate firing on deceased persons and fled away---Witnesses of ocular account did not mention in FIR name of person to whom deceased had gone to see neither the said person was produced before Investi-gating Officer nor was summoned for verification---Deceased girl accompanying both male deceased was real sister of accused and as per defence was being taken forcibly by deceased persons---Prosecution could not justify company of deceased girl with the other deceased persons---One deceased was owner of motorbike as well as a car but motorbike found at the place of occurrence was obtained on rent---Deposition of complainant showed that firing upon the deceased was made from right side of deceased but fire hit on fuel tank of motorcycle on left side---Occurrence took place at 2:30 a.m. while matter was reported at 7:30 a.m. such delay was not properly explained---FIR and complaint did not show arrival of accused on motorcycle which was recovered during investigation---Motive was not alleged by prosecution---Presence of witnesses of ocular account at the place of occurrence at relevant time had become doubtful---Abetment by father of accused, as alleged, was not proved by confidence inspiring evidence---Appeal was dismissed.



**(b) Criminal trial---**

---Ocular testimony, disbelieved---Effect---When ocular testimony was disbelieved then recovery as well as medical evidence were of no help to prosecution.

**(c) Criminal trial---**

---Onus of establishing case---Prosecution had to establish its own case independently instead of depending upon weaknesses of defence. Waqar Ahmad v. Shaukat Ali and others 2006 SCMR 1139 rel.

**(d) Criminal Procedure Code (V of 1898)---**

----S. 342---Statement of accused---Acceptance or rejection---Statement of accused under S.342, Cr. P. C. was to be accepted or rejected as a whole.

Waqar Ahmad v. Shaukat Ali and others 2006 SCMR 1139 and Muhammad Asghar v. The State PLD 2008 SC 513 rel.

**(e) Penal Code (XLV of 1860)---**

----S.302---Criminal Procedure Code (V of 1898), S.342---Qatl-i-amd---Admission of guilt by accused---Prosecution failing to prove case---Effect---Where prosecution had failed to prove its case against accused beyond reasonable doubt, accused might be acquitted even if he had taken plea and admitted killing the deceased.

Muhammad Asghar v. The State PLD 2008 SC 513 and Azhar Iqbal v. The State 2013 SCMR 383 rel.

Rai Bashir Ahmad for Appellants.

Javed Hashmi for the Complainant.

Malik Muhammad Jaffer, Deputy Prosecutor General for the State.

Date of hearing: 7th March, 2016.

**JUDGMENT**

**CH. MUSHTAQ AHMAD, J.**---Appellants Talib Hussain and Khalid Mahmood alias Kala have filed Criminal Appeal No.425 of 2012/BWP challenging their conviction and sentence. They were tried by learned Additional Sessions Judge, Bahawalnagar in a private complaint titled "Khalid Hussain v Talib Hussain and 2 others" arising out of case FIR No.106/2010 dated 28.04.2010 under sections 302, 34, 109, P.P.C. registered with Police Station Khhichi-wala, District Bahawalnagar and on conclusion of trial they were convicted

vide judgment dated 15.12.2012 (impugned herein) and sentenced as under:-

(i) Each of appellants convicted under section 302, P.P.C. for committing qatl-i-amd of Muhammad Asif, Muhammad Amir Naseer and Mst. Rashida Bibi and sentenced to death on three counts. They were directed to pay an amount of Rs.6,00,000/- each as compensation under section 544-A, Cr.P.C. to the legal heirs of deceased (Rs.2,00,000/- each deceased) and in default in payment whereof, delinquent convict to further undergo S.I. for eighteen months on each count.

Co-accused Muhammad Arif was acquitted. Complainant challenged his acquittal through PSLA No.03 of 2013. All the above matters will be disposed of by this consolidated judgment.

2. Khalid Hussain (PW-2) got registered above mentioned FIR, which was investigated by CW-3 Muhammad Aslam SI. However, dissatisfied with investigation conducted by police, complainant preferred to file private complaint titled "Khalid Hussain v. Talib Hussain and 2 others". As per private complaint, complainant was resident of Chak No.165/7-R. On 27.04.2010 at about 09:00 P.M., his son Muhammad Asif and relative Amir Naseer told the complainant that they were going to see their friend at Chak No.168/7-R and will return soon. Complainant got worried when they did not return. He along with his brother Muhammad Ramzan (given up PW) and Bashir Ahmad (PW-3) went in search of Muhammad Asif, etc, on a motorcycle. At about 02:30 A.M., they reached in Izafi Basti Chak No.168/7-R and saw Muhammad Asif, Amir Naseer and one unknown girl on a motorcycle coming from Chak No.168/7-R. All of sudden, two persons emerged from watercourse and made indiscriminate firing with their rifles on Muhammad Asif, etc. Said two persons were identified in the light of motorcycle as Talib Hussain and Khalid Mahmood (appellants). Muhammad Asif, Amir Naseer and unknown girl fell from motorcycle and succumbed to the injuries at the spot, whereas accused fled away.

It was alleged that accused (appellants) were abetted by Muhammad Arif (since acquitted), which fact was told to complainant by Munawar Hussain and Rehmat Ali PWs.

3. Post mortem examination on the dead body of Muhammad Amir Naseer was conducted on 28.04.2010 at 10:30 A.M. by Dr. Muhammad Anwar (PW-1), who observed following injuries:--

1. Two lacerated and penetrating wounds on the right side of face at the lateral corner of right eye, each 1.1 CM x .5 CM, margins inverted, no burning or blackening present.
2. A lacerated wound of about 3 CM and 1 CM wide on the right lateral corner of forehead, bone below is broken into pieces.
3. A lacerated wound of about 4 CM x 1.5 CM about 6 CM above the right ear anteroposterior in direction.
4. A lacerated wound of about 3 CM x 1 CM on the front of forehead above the medial part of the right eye, bone below is broken.
5. A lacerated wound of about 3 CM x 1 CM just above the right eye, transverse in direction.
6. A lacerated wound of 2 CM x .5 CM behind the right ear up down in direction.
7. A lacerated wound of about .8 CM x .5 CM on the lateral aspect of right shoulder. Metallic particle was removed from this hole.
8. A lacerated wound of 5 CM long and 1 CM wide anteroposterior in direction on the lateral aspect of skull about 3 CM above the right ear.
9. A lacerated and penetrating wound of about 2.5 CM x 2 CM behind the left shoulder, margins averted. No burning or blackening present.

As per opinion of PW-1, cause of death was injuries Nos.1 to 6 and 8 which were caused by firearm weapon. Injury No.7 was also caused by firearm which was entry wound corresponding to injury No.9 (exit). Probable time between injuries and death was about one to three minutes and between death and post mortem was 8 to 10 hours. Autopsy on the dead body of Muhammad Asif was also conducted by PW-1, who observed following

**injuries:--**

1. A lacerated wound of about 6 CM long and 1 CM wide on the posterior of skull, oblique in direction 8 CM from left ear.

2. A lacerated wound of about 3 CM long and 1.5 CM wide on the left side of forehead about 3 CM from left eye.
3. A penetrating and lacerated wound of about 1.1 CM long and .5 CM wide about 2 CM anterior to left ear on the left cheek. Margins inverted. No burning or blackening present.
4. A lacerated wound of about 1.5 CM x 3 MML in size about 7 CM above the left ear anteroposterior in direction.
5. A lacerated wound of about 4 CM long into .5 CM wide posterior to the left ear.
6. A lacerated and penetrating wound of about 3.5 CM long and 2 CM wide on the back of right shoulder 9 CM from mid line and 17 CM from the right shoulder. Margins inverted. A metallic particle bullet was removed from front of right shoulder about 9 CM from right nipple.

PW-1 was of the opinion that firearm injuries Nos.1 to 4 were cause of death. Probable time between injuries and death was one to three minutes, whereas between death and post mortem examination was within 10 to 12 hours.

Post mortem examination on the dead body of Mst. Rashida Bibi was conducted by lady Dr. Asima Zafar PW-6, who noted following injuries:-

1. A lacerated penetrating wound on right side of head, wound was 2 CM x 1 CM, it is 4.5 CM above and lateral to right eye.
2. A lacerated penetrating wound 1.5 x 1 CM on right side of head, above 5 CM and later to right eye.
3. A stellate shaped wound about 3 x 3 CM on forehead above left eye.
4. A stellate shaped wound about 6 x 3.5 CM on forehead above left eye.
5. A stellate shaped wound 3.5 x 1 CM in the middle of forehead.
6. A lacerated penetrating wound 9 x 1.2 CM anterior to chin. Right margin of wound was 1.5 CM left margin is 1.5 CM and centre is 1 CM.
7. A lacerated penetrating wound of 3.5 CM x 1 CM on left cheek.

8. A lacerated penetrating wound about 1 CM x .5 CM on left cheek below left eye.

9. A lacerated penetrating wound about 3.5 x 2.5 CM on chest just left to the sternum.

10. A penetrating wound 2.1 CM on posterior aspect of left shoulder.

4. Appellants along with co-accused Muhammad Arif were charge sheeted by learned trial court, who pleaded not guilty and claimed trial. Six witnesses were examined by complainant, whereas statements of five witnesses were recorded as CW-1 to CW-5. Thereafter accused were examined under section 342, Cr.P.C. Appellant Talib Hussain took the stance as under:--

"In fact both the deceased Amir Naseer and Muhammad Asif were studying in Commerce College at Haroonabad and were staying there and they had not come to their house during the night of occurrence nor they went to see their friend to Chak No.168/7-R.

During the night of occurrence they took a motorcycle P-11 on rent from Haroonabad which was taken by the I.O. from the place of occurrence from near the dead bodies and took into possession vide recovery memo Ex.P-N and straight came to our Chak No.168/7-R without knowledge of the complainant or the PWs. Incidentally during the night of occurrence I was irrigating our land situated near the place of occurrence and I had brought the licensed rifle 8 MM of my father for safety. When in between 01.30 AM or 02.00 AM on 28.04.2010 I noticed one motorcycle coming from our village side and when it came at some distance from me I found that both the deceased persons of this case were carrying my sister Mst. Rashida Bibi deceased and she was shouting leave me leave me. In self defence in order to save the life and chastity of my sister Mst. Rashida Bibi, I made firing, as a result of which some fires hit on the fuel tank of motorcycle and some fires hit the deceased persons. Thereafter, they fell down on the ground and I being frustrated, also inflicted butt blows with my rifle on their persons and caused several injuries with the butt of rifle, as a

result of which butt of my rifle was broken into three pieces which had fallen at the place of occurrence and secured by the I.O from the place of occurrence vide recovery memo Ex.P-O.

Hearing noise of firing, immediately neighbours Abid Iqbal as well as the Chowkidar of village who was on round, attracted to the place of occurrence and I sent the above said chowkidar to inform in our village to Muhammad Anwar Lumberdar and my father Muhammad Arif about this occurrence. Sometimes thereafter, Lumberdar Muhammad Anwar son of Subey Khan, Muhammad Nawaz son of Muhammad Ashraf, Muhammad Asghar, Tariq Hussain, etc, residents of Chak No.168/7-R reached at the place of occurrence. Muhammad Anwar Lumberdar on telephone informed the investigating officer about this occurrence and the investigating officer reached there within an hour or so. The investigating officer after reaching the place of occurrence informed the relatives of both the deceased male persons including the complainant who reached at the place of occurrence at about 08.00 AM. In the meantime the I.O. had already secured all the articles mentioned above lying at the place of occurrence or secured from the personal search of the three dead bodies and had been taken into possession by him. Soon after arrival of the complainant and the relatives of the male deceased persons, investigating officer left the place of occurrence within half an hour sometimes before 09.00 AM.

I narrated the I.O at the place of occurrence of the above said facts he did not enter my arrest in police papers and kept me sitting at police station till 12.05.2010. I also at that time, produced the rifle with broken butt to the I.O. at the place of occurrence but the I.O did not prepare its recovery memo also and kept it with him till 23.05.2010 when he prepared a fake recovery memo of the above said rifle while sitting in the police station in connivance with the complainant party in order to strengthen the prosecution case against me.

Khalid Hussain, my brother, was neither present at the place of occurrence nor he fired or took any part whatsoever regarding this occurrence with me. He has been involved in this case by the complainant party by widening the net falsely.

My father Muhammad Arif had nothing to do with this case nor he ever abetted this offence with me and my brother Khalid Mehmood alias Kala co-accused and the complainant party also did not cite any witness in written application Ex.P-G and formal FIR Ex.P-G/1 and later on by widening the net they in connivance with the I.O of this case prepared ante-dated statements of Munawar Hussain and Muhammad Latif by concocting a false story of abetment in this case".

Co-accused relied on the statement of Talib Hussain (appellant) and denied the allegation against them. Defence examined Muhammad Anwar as DW-1. However, accused did not opt to appear as provided under section 340(2) Cr.P.C. On conclusion of trial, appellants were convicted and sentenced as mentioned in opening paragraph of this judgment, hence this criminal appeal as well as murder reference.

5. Contention of learned counsel for appellants is that eye-witnesses were not present at the scene nor the incident took place as stated by them; that there was delay in lodging FIR, for which no plausible explanation is given; that ocular account is not in consonance with the site plan as well as medical evidence. Further argued that prosecution had failed to establish guilt of the accused beyond reasonable doubt; that ocular account being untrustworthy and unreliable, conviction and sentence were not sustainable; that only on the statement of accused under section 342, Cr.P.C., conviction cannot be recorded when prosecution fails to prove its case.

6. Learned counsel for complainant assisted by learned DPG vehemently opposed above contentions. It was argued that PW-2 and PW-3 remained consistent on material points and their testimony/presence could not be shattered by defence during cross-examination. Further argued that oral account finds corroboration from medical evidence as well as recoveries and that even appellant Talib Hussain himself admitted his guilt, as such findings recorded by learned trial

court being in line with evidence available and facts established on record, do not call for interference in appeal, which merits dismissal.

7. We have heard submissions of learned counsel for the parties as well as learned DPG and perused the record with due care.

8. Prosecution case hinges on ocular account, medical evidence and recoveries. Main role is that of ocular account, therefore, we would analyse the same in order to evaluate testimony of eye-witnesses. PW-2 Khalid Hussain is complainant of the case who along with PW-3 Bashir Ahmad furnished ocular account. According to PW-2 and PW-3, they along with Muhammad Ramzan (given up PW), were going to Chak No.168/7-R in order to search Muhammad Asif and Amir Naseer who had gone there to see their friend at 09:00 P.M. but did not return till 02:00 A.M. PWs further stated that they were at some distance from said village when they saw Muhammad Asif and Amir Naseer accompanied by an unknown girl coming on a motorcycle from Chak but suddenly two persons emerged from watercourse and made indiscriminate firing on them resulting in their death and then the assailants (appellants) fled away. Name of the person to whom Muhammad Asif and Amir Naseer (deceased) went to see, was not mentioned in the FIR or complaint. However, PW-2 stated that deceased went to see their friend Mohsin who was resident of Chak No.168/7-R. PW-2 during cross-examination stated that he did not inquire said Mohsin. He further deposed that neither said Mohsin was produced before I.O. during investigation nor he was summoned by I.O. for verification. The deceased girl accompanying both the male deceased was real sister of appellants. According to defence she was being taken away by appellants forcibly, which fact prompted appellant Talib Hussain to fire on them. However, prosecution witnesses did not utter even a single word in order to justify her company with the male deceased. Both the eye-witnesses during cross-examination admitted that Muhammad Asif deceased owned a motorcycle Honda 125 CC as well as a car. At the time of occurrence deceased were riding on a motorcycle which belonged to none of them. PW-2 stated that said motorcycle belonged to a friend of Asif (deceased), however, he remained failed to tell the name of said friend. Admittedly, both the deceased were studying in a college at Haroonabad city at a distance of about 35 kilometres from their



village. It was version of defence that they used to live in the college hostel. PWs however stated that they used to return home daily, but quite oftenly they used to stay at college hostel. It transpired during investigation that the motorcycle was obtained by them on rent from Haroonabad. Had the deceased left for village/place of occurrence from their home, then why they took motorcycle on rent from Haroonabad instead of using his own motorcycle or car, is a question mark. It was stated by PW-1 that deceased had mobile phones with them at the time of occurrence. He deposed that they tried to contact the deceased on their mobile phones from 09:00 P.M. till 02:00 A.M. but due to network problem they could not be contacted. This statement on the face of it does not sound logical. PW-2 during cross-examination stated that at the time of occurrence they (PWs) were facing towards north, from which side deceased were coming on motorcycle and the accused persons were on their left side, meaning thereby assailants made firing on deceased from their right side. Motorcycle of the deceased was taken into possession by the I.O. during his first visit to the place of occurrence. It was noted that fire shots had hit fuel tank of motorcycle on left side, meaning thereby fires were made from left side, which fact negates deposition of PWs qua direction/position of parties at the time of occurrence. Occurrence took place at 02:30 A.M. and the matter was reported to police at 07:30 A.M. Distance between place of occurrence and police station was 15 kilometres. Reason for delay according to PWs was that they remained awaiting light at the place of occurrence till 05:00 A.M. On one hand they went for searching the deceased at odd hours i.e. at 02:00 A.M. but on the other hand they did not inform the police about occurrence immediately and remained waiting for light, is not believable by any stretch of imagination. Another fact making presence of PWs doubtful is that according to FIR as well as complaint there was no vehicle with the accused at the time of occurrence, however, during investigation, recovery of a motorcycle on pointation of appellant Khalid Mahmood alias Kala, was shown, on which appellants allegedly proceeded to the place of occurrence. It was version of prosecution that Muhammad Latif and Munawar Hussain told the complainant about abetment, who both were introduced in the complaint. There was no mention in the FIR as to

the names of persons who witnessed alleged abetment. Prosecution at no stage alleged any motive prompting the appellants to commit the crime. Above discussion makes presence of PW-2 and PW-3 at the place of occurrence at relevant time highly doubtful affair, as such their testimony could not be relied upon.

9. As regards recovery of rifle from Talib Hussain appellant, he admitted said rifle as the weapon with which he made firing on deceased. He however, objected mode of its recovery. Defence objected medical evidence as well, however, nothing helpful to defence could be brought on record. Pertinent to note here in the above backdrop is that when ocular testimony is dis-believed, then recovery as well as medical evidence are of no help to prosecution, which even otherwise are only supportive pieces of evidence.

10. Prosecution was bound to prove charge against appellants by standing on its own legs, in which affair it remained failed. What remains in field, is statements of appellants recorded under section 342 Cr.P.C. coupled with statement of DW-1. Three accused i.e. Talib Hussain, Khalid Mahmood (appellants) and their father Muhammad Arif (since acquitted) were tried. Appellant Talib Hussain explained in his statement how was made firing on the deceased resulting in their death, whereas remaining two accused pleaded innocence. Stance taken by Talib Hussain appellant has been reproduced in paragraph No.4 of this judgment, wherein he excluded presence of co-accused Khalid Mahmood. Question arises what is evidentiary value of such statement and after prosecution evidence having been discarded, whether conviction could be recorded on statement of accused under section 342, Cr.P.C. or not. In this regard, law is well settled that if the prosecution evidence is disbelieved by the court in its entirety, then the statement of accused is to be accepted or rejected as a whole. It is legally not possible to accept the inculpatory part of statement of accused and reject the exculpatory part of same statement. In case titled Waqar Ahmad v Shaukat Ali and others reported in 2006 SCMR 1139 it was laid down that in criminal cases prosecution always has to establish its own case independently instead of depending upon the weaknesses of defence, same being its primary duty. It was further observed that statement of accused under section 342 Cr.P.C. can be accepted in toto, if there is

no other prosecution evidence and the case is to be decided only on the statement of accused. Status of statement made by accused under section 342 Cr.P.C. again came under consideration before Apex Court in case titled Muhammad Asghar v. The State reported in PLD 2008 SC 513, wherein it was held that statement of accused recorded under section 342, Cr.P.C. is to be read in its entirety, is to be accepted or rejected as a whole and reliance should not be placed on that part of the statement which goes against accused. Legality of conviction awarded on the basis of admission made by accused in his statement recorded under section 342, Cr.P.C. once again came under analysis before Apex Court in case titled Azhar Iqbal v. The State reported in 2013 SCMR 383, wherein it was observed that prosecution had failed to prove its case against accused beyond reasonable doubt, therefore, he should have been acquitted, even if he had taken a plea and admitted to killing the deceased. It was held that statement of accused recorded under section 342, Cr.P.C. was to be accepted or rejected in its entirety.

11. In the light of case law referred above, statement of appellant Talib Hussain recorded under section 342, Cr.P.C. has to be accepted or rejected in toto. If the same is accepted, then it was appellant Talib Hussain who made firing in order to save his sister. His statement is exculpatory in nature, which could not be used for recording conviction against appellant Talib Hussain. If said statement is rejected, then prosecution as already discussed above, failed to prove its case. In both situations, benefit will go to the accused. Therefore, on re-appraisal of evidence, we are persuaded to set aside impugned conviction recorded against appellants and they are acquitted of the charge in this case.

12. As a result of above discussion, Criminal Appeal No.425 of 2012/BWP is allowed. Conviction and sentence awarded to appellants Talib Hussain and Khalid Mahmood is set aside. They be released forthwith if not required in any other case. Murder Reference No.04 of 2013/BWP is answered in negative.

13. For the reasons recorded above, PSLA No.03 of 2013/BWP is dismissed.

WA/T-12/L Appeal allowed.

**2017 Y L R Note 31**  
**[Lahore]**  
**Before Ch. Mushtaq Ahmad, J**  
**GHULAM FARID and others---Appellants**  
**Versus**  
**The STATE---Respondent**

Criminal Appeal No.549 of 2000, heard on 17th June, 2015.

**(a) Penal Code (XLV of 1860)---**

---Ss. 302 & 34---Qatl-i-amd and common intention---  
Appreciation of evidence---Non-intervention of complainant party  
to rescue the deceased---Doubt on presence of prosecution  
witnesses at the spot---Ocular account not believable---None of the  
accused was armed with firearm weapon---No attempt was made  
by the complainant party to intervene to rescue the deceased---  
Prosecution witnesses were not present at the spot who were close  
relatives of the complainant---Complainant had made  
improvements in his version while appearing in the witness box  
before the Trial Court---Ocular account in the case was not  
believable---Charge against the accused had not been established--  
-Conviction and sentence recorded by the Trial Court were set  
aside and accused were acquitted of the charge---Sureties would  
stand discharge of the liabilities---Appeal was accepted  
accordingly. [paras. 10 and 11 of the judgment]

**(b) Penal Code (XLV of 1860)---**

---Ss. 302 & 34---Qatl-i-amd and common intention---  
Appreciation of evidence---Sentence, reduction in---Doubt on  
presence of prosecution witnesses at the spot---Ocular account not  
believable---Prosecution evidence--- was not believable---Statement  
of accused had to be accepted in entirety---Case of accused was  
covered under S. 302(c), P.P.C.---Conviction of accused was  
altered from S. 302(b) to S. 302(c), P.P.C.---Accused remained in  
jail as under-trial prisoner and then as convict after decision of the  
case---Sentence already undergone by the accused would be  
sufficient to meet the ends of justice---Quantum of sentence was

reduced to the period already served out by the accused---Appeal was dismissed while maintaining conviction under S. 302(c), P.P.C.---Surety of accused was discharged of the liability of bail bonds. [para. 12 of the judgment]

Rana Muhamamd Nadeem Kanju for Appellants.

Hassan Mahmood Khan Tareen, Deputy Prosecutor General for the State.

Malik Aashiq Hussain for the Complainant.

Date of hearing: 17th June, 2015.

## **JUDGMENT**

**CH. MUSHTAQ AHMAD, J.**---Appellants Ghulam Farid, Rab Nawaz, Muhammad Ramzan and Muhammad Nawaz have challenged their conviction and sentence through this Criminal Appeal. They were tried by learned Additional Sessions Judge, Muzaffargarh in case FIR No.53 dated 08.04.1996 registered under sections 302, 34, P.P.C. at Police Station Shah Jamaal, District Muzaffargarh along with co-accused Haji Muhammad and Abdul Majeed.

2. On conclusion of trial, learned trial court vide its judgment dated 12.10.2000 convicted the appellants and they were sentenced as under:-

Convicted under section 302(b)/34, P.P.C. and sentenced to imprisonment for life (Each). They were held liable to pay Rs.20,000/- (each) as compensation in terms of section 544-A, Cr.P.C. to the legal heirs of deceased Ghulam Qadir and in case of default in payment thereof, to further undergo imprisonment for six months (R.I.) each. The compensation awarded under section 544-A, Cr.P.C. shall be recoverable as arrears of land revenue.

Benefit of section 382-B, Cr.P.C. was also extended to the appellants.

Co-accused Haji Muhammad and Abdul Majeed were acquitted of the charge.

3. FIR was got registered by Ghulam Sarwar son of Elahi Bakhsh. Facts of the case as per FIR are that on the night intervening between 07/08th of April, 1996, complainant, his brother Ghulam Qadir along with Fayyaz Hussain and Muhammad Bakhsh were coming back from their agricultural land situated at Mauza Mandoo. At about 02:30 A.M., when they reached Chah Bakaain wala, they heard barking of dogs. Suddenly, Ghulam Fareed armed with hatchet, Muhammad Ramzan armed with sota, Rab Nawaz armed with Chhuree, Muhammad Nawaz armed with Sota (appellants herein) came from backside. Muhammad Nawaz (appellant) caught hold Ghulam Qadir with his rifle in "Japha". They (appellants) lifted Ghulam Qadir and took him near their houses. Appellants shouted that they had restrained Ghulam Qadir from passing that way as they had suspicion on Ghulam Qadir of having illicit relations with Mst. Irshad Mai wife of Ghulam Sarwar. Ghulam Fareed gave a blow with hatchet at chin of Ghulam Qadir, who fell down. Complainant along with others went forward to rescue his brother, on which accused persons threatened them of same treatment. Rab Nawaz gave several blows with Chhuree at neck of Ghulam Qadir. Muhammad Nawaz and Muhammad Ramzan gave sota blows at different parts of body of Ghulam Qadir. Thereafter, Ghulam Fareed accused brought Mst. Irshad Mai from his house and gave blows with hatchet hitting at her neck, chin and left shoulder. Rab Nawaz also gave blows with Chhuree at her fingers. Mst. Irshad Mai fell down and then Muhammad Ramzan gave her blows with sota which hit at different parts of her body. After that, all the four accused persons fled away along with their respective weapons. Ghulam Qadir and Mst. Irshad Mai succumbed to the injuries on the spot.

4. Motive as alleged in the FIR is that accused persons (appellants) had suspicion on Ghulam Qadir of having illicit relations with Mst. Irshad Mai.

5. Investigation was conducted by Mr. Mahmood Shahid Inspector PW-11. Report under section 173, Cr.P.C. was submitted before trial court, where appellants along with two co-accused

aforementioned were charge sheeted. They pleaded not guilty and claimed trial. Prosecution in order to prove its case, got examined eleven witnesses. Ocular account was furnished by PW-6 Ghulam Qadir (complainant) and PW-9 Muhammad Bakhsh. Prosecution got examined Abdul Majeed as PW-5 who implicated co-accused Haji Muhammad and Abdul Majeed with charge of abetment. Medical evidence was furnished by PW-3 Dr. Muhammad Tanveer Qureshi, who conducted postmortem examination on the dead body of Ghulam Qadir and found following injuries:-

1. Cut wound 8 x 8 cm just beneath chin extending on both sides, muscle cut, boney pieces shriveled, and vessels were also cut.
2. A lacerated wound 2 x 1 cm through and through on right upper lip.
3. A cut wound 4 x 1 cm, cutting tip of nose going deep just above right moustaches, cutting muscle and bone.
4. Contusion 2 x 2 cm with redness and swelling on bridge of nose, nasal bone cut into pieces.
5. A lacerated wound 2 x 1 cm, 2 cm above right eyebrow with marked contusion and redness around, bone deep and exposed.
6. Contusion 5 x 1 cm with marked depression around, creitus felt beneath on left top of forehead.
7. Multiple contusions 2 x 4 cm with mark redness and swelling on left upper eye.
8. A lacerated wound 1 x 1 cm muscle deep 1 x half cm outer to left eye wall with multiple contusion 5 x 3 cm on circling lacerated wound with redness and swelling.
9. A huge cut wound 6 cm x 2 cm on basal front of neck cutting muscle and left neuron vascular bundle.
10. A cut wound 3 x 2 cm below an inward injury No.9 cutting vessels nerves and esophagus.
11. Contusion 14 x 1/2 cm just below injury No.10 on front lower bere of neck both on left side.
12. Superficial cut wound 5 x 1/3 cm on front mid of neck muscle deep.
13. Superficial cut wound 5 cm x 2 cm below injury No.12 skin deep.

14. Huge cut wound 12 x 2 cm on front upper neck extending on both sides cutting/all the muscles, nerves, vessels, esophagus, trachea and extending upto cervical area.
  15. A cut wound 6 x 2 cm in the mid line extending on both the sides, upto 1/3 cm cutting muscle, nerves and vessels below injury No.14.
  16. A lacerated wound 2 x 1 cm bone deep and exposed on left mastoid process.
  17. Multiple contusion 12 x 9 cm on back of left shoulder with swelling and redness.
  18. Contusion 19 x 4 cm on back of left of upper chest extending upto auxiliary area.
  19. Superficial cut wound 9 x 1/4 cm on back of right shoulder just above scapula.
  20. Multiple contusion in area 20 x 15 cm on left lumber region extending upto iliac crist.
  21. Multiple contusions, in area 19 x 6 cm on whole of left flank.
  22. Multiple contusions in area 13 x 12 cm on left lumber sacral area.
  23. Contusion 30 x 2 cm on front left axilla extending upto lower outer chest.
  24. Multiple contusions in area 18 x 12 cm with variable length and width on left lower back of chest.
  25. Contusion 12 x 4 cm on outer mid left thigh.
  26. Contusion 8 x 4 cm below injury No.25.
  27. Multiple contusion in area 13 x 6 cm below injury No.26.
  28. Multiple contusion in area 5 x 6 cm on front right upper and outer thigh.
  29. Multiple contusions covering whole of left upper arm.
  30. Multiple contusions covering whole of left forearm posterior part.
  31. Contusion 9 x 4 cm on right outer elbow joint.
- In deep dissection of brain and skull vault.
1. There were marked multiple hematoma beneath frontal scalp.
  2. There were marked multiple hematoma beneath left mastoid process.



3. Multiple lineal fracture of left frontal bone with mark hematoma beneath.

According to opinion of PW-3, cause of death was severe and profuse haemorrhage and shock (vasovagal, hypovolumic, spinal) which was sufficient to cause death due to injuries Nos.1, 6, 9, 10, 14, and 15 specially and due to all injuries collectively. Injuries Nos.1, 3, 9, 10, 12, 13, 14, 15 and 19 were inflicted by sharp edged weapon while all rest by blunt weapon. Injuries Nos.1, 6, 9, 10, 14, 15 were dangerous to life. Injury No.3 was grievous while all the rest were simple in nature. All these injuries were ante-mortem in nature.

6. Postmortem examination on the dead body of Mst. Irshad Mai was also conducted by PW-3 who found following injuries on the dead body:-

1. A huge cut wound (combination of multiple cut wounds) 11 x 5 cm cutting all vessels, nerves, muscle, trachea and cervical vertebra on left front upper neck extending outward.
2. A cut wound 9 cm x 2 cm cutting all vessels, nerves and vessels just below injury No.1.
3. A cut wound 3 x 1 cm muscle deep adjoining injury No.1 on inner side.
4. A cut wound 12 x 4 cm just below chin cutting muscle, nerves and vessels, 3.5 cm above injury No.1 also cutting wound.
5. An incised wound 7 x .5 cm on front mid of neck muscle deep.
6. An incised wound 6 x .1 cm on left front upper chest muscle deep.
7. An incised wound 3 x 1/2 cm on right front base of neck.
8. Incised wound 10 x 1 cm skin deep but from inner side muscle deep on left front upper chest.
9. Incised wound 6 x 1/2 cm, 2 cm below injury No.8.
10. Multiple incised wound in area 6 x 6 cm all skin deep on top of left shoulder.
11. A cut wound 8 x 2 cm bone deep and exposed on top and back of left shoulder.
12. A cut wound 6 x 3 cm muscle deep on outer part of left arm.
13. A lacerated wound 2 x 1/2 cm on mid outer right Pinna.

14. Two incised wounds in area 5 x 1 cm on right front upper chest all skin deep.
15. Contusion 2 x 1.5 cm on right chest on front.
16. Contusion 4 x 1.5 cm on right lower inner cheek.
17. Contusion 3 x 1 cm just below left eye.
18. Two cut wounds in area 8 x 4 cm on palmer base of right ring big and index finger cutting all vessels, nerves, muscle and bone.
19. Contusion 3 x 1 cm on back of right elbow joint.
20. A cut wound 8 x 4 cm on back of right leg inner posterior part muscle deep.
21. Contusion 16 x 4 cm on left outer buttock.
22. Multiple abrasions in area 10 x 4 cm on back of right lower chest.
23. A cut wound 7 x 4 cm on root of neck mid back cutting muscles, nerves and vertebra.
24. A cut wound 10 x 1/2 cm muscle deep 1.5 cm above injury No.23.

7. On conclusion of prosecution evidence, statements of appellants were recorded under section 342, Cr.P.C., wherein they again pleaded innocence. In answer to the question why this case against him and why the PWs had deposed against him, appellant Ghulam Fareed stated as under:-

"On the night of occurrence, I along with my brother Ghulam Sarwar was sleeping in our house. On the barking of dogs, I and my brother woke up. I picked up hatchet with me as it was a night time as a precautionary measure to meet unforeseen episode. I followed the dogs in which direction they were going. Ghulam Sarwar was also with me empty handed. When we reached near the small brick kiln (Bhatti Khisht), I saw Ghulam Qadir deceased committing Zina with Mst. Irshad Mai deceased wife of my brother Ghulam Sarwar. They were in naked position. On seeing such a situation abruptly, I lost my self control on grave and sudden provocation. I started inflicting injuries to both of them as a result of which both of them expired at the spot. Since I had

lost my self control, therefore, I cannot say as to how many injuries were caused by me to them".

Appellant Muhammad Nawaz in reply to the same question, stated as under:-

"The case against me is false. The complainant had roped as many as respectable family members of our tribe in order to prevent us from the Pairvi of the case. The PWs are inter se related to each other. They were not present at the spot".

Appellants Muhammad Ramzan and Rab Nawaz also deposed in similar lines. In their defence, appellants got examined Allah Baksh, Mst. Sakina Mai and Ghulam Sarwar as DW-1 to DW-3.

8. On conclusion of trial, appellants were convicted and sentenced for murder of Ghulam Qadir as mentioned above. However, to the extent of murder of Mst. Irshad Mai, they were acquitted of the charge on the basis of compromise with her legal heirs.

9. I have heard arguments advanced by learned counsel for parties and gone through the record with due care.

10. This case was registered on the complaint made by Ghulam Sarwar, brother of Ghulam Qadir deceased. Complainant appeared in the witness box as PW-6 and reiterated the story narrated in the FIR. His statement was corroborated by Muhammad Bakhsh (PW-9). According to version of prosecution, complainant (PW-6), his brother Ghulam Qadir (deceased) along with Fayyaz Hussain (given up PW) and Muhammad Bakhsh (PW-9) were coming from village Mando to their house. It was 02:30 A.M., when they reached Chah Bakaain wala, they heard barking of dogs and suddenly, Ghulam Fareed armed with hatchet, Muhammad Ramzan armed with sota, Rab Nawaz armed with Churee, Muhammad Nawaz armed with Sota (appellants herein) came from backside. Muhammad Nawaz (appellant) caught hold Ghulam Qadir in "Japha" and licenced rifle of Ghulam Qadir also went in his "Japha". They (appellants) lifted Ghulam Qadir and took him near their houses. Appellants shouted that they had restrained

Ghulam Qadir from passing that way as they had suspicion on Ghulam Qadir of having illicit relations with Mst. Irshad Mai wife of Ghulam Sarwar. Then appellants gave blows to Ghulam Qadir with their respective weapons. Complainant along with others went forward to rescue his brother, on which accused persons threatened them. PW-6 during cross-examination stated that both the dead bodies were lying jointly. He further stated that the place from where blood stained earth was taken was a field of Barseem. PW-9 who also claims to be an eye-witness of the occurrence, during cross-examination stated that no other person came to place of occurrence except them despite the fact that they remained shouting. He further stated that deceased remained making hue and cry. According to PWs, accused persons dragged Ghulam Qadir to their houses. According to prosecution accused were four in number who murdered two persons in view of complainant party consisting of three persons. It is strange to note that none of the accused was armed with firearm weapon, despite that no attempt was made by complainant party to intervene to rescue the deceased. The fact that nobody else attracted to the spot despite raising hue and cry by deceased as well as PWs, also casts doubt on presence of PWs at the spot. It was a night occurrence which was reported to police at 07:45 A.M on 08.04.1996. Postmortem examination on the dead body was conducted on next date i.e 09.04.1996 at 10:15 A.M. PWs are close relatives of complainant. Complainant while appearing as PW-6 also made many improvements in his version. Inference drawn from above discussion is that none of the PWs was present on the spot at relevant time, as such ocular account in this case is not believable.

11. After discarding the prosecution version, what remains on the record is statements of appellants recorded under section 342, Cr.P.C. All the appellants except Ghulam Fareed in their statements recorded under section 342, Cr.P.C. denied the allegation. Therefore, charge against them is not established on record. Resultantly, this criminal appeal to the extent of appellants Rab Nawaz, Muhammad Ramzan and Muhammad Nawaz is hereby allowed and conviction and sentence recorded by the trial

court against them through impugned judgment is set aside and appellants Rab Nawaz, Muhammad Ramzan and Muhammad Nawaz are acquitted of the charge. They are presently on bail. Their sureties stand discharged of the liability of bail bonds.

12. As regards case of Ghulam Fareed appellant, it was his version that he saw Ghulam Qadir (deceased) and Mst. Irshad Mai (deceased), who was his sister-in-law, in compromising position. He lost self control and on grave and sudden provocation inflicted injuries to both of them which resulted in their death. In the given facts and circumstances of the case when prosecution evidence has been disbelieved, statement of appellant has to be accepted in its entirety. Therefore, case of Ghulam Fareed appellant was covered under section 302(c), P.P.C. His conviction is altered from section 302(b), P.P.C. to section 302(c), P.P.C. Record shows that he remained in jail as under-trial prisoner and then as convict after decision of the case. The sentence, therefore, already undergone by him would be sufficient to meet the ends of justice. Resultantly, while maintaining conviction of Ghulam Fareed appellant under section 302(c), P.P.C., this appeal is dismissed to his extent. However, quantum of sentence is reduced to the period already served out by him. Presently appellant Ghulam Fareed is on bail. His surety stands discharged of the liability of bail bonds.

ZC/G-34/L Order accordingly.

**2017 Y L R Note 69**  
**[Lahore (Rawalpindi Bench)]**  
**Before Ch. Mushtaq Ahmed, J**  
**Rao KHALID ANJUM---Appellant**  
**Versus**  
**SHAMAS-UR-REHMAN---Respondent**

Regular First Appeal No.210 of 2014, heard on 6th January, 2015.

**(a) Civil Procedure Code (V of 1908)---**

---O. XXXVII, Rr. 2 & 3---Constitution of Pakistan, Art. 10-A---  
Summary suit on negotiable instrument---Application for leave to  
appear and defend the suit---Right of fair trial---Scope---  
Application for leave to appear and defend the suit was dismissed  
and suit was decreed---Validity---Defendant produced documents  
along with application seeking leave to defend the suit in support  
of his version apart from the affidavit sworn by him---Question  
whether cheque was without consideration after amount having  
been paid, or otherwise, was a factual controversy---No one could  
be condemned unheard---Factual controversy could be resolved  
after recording evidence---Defendant had made out a case for grant  
of leave to defend the suit---Fair opportunity had not been  
provided to the defendant to prove his version---Impugned  
judgment and decree were set aside---Application filed by the  
defendant (appellant) for leave to defend the suit was allowed  
subject to furnishing security equal to the suit amount to the  
satisfaction of Trial Court within a specified period---Trial Court  
was directed to conclude the case expeditiously within a specified  
time---Appeal was accepted, in circumstances. [Paras. 6 & 7 of the  
judgment]

**(b) Constitution of Pakistan---**

---Art. 10-A---Right of fair trial---Scope---Person should be  
entitled to a fair trial and due process for determination of his civil  
rights and obligation or in any criminal charge against him. [Para.  
6 of the judgment]

Raja Sajid Mehmood for Appellant.

Asad Mahmood Abbasi for Respondent.

Date of hearing: 6th January, 2015.

## **JUDGMENT**

**CH. MUSHTAQ AHMAD, J.**---This appeal has been directed against judgment and decree dated 15.05.2014 passed by learned Additional District Judge, Rawalpindi, whereby application moved by the appellant for leave to defend the suit filed under Order XXXVII of Civil Procedure Code, 1908 was rejected and the suit was decreed.

2. Contention of learned counsel for appellant is that the appellant had made out a case for grant of leave to defend the suit; that there was disputed question of fact touching merits of the case and the controversy could not be resolved without recording evidence but the learned trial court declined to grant leave to defend the suit without providing fair opportunity of being heard, which has caused injustice to the appellant and that the impugned judgment and decree is not sustainable in the eye of law.

3. The appeal has been opposed by learned counsel for the respondent on the ground that the appeal was not filed within time prescribed by the law, hence, was liable to be dismissed on the question of limitation. Learned counsel further argued that the cheque for payment of Rs.12,00,000/- was issued by the appellant/defendant, which on being presented before the bank authorities was dishonoured; that the learned trial court has rightly declined to grant leave to defend the suit and that the impugned judgment and decree is in accordance with law, hence, not liable to be interfered by this Court.

4. Arguments heard and record perused.

5. The objection raised by learned counsel for respondent regarding limitation has been considered. In the case in hand, impugned judgment and decree was passed on 15.05.2014. The appellant applied for obtaining certified copies on 17.05.2014,

which were prepared and delivered to him on 17.06.2014. Time for filing appeal ended in summer vacations. The appeal was filed on 08.09.2014, hence, it could not be said as time barred.

6. On merits, it is to be seen that the respondent/plaintiff had referred in the plaint an agreement between the parties, according to which the payment was to be made by the appellant/defendant. It was version of plaintiff that the payment was not made by defendant as settled by the parties. However, it was version of appellant/defendant that the amount had been paid by him and the cheque was without consideration. The defendant also produced documents along with the application seeking leave to defend the suit in support of his version apart from the affidavit sworn by him. The question as to whether the cheque was without consideration after the amount having been paid, or otherwise, was a factual controversy. The receipts of cheques referred by the appellant/defendant were available on record. By now, it is well settled that nobody can be condemned unheard. Reference may be made to Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973, wherein it is provided that "for the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process". Factual controversy raised and supported by documents, can be resolved after recording evidence. Prima facie, the appellant/defendant had made out a case for grant of leave to defend the suit. Contention of learned counsel for appellant that fair opportunity has not been provided to the appellant to prove his version, is convincing.

7. In view of above, the appeal in hand is accepted and impugned judgment and decree is set aside. Consequently, application filed by the appellant/defendant for leave to defend the suit is allowed, subject to furnishing security equal to the suit amount to the satisfaction of the trial court within seven days after receipt of certified copy of this judgment. Parties are directed to appear before the trial court on 19.01.2015 for further proceedings. As considerable time has already been consumed in litigation by



the parties, the trial court is directed to conclude the trial expeditiously, within four months from receipt of certified copy of this judgment, under intimation to the Deputy Registrar (Judicial) of this Court.

ZC/K-3/L Appeal allowed.

**2017 Y L R Note 237**  
**[Lahore (Multan Bench)]**  
**Before Qazi Muhammad Amin Ahmed and Ch. Mushtaq Ahmad,**  
**JJ**  
**BEHRAM alias SUFI BABA---Appellant**  
**Versus**  
**The STATE and another---Respondents**

Criminal Appeals Nos.260-ATA, 280-ATA and Capital Sentence Reference No.6 of 2013, heard on 3rd February, 2015.

**Penal Code (XLV of 1860)---**

---Ss. 302(b), 324, 34 & 37---Anti-Terrorism Act (XXVII of 1997), Ss. 7 & 21-I---Explosive Substances Act (VI of 1908), Ss.3 & 4---Qatl-i-amd, attempt to commit qatl-i-amd, common intention, co-operation by doing one of several act constituting an offence, act of terrorism, possessing and using explosive substance---Appreciation of evidence---Accused, on the very day of his arrest got recorded his confessional statement before Special Judicial Magistrate; wherein he disclosed the story of his involvement; as well as his role played in the occurrence---Both accused persons in their statements recorded under S.164, Cr.P.C., described the story of occurrence; confessed their guilt, and also implicated each other in the occurrence with their active role---Before recording confessional statements of accused persons, Magistrate himself examined the body of accused persons to rule out possibility of use of coercion, inducement or persuasion---Judicial Magistrate, while recording confessional statements of accused persons, complied with all the necessary formalities enumerated in Ss.164 & 364, Cr.P.C.---Confessional statements of accused persons, were recorded by the Magistrate in his own handwriting---Accused persons, had brought nothing on record to show that the confession were not voluntary; or the same were obtained through coercion, maltreatment or inducement---No irregularity had been pointed out by the defence to be committed by Magistrate, while recording confessional statements of accused persons---Police Officials, were performing their duties at the place of occurrence, when incident took place---Said officials had

corroborated the story as narrated in the FIR, they were cross-examined at length, but their credence could not be shaken by the defence---Accused persons, had not denied suicide blast, resulting into 52 casualties and 73 people wounded---Accused did not justify his continuous contact with proclaimed offender---No mala fide on the part of Police had been alleged by accused regarding his implication in the case---Co-accused, also, could not give any reason for his alleged false implication, he did not produce any evidence in defence---Confessions, though were retracted by accused persons, but same were corroborated through evidence of accused and medical evidence---Same was reliable piece of evidence---Conviction could be based on retracted judicial confession, provided it was corroborated by independent circumstantial evidence---Trial Court correctly appreciated the evidence available in the record---Present was a case of carnage, which resulted in many deaths and caused serious injuries to those, who had come at the Shrine to pay homage--  
-In such like cases leniency could not be extended to culprits---  
Incident had brought sense of fear, insecurity and terror, not only amongst those who were present at the place of occurrence; but also in the society---Prosecution had proved its case against accused persons beyond any shadow of doubt---Findings recorded by the Trial Court, could not be interfered with---Death sentence imposed upon accused persons, was confirmed and reference, was answered in the affirmative, in circumstances. [Paras. 13, 14, 15, 16 & 17 of the judgment]

Mehroz Aziz Khan Niazi for Appellant.

Malik Riaz Hussain Saghla, D.P.-G. for the State.

Date of hearing: 3rd February, 2015.

## **JUDGMENT**

**CH. MUSHTAQ AHMAD, J.**---Behram alias Sufi Baba appellant has filed Criminal Appeal No.260-ATA of 2013 against his conviction and sentence, whereas Umar alias Fidai appellant has filed Criminal Appeal No.280-ATA of 2013 against his conviction. Besides these appeals, Capital Sentence Reference No.06 of 2013 has

been sent by the trial court for confirmation of death sentence awarded to appellant Behram alias Sufi Baba.

2. Both the appellants Behram alias Sufi Baba and Umar alias Fidai were tried by learned Judge, Anti Terrorism Court No.IV, Lahore (Camp at D.G. Khan) in case FIR No.70/11 dated 03.04.2011 registered under Sections 302, 324, 34, 37, P.P.C., Sections 3, 4 of Explosive Substances Act, 1908 read with section 21(I) and 7 of Anti Terrorism Act, 1997 at Police Station Sakhi Sarwar, Dera Ghazi Khan, who vide his judgment dated 06.03.2013, convicted and sentenced both the appellants as under:-

**APPELLANT BEHRAM ALIAS SUFI BABA.**

- i) Death on 52 counts under section 7(a) read with section 21-I of ATA, 1997.
- ii) Rigorous Imprisonment for 14 years under section 7(b) ATA, 1997 and with fine Rs. 1,00,000/-.
- iii) Imprisonment for life under section 7(c) read with section 21-I of ATA, 1997 and with fine Rs. 1,00,000/- on 73 counts.
- iv) Rigorous Imprisonment for fourteen years under section 7(d) read with section 21-I of ATA, 1997 and with fine Rs. 1,00,000/-
- v) Imprisonment for life under section 7(ff) read with section 21-I of ATA, 1997.
- vi) Death on 52 counts as Tazir under section 302 (b) read with sections 34, 37 of P.P.C. and to pay compensation Rs.1,00,000/- to the heirs of all the deceased each and Rs.50,000/- to injured persons each. In default in payment of said amount, to suffer further imprisonment for four months each.
- vii) Rigorous Imprisonment for ten years on 73 counts under section 324 read with sections 34, 37, P.P.C.
- viii) Rigorous Imprisonment for two years under section 427 read with sections 34, 37 P.P.C. and with fine Rs.50,000/-.
- ix) Death under section 03 of Explosive Substances Act, 1908 read with schedule 03 clause (V) and section 21-G, ATA, 1997 with fine Rs. 1,00,000/-.

x) Imprisonment for life under section 04 of Explosive Substances Act, 1908 read with schedule 03 clause (V) and section 21-G, ATA, 1997.

**APPELLANT UMAR ALIAS FIDAI.**

i) Imprisonment for life on 52 counts under section 7(a) read with section 21-I of ATA, 1997 and with fine Rs. 1,00,000/- on 52 counts.

ii) Simple Imprisonment for 14 years under section 7(b) ATA, 1997 and with fine Rs. 1,00,000/-.

iii) Imprisonment for life under section 7(c) of ATA, 1997 and with fine Rs. 1,00,000/-.

iv) Simple Imprisonment for fourteen years under section 7 (d) read with section 21-I of ATA, 1997 and with fine Rs. 1,00,000/-

v) Imprisonment for life under section 7(ff) of ATA, 1997.

vi) Imprisonment for life on 52 counts under section 302(b) read with section 34, 37 of P.P.C. and to pay compensation Rs.1,00,000/- to the heirs of all the deceased each and Rs.50,000/- to injured persons each. In default in payment of said amount, to suffer imprisonment for four months each.

vii) Imprisonment for ten years on 73 counts under section 324 read with sections 34, 37, P.P.C.

viii) Imprisonment for two years under section 427 read with sections 34, 37, P.P.C. and with fine Rs.50,000/-.

ix) Imprisonment for life under section 03 of Explosive Substances Act, 1908 read with schedule 03 clause (V) and section 21-G, ATA, 1997 with fine Rs.1,00,000/-.

x) Imprisonment for life under section 04 of Explosive Substances Act, 1908 read with schedule 03 clause (V) and section 21-G, ATA, 1997.

3. FIR in this case was registered on the complaint made by Syed Zahid Hussain Inspector/SHO of Police Station Sakhi Sarwar, District Dera Ghazi Khan. Succinctly, but relevant facts as set out in the FIR are that on 03.04.2011, complainant Syed Zahid Hussain Inspector along with Rehmatullah 890/C, Muhammad Aslam 683/C, Ghazanfar Abbas 1312/C, Sabir Husnain ASI, Sajjad Hussain 4349/C,

Muhammad Kamran 4221/C, Jaffer Hussain 394/C, Muhammad Ashraf 4426/C, Mazhar Abbas, Muhammad Arshad, Sughran Maai, Muhammad Akram and Muhammad Farrukh were present at security duty at Darbar Sakhi Sarwar. Four persons whose features have been fully described in FIR, tried to enter Darbar, whom police officials directed to wait their turn and to be in the line. In the meanwhile, a huge explosion took place and in consequence thereof, injured people as well as dead bodies were scattered. Police got vacated the courtyard of Darbar and one human head was found therefrom. After twenty minutes, one more explosion took place at backside of Darbar, where one person was present in injured condition. Complainant was informed that said person tried to blast his explosive jacket which could not blast and only igniter was exploded, due to which left arm of said person was shattered. Then said person wanted to throw hand grenade, whereupon police made firing and consequently his right arm was injured. Said person was arrested by the police, whose name was disclosed as Umar alias Fidaai (appellant). Name of expired suicidal terrorist was known as Ismail alias Abdullah. Two unknown terrorists taking benefit of huge gathering of people, succeeded in fleeing away.

4. Investigation in this case was conducted by PW-22 Syed Zahid Hussain Inspector, who is also complainant of this case. Investigation was in progress when PW-22 went to Sehala for advance course. Thereafter, investigation was conducted by Joint Investigation Team. PW-23 Liaqat Ali Inspector was the convener of Joint Investigation Team, who deposed about the steps taken for investigation. Both the appellants made confessional statements under section 164 Cr.P.C. before PW-21 Abdul Jabbar, Special Judicial Magistrate. Apart from appellants, co-accused Farooq, Saleem Jan, Muhammad Asghar and Bashir Ahmad were also arrested in this case with the allegation of involvement in the occurrence. Co-accused Zara Ali could not be arrested, who was declared as Proclaimed Offender. After completion of necessary steps of investigation, supplementary report under section 173 Cr.P.C was submitted before the court for trial.

5. Umar alias Fidaai appellant/convict was declared of the age of 13 to 15 years vide report of medical board dated 23.05.2012. So, he was given benefit under the provisions of Juvenile Justice System Ordinance, 2000. Learned trial court after observing pre-trial formalities, framed charge against appellants and afore-mentioned co-accused (since acquitted), to which they pleaded not guilty and claimed trial.

6. At the trial, prosecution, in order to prove its case, produced as many as 33 witnesses, whereas PWs Mohsin Ali Sub-Inspector, Muhammad Aslam 683/C were given up being unnecessary. Attendance of remaining prosecution witnesses could not be procured without expense of inordinate delay, so, right of prosecution to produce further evidence was closed by the trial Court.

7. Medical evidence in this case was furnished by PW-2, PW-3, PW-4, PW-5, PW-6 and PW-26.

8. Statements of the appellants were recorded under section 342, Cr.P.C. wherein they again pleaded innocence. They both did not opt to make statement on oath as required under section 340(2), Cr.P.C. They also did not show their intention to produce any defence evidence. Appellant Behram while answering to the question why this case against him and why the PWs have deposed against him, stated as follows:-

"I am falsely involved in this case only because of the reason that main accused Zara Ali (since absconder) is resident of my village".

Appellant Umar alias Fidai while answering to the same question, replied as under:--

"My father has died. I am the only earning hand of my family. I had come to pay homage to the saint Hazrat Sakhi Sarwar on his tomb. Police injured me by firing and pressurized me to get record my statement according to their whim and wishes and threatened me to kill otherwise. I know nothing about the procedures of the courts as there are no

such systems in my area. I am child. I am falsely involved in this case".

9. At conclusion of trial, the appellants were convicted and sentenced as mentioned above, hence these criminal appeals as well as capital sentence reference.

10. Learned counsel for appellants contended that the appellants had no connection with the suicidal bomber Ismail and there is no such evidence on the file in this regard; that the appellants have been involved falsely in this case by the police just to show efficiency; that the confessions were not voluntarily made because the appellants were in police custody and had been tortured by police in order to make confession before the court and they were extended threats of dire consequences in case they did not make confession, therefore, such confession could not be made basis for conviction; and that, the prosecution has failed to prove its case against the appellants.

11. Learned DPG has opposed the submissions by arguing that the appellant Umar alias Fidaai was apprehended from the spot when luckily his explosive jacket could not blow off, hence, there is no doubt regarding his involvement in the occurrence; that confessional statements of both the appellants have been recorded by the learned Special Judicial Magistrate while following the procedure laid down in the law, therefore, there is no reason to disbelieve such statement; that the confessional statements of the appellants have been fully corroborated by the prosecution evidence and as such both the appellants have been rightly convicted by the learned trial court.

12. We have heard the exhaustive arguments of the learned counsel for the parties and have gone through the record with their valuable assistance.

13. As per prosecution story mentioned in the FIR, four unknown persons tried to enter into shrine of Sakhi Sarwar at the eve of Urs when there was a large gathering of people. One of said persons exploded his suicidal jacket in the middle of gathering, resulting into



52 casualties and 73 injured. After the brutal incident of first suicide blast by Ismail alias Abdullah, an attempt was made for suicide explosion by appellant Umar alias Fidaai, however, his suicide jacket could not blast fortunately and he was apprehended on the spot. The other two companions of the suicidal bombers succeeded in fleeing away taking advantage of large gathering at the shrine. This case was investigated by Joint Investigation Team, of which PW-23 Liaquat Ali Inspector was convener. Formal arrest of appellant Umar alias Fidaai was made on 16.04.2011, who on the same day got recorded his confessional statement before Special Judicial Magistrate (PW-21), wherein he disclosed the story of his involvement as well as his role played in the occurrence. Confessional statement of appellant Behram was recorded on 27.04.2011 by PW-21. Both the appellants in their statements recorded under section 164, Cr.P.C, described the story of occurrence, confessed their guilt and also implicated each other in the occurrence with their active role despite the fact that statements of both of them were recorded on different dates. Before recording confessional statements of the appellants, the Magistrate (PW-21) himself examined the body of appellants in order to rule out possibility of use of coercion, inducement or persuasion. PW-21 while recording confessional statements of the appellants complied with all the necessary formalities enumerated in sections 164 and 364, Cr.P.C. Confessional statements of the appellants were recorded by the Magistrate in his own handwriting. Appellants had brought nothing on record to show that the confessions were not voluntary or the same were obtained through coercion, maltreatment or inducement. No irregularity has been pointed out by the defence to be committed by PW-21 while recording confessional statements of the appellants. In the attending circumstances of this case, we are of the view that confessional statements of appellants were not the result of maltreatment and coercive measures.

14. PW-15 Imtiaz Hussain, ASI and PW-22 Syed Zahid Hussain Inspector were performing duty at the place of occurrence when this unfortunate incident took place. They both have corroborated the story as narrated in the FIR. PWs were cross-examined at length, however, their credence could not be shaken by the defence. In the

FIR, features of four persons who tried to enter the shrine by breaking the procedure of security checking, have been fully mentioned. One of the said persons expired in suicide blast by himself, whereas appellant Umar alias Fidaai is unsuccessful suicide bomber. He was apprehended from the place of occurrence while he remained unsuccessful in exploding his suicide jacket, which was removed from his body by the police and he was sent to Hospital for treatment. A hand grenade was also recovered from his possession and the same was defused on the spot. Head as well as legs of the successful suicidal bomber were recovered from the spot. Photographs of his head were taken by the police. Whole of the oral and documentary evidence is relevant for the purpose of proving prosecution case against the appellants.

15. Appellants have not denied suicide blast by Ismail alias Abdullah, resulting into 52 casualties and 73 people wounded. In his statement recorded under section 342, Cr.P.C., appellant Behram took the plea that he was involved in this case for the reason that the main accused Zara Ali (since absconder) is resident of his village. However, he did not justify his continuous contact with said accused/P.O. Zara Ali at Dera Ghazi Khan before the occurrence. He also did not produce any evidence to substantiate his plea. No mala fide on the part of police has been alleged by appellant Behram regarding his implication in this case. Likewise, appellant Umar alias Fidaai could not give any reason for his alleged false implication. He also did not bother to produce any evidence in defence. By now it is well settled that conviction can be based on retracted judicial confession provided it is corroborated by independent circumstantial evidence.

16. In the instant case though the confessions were retracted by the appellants but the same were corroborated through evidence of recovery, ocular account to the extent of appellant Umar Fidai and the medical evidence, hence, the same is reliable piece of evidence. Learned trial court correctly appreciated the evidence available on the record. It was a case of carnage which resulted in too many deaths and caused serious injuries to those who had come at the shrine to pay homage to the sacred personality buried therein. In such like cases

leniency could not be extended to the culprits. Admittedly, the incident had brought sense of fear, insecurity and terror not only amongst those who were present at the place of occurrence but also in the society.

17. After reappraisal of evidence we are of the view that prosecution had proved its case against appellants beyond any shadow of doubt. We are not persuaded to interfere with the findings recorded by the trial court. Consequently, appeals filed by Behram alias Sufi Baba and Umar alias Fidai fail and the same are DISMISSED. Resultantly death sentence imposed upon the appellant Behram alias Sufi Baba is CONFIRMED and Capital Sentence Reference No.06 of 2013 is answered in the AFFIRMATIVE.

HBT/B-9/L Appeals dismissed.

**2017 Y L R Note 255**  
**[Lahore (Multan Bench)]**  
**Before Ch. Mushtaq Ahmad, J**  
**GHULAM MURTAZA---Appellant**  
**Versus**  
**The STATE---Respondent**

Criminal Appeal No.2 of 2005, heard on 30th June, 2015.

**Penal Code (XLV of 1860)---**

---S.302---Criminal Procedure Code (V of 1898), Ss.342, 544-A & 382-B---Juvenile Justice System Ordinance (XXII of 2000), S.7---Qatl-i-Amd---Appreciation of evidence---Motive, proof of---Examination of accused under S.342, Cr.P.C.---Admissibility---Grave and sudden provocation---Mitigating circumstances---Sentence, reduction in---Trial Court, having convicted accused, after trial under Juvenile Justice System Ordinance, 2000, sentenced him to life imprisonment, holding him liable to pay compensation to legal heirs of deceased under S.544-A, Cr.P.C.---Contrary to version of prosecution witnesses, accused had admitted to have killed deceased with Churri blows on grave and sudden provocation while he had found deceased with his mother in objectionable position---Testimony of prosecution witnesses, father and brother of deceased, was not confidence inspiring as the same was not plausible---Motive alleged by prosecution did not sound logical---Independent eye-witness was not produced to support prosecution case---Statement of accused recorded under S.342, Cr.P.C. in given facts and circumstances of case when prosecution witnesses had been disbelieved, had to be accepted as a whole---Case of accused was covered under S. 302(c), P.P.C.---Sentence already undergone by accused was held to be sufficient to meet ends of justice, as he had been behind bars, during trial and after conviction while his sentence had been suspended---High Court, maintaining conviction of accused under S.302(c), P.P.C. reduced quantum of sentence to period of imprisonment already undergone by him---Appeal was dismissed accordingly. [Paras. 10 & 11 of the judgment]

Mudassar Altaf Qureshi for Appellant.  
Sardar Noor Akbar Khan for the Complainant.  
Hassan Mahmood Khan Tareen, Dy. P.-G. for the State.  
Date of hearing: 30th June, 2015.

## **JUDGMENT**

**CH. MUSHTAQ AHMAD, J.---**Appellant Ghulam Murtaza has challenged his conviction and sentence through this Criminal Appeal. He was tried by learned Additional Sessions Judge, Multan in case FIR No.263 dated 20.10.2003 registered under sections 302, P.P.C. at Police Station Dehli Gate, Multan.

2. Appellant was declared Juvenile, as such he was tried under Juvenile Justice System Ordinance, 2000. On conclusion of trial, learned trial court vide its judgment dated 30.11.2004 convicted the appellant and he was sentenced as under:--

Convicted under section 302(b), P.P.C. and sentenced to imprisonment for life. He was held liable to pay Rs.50,000/- as compensation in terms of section 544-A, Cr.P.C. to the legal heirs of deceased and in case of default in payment thereof, to further undergo imprisonment for six months.

Benefit of section 382-B Cr.P.C. was also extended to the appellant.

3. FIR was got registered by Ghulam Nabi son of Haakim Ali. Facts of the case as per FIR are that Muhammad Zubair Hussain, son of the complainant was a truck body maker with whom Murtaza son of Muhammad Ramzan was a learner/ trainee. Said Murtaza did not come at work for two/three days, whereupon Muhammad Zubair Hussain went to his house to bring him at work but he refused. Exchange of hot words took place between them. Complainant along with Mehboob Hussain and Muhammad Javed Hussain on hearing noise reached the house of Murtaza where Murtaza and son of the complainant were having scuffle with each other. Murtaza picked up a Churee from the house and gave a blow to Zubair Hussain at right

side of neck. He repeated the blow at left side of neck of Zubair Hussain. Accused person fled away whereas complainant's son succumbed to the injuries.

4. Investigation was conducted by PW-11 Ghulam Muhammad SI and PW-12 Abid Sagheer S.I. Report under section 173 Cr.P.C. was submitted before trial court, where appellant was charge sheeted. He pleaded not guilty and claimed trial. Prosecution in order to prove its case, got examined twelve witnesses. Ocular account was furnished by PW-9 Ghulam Nabi (complainant) and PW-10 Mehboob Hussain. Medical evidence was furnished by PW-8 Dr. Waseem Sarwar, who conducted postmortem examination on the dead body of Muhammad Zubair Hussain and found two injuries on left and right side of neck, respectively.

5. On conclusion of prosecution evidence, statement of appellant was recorded under section 342, Cr.P.C., wherein he again pleaded innocence. In answer to the question why this case against him and why the PWs had deposed against him, appellant stated as under:--

"On the day of occurrence, I got up at 07:00 A.M. and went towards Chappar in order to take towel for washing my face. There I found the deceased Muhammad Zubair in objectionable position with my mother. Therefore, under sudden and grave provocation, I lost my senses and could not control myself due to Gairat. I inflicted injuries on the person of deceased Muhammad Zubair. After that, I tried to catch hold of my mother but she slipped away, meanwhile, thereafter, I went to P.S. Bohar gate along with Churri and told to police officer about the occurrence and surrendered myself there. Then on the information of P.S. Bohar gate to P.S. Dehli gate about the occurrence, the staff of P.S. Dehli gate Multan had taken me into custody along with Churri. I made the whole statement before the SHO P.S. Dehli gate, Multan about the occurrence. The deceased was taken into Nishter Hospital Multan by the father of deceased in injured condition and Muhammad Javed brother of the deceased also

reached there but Muhammad Zubair died before receiving any treatment. Therefore, dead body of Muhammad Zubair brought to the house of Muhammad Zubair deceased through Edhi Ambulance bearing No.E.A. 11133 certificate issued in this regard by the Zonal Incharge Edhi Welfare Centre is tendered as Ex.DC. The police took the dead body of the deceased from the house of Muhammad Zubair. I was the first informant of the occurrence. All proceedings taken up by the police are fake and fabricated. The PWs are real brothers and father of the deceased due to this fact they deposed falsely against me ".

6. On conclusion of trial, appellant was convicted and sentenced as mentioned above, hence, this criminal appeal.

7. Learned counsel for appellant argued that the occurrence was unseen and presence of PWs has not been established; that appellant was minor at the time of occurrence and had the PWs who were father and brother of deceased been present, they must have intervened to save his life; that appellant did not have intention to kill Zubair Hussain but he did so on grave and sudden provocation.

8. Conversely, learned Deputy Prosecutor General assisted by learned counsel for complainant contended that eye-witnesses were residents of the same locality and FIR was lodged promptly, hence, appellant was rightly convicted and sentenced by learned trial court.

9. I have heard learned counsel for the parties at length and gone through the record with due case.

10. Occurrence was reported to police by Ghulam Nabi, father of Zubair Hussain deceased. He appeared in the witness box as PW-9 and reiterated the contents of FIR. His statement was supported by PW-10 Mehboob Hussain who is also his son. According to prosecution, PW-9, PW-10 along with Javed Hussain (given up PW) on hearing noise were attracted to the spot when appellant gave Churri blows to Zubair Hussain (deceased) in their presence. PW-9 is

father of deceased whereas PW-10 is his brother. Appellant at the time of occurrence was a minor young boy. Both PW-9 and PW-10 along with Javed Hussain could easily overpower the appellant, had they been present at the time of occurrence and they must have not let him go scot-free. Javed Hussain who was an independent witness, has not been examined by prosecution, which indicates that he was not ready to support the prosecution version. So, presence of the PW-9 and PW-10 at the place of occurrence at relevant time is highly doubtful affair. According to prosecution case, appellant was working as trainee with Zubair Hussain (deceased) at the time of incident, whom deceased criticized for not going at the place of work and due to that grudge appellant killed him.

Appellant who was a trainee under the deceased, would not have killed him on such a petty matter, hence, motive alleged by the witnesses did not sound logical. For the above reasons, testimony of PW-9 and PW-10 is not confidence inspiring, hence excluded from consideration.

11. After discarding ocular account, what remains on the record is statement of appellant recorded under section 342, Cr.P.C. It was version of appellant that he saw Zubair Hussain (deceased) in an objectionable position in the company of his mother. He lost self control and under grave and sudden provocation inflicted injuries to deceased, which resulted in his death. In the given facts and circumstances of the case when prosecution evidence has been disbelieved, statement of appellant has to be accepted as whole.

Therefore, case of appellant was covered under section 302(c) P.P.C. Record shows that appellant remained in jail as under trial prisoner and then as convict after decision of the case. He was convicted vide judgment dated 30.11.2004 and his sentence was suspended on

12.10.2011. He also remained in judicial custody during the trial. The sentence, therefore, already undergone by him would be sufficient to meet the ends of justice. Resultantly, while maintaining conviction of appellant under section 302(c), P.P.C., this appeal is dismissed.



However, quantum of sentence is reduced to the period already served out by him. Presently appellant is on bail. His sureties stand discharged of the liability of bail bonds.

SL/G-31/L Order accordingly.

**2017 Y L R 1576**  
**[Lahore (Multan Bench)]**  
**Before Qazi Muhammad Amin Ahmed and Ch. Mushtaq Ahmad,**  
**JJ**  
**MUHAMMAD AZAM---Appellant**  
**Versus**  
**The STATE---Respondent**

Criminal Appeal No.736-J of 2012 and Murder Reference No.52 of 2011, heard on 24th October, 2016.

**(a) Penal Code (XLV of 1860)---**

---Ss. 302 & 365---Qatl-i-amd, kidnapping or abducting with intent secretly and wrongfully to confine person---Appreciation of evidence--Benefit of doubt---Unseen occurrence---Prosecution case was that accused kidnapped and murdered the deceased---Accused was not nominated in FIR and it was an unseen occurrence---Prosecution produced fourteen witnesses in order to prove the charge---None of them had claimed to have seen the accused while committing murder of the deceased within their sight---Record was silent as to who informed the police about presence of dead body of deceased lying in the field---Matter was reported to the police after 12 days of the missing of deceased---Where the fact as to how the deceased was murdered and his dead body was thrown in the field of standing wheat crop, was not explained by the prosecution, no evidence of "Wajj Takkar" came on record and none of the prosecution witnesses had expressed suspicion against the accused during search of deceased, accused, was acquitted by setting aside his conviction and sentence recorded by Trial Court in circumstances.

**(b) Penal Code (XLV of 1860)---**

---Ss. 302 & 365---Qatl-i-amd, kidnapping or abducting with intent secretly and wrongfully to confine person---Appreciation of evidence--Extra-judicial confession---Evidentiary value---Extra-judicial confession allegedly made by the accused before two prosecution witnesses---Apparently, there was no reason for the accused to confess his guilt before the prosecution witnesses, who were relatives of the deceased, which had been admitted by prosecution witness---Even otherwise, evidence of extra judicial confession was considered as weak evidence, which, in the present case, was not confidence inspiring---Accused, in circumstances, was acquitted by setting aside his conviction and sentence recorded by Trial Court.

**(c) Penal Code (XLV of 1860)---**

---Ss. 302 & 365---Qatl-i-amd, kidnapping or abducting with intent secretly and wrongfully to confine person---Appreciation of evidence--Recovery of incriminating material--- Reliance---Recovery of incriminating articles like "Safa" and computerized National Identity Card of deceased were effected---Such recoveries did not appeal to reason that after the commission of murder, accused would retain such articles with him---Accused, in circumstances, was acquitted by setting aside his conviction and sentence recorded by Trial Court.

Prince Rehan Iftikhar Sheikh for Appellants.

Nemo for the Complainant.

Malik Riaz Ahmed Saghla, Deputy Prosecutor General for the State.

Date of hearing: 25th October, 2016.

## JUDGMENT

**CH. MUSHTAQ AHMAD, J.**---Appellant Muhammad Azam sent to be tried on the charge of abduction and homicide in case FIR No.100 dated 13.4.2009 registered under sections 365, 302, P.P.C. at Police Station Kmeer, District Sahiwal.

2 Learned Additional Sessions Judge, Sahiwal vide his judgment dated 29.3.2011 convicted the appellant under section 302(b), P.P.C. and sentenced him to death with payment of Rs.1,00,000/- as compensation to the legal heirs of deceased in terms of section 544-A, Cr.P.C. and in the event of default to undergo further simple imprisonment for six months. Hence, above cited appeal and Murder Reference.

3. FIR (Exh.PM/1) was recorded on the complaint (Exh.PM) of Allah Ditta (PW-9) who reported that on 1.4.2009 his Mamoo Noor Zaman had come in Chak No.129/9-L at about 4/5.00 p.m. to watch 'Maila Kameer Muhammad Pinah' on bicycle. He had also his cell phone with him bearing No.0307-2676691; that on 3.4.2009 at 4.30 p.m. Muhammad Ramzan came and informed him that his Mamoo Noor Zaman had come at the house of his Mamoo Inayat and went to Maila by leaving his bicycle at his house but he did not come back to take his bicycle; that complainant got worried about his Mamoo Noor Zaman and started searching him along with Abdul Rehman and Naik Muhammad in the area of Chak No.120/9-L but they could not trace out him; that complainant suspected that his Mamoo was abducted or murdered by some unknown culprits. On this report law set in motion on 13.2.2009. Dead body of Noor Zaman, deceased was recovered by PW-14 on 21.4.2009 and post mortem was conducted by PW-3 Dr.Tahir Mehmood who opined that time between death and post mortem was between 15 to 30 days. Appellant was arrested in this case on 22.4.2009.

4. On the above information, police investigated the case and submitted report under section 173, Cr.P.C. Prosecution in order to prove charge produced fourteen witnesses in all.

On 21.2.2011 after giving up Noshier PW being unnecessary and submitting reports of Chemical Examiner and Serologist (Exh.PP, Exh.PQ, Exh.PR) prosecution case was closed.

5. Statement of accused under section 342, Cr.P.C. was recorded on 2.3.2011. He pleaded not guilty and professed his innocence, opting not to make statement on oath under section 340(2), Cr.P.C.

6. Learned trial court after hearing arguments, recorded conviction and awarded sentence to the appellant as mentioned in the opening paragraph of this judgment.

7. We have heard the learned counsel for the appellants as well as the learned Deputy Prosecutor General appearing for the State assisted by learned counsel for the complainant in the light of circumstantial evidence like last seen and extra judicial confession and recoveries effected in this case during police investigation.

8. Admittedly present appellant Muhammad Azam was not nominated in the FIR lodged by PW-9 Allah Ditta, complainant. It was an unseen occurrence. Prosecution case hinges upon the statements of PW-6 to PW-12. None of them claimed to have seen the appellant while committing murder of Noor Zaman within their sight. Dead body of Noor Zaman with separate neck and arm was found in wheat crop near Police Station Kameer unattended. Record is silent as to who informed the police about presence of dead body of deceased lying in the said field. Statements of PW-6 to 9 relate to the identification of dead body of deceased when police called them for the said purpose whereas statement of PW-10 Inayat was that while proceeding to Maila Kameer Muhammad Pannah' deceased parked his cycle in his house and when after passing of two days he did not come back PW-10 through his nephew Ramzan informed the complainant Allah Ditta (PW-9). Deceased went missing on 1.4.2009 whereas matter was reported to the police on 13.4.2009 when the police took into possession his cycle (P5).

In the intervening period where the deceased remained, how he was murdered and how his dead body was thrown in the field of standing

wheat crop is not explained by the prosecution. In this way the factum of slaying of the deceased upto throwing of his dead body in the field of wheat crop went unnoticed. Even no evidence of 'Wajj Takkar' having seen by any of the PWs or any other person came on record.

In this case main stay of the prosecution hinges upon the statements of PW-11 Rab Nawaz and PW-12 Ghulam Fareed before whom as per prosecution's own version appellant confessed his guilt of killing Noor Zaman. FIR was lodged against unknown persons for abduction of Noor Zaman. None of the PWs had expressed suspicion against the appellant during search of deceased Noor Zaman. None had witnessed him killing the deceased. Apparently there was no reason for the appellant to confess his guilt before the said PWs who were relatives of the deceased which fact has been admitted by PW-11 in his statement. Even otherwise evidence of extra judicial confession is considered as weak evidence which in this case is not confidence inspiring.

After excluding this piece of evidence there remains nothing to connect the present appellant with the commission of offence. So, in our considered opinion prosecution has miserably failed to bring home charge against the present appellant. So far as recovery of incriminating articles like Safa (P6) and CNIC (P8) of the deceased are concerned it does not appeal to reason that after the commission of murder accused would retain such articles with him.

The medical evidence also does not advance prosecution case. Resultantly, we are unable to go along with the findings arrived at by learned trial court because the evidence relied upon to pass the impugned judgment is not only weak but suffers from a number of infirmities which go to the roots demolishing the prosecution case in as much as that evidence brought on record was neither convincing nor confidence inspiring. So, we find that conviction recorded by learned trial court is not sustainable. Consequently, this criminal appeal is allowed. Conviction and sentence is set aside. Appellant is acquitted of the charge. He shall be released from jail forthwith if not required in any other case.

9. As a corollary to the above, Murder Reference No.52 of 2011 is answered in Negative.

JK/M-205/L Appeal allowed.

**2017 Y L R 2465**  
**[Lahore (Multan Bench)]**  
**Before Ch. Mushtaq Ahmad, J**  
**MUHAMMAD RIAZ---Petitioner**  
**Versus**  
**The STATE and another---Respondents**

CrI. Misc. No.6182-B of 2016, decided on 7th December, 2016.

**Criminal Procedure Code (V of 1898)---**

---Ss. 497 & 498---Penal Code (XLV of 1860), Ss. 337-F(v), 148 & 149---Hurt, rioting armed with deadly weapon, unlawful assembly--- Bail, confirmation of---Allegation against the accused were that he gave a blow with sota (stick) resulting in fracture of complainant's right arm---Accused along with six co-accused were named in FIR--- Co-accused were also given specific roles but medical evidence did not support charge to their extent---Dispute between the parties was over possession of agricultural land---Offence with which accused was charged did not fall within prohibitory clause of S. 497, Cr.P.C.-- -Accused had already joined investigation and sending him behind the bars would serve no useful purpose---Ad-interim pre-arrest bail already granted to accused was confirmed accordingly.

Prince Rehan Iftikhar for Petitioner.

Ch. Ahmad Raza, Additional Prosecutor General and Ghulam Mustafa, ASI for the State.

Sardar Muhammad Irshad Dogar for the Complainant.

**ORDER**

**CH. MUSHTAQ AHMAD, J.**---This petition has been moved by Muhammad Riaz accused in case FIR No.274 of 2016 dated 30.08.2016 under sections 337-F(v), 148, 149, P.P.C. registered at Police Station Sultan-Pur District Vehari seeking pre-arrest bail.

2. Arguments heard and record perused.



3. Allegation against petitioner, according to FIR is that he gave a blow with sota resulting in fracture of complainant's right arm. Along with petitioner, six co-accused were named in the FIR who were also given specific roles but medical evidence did not support charge to their extent, as such their ad-interim pre-arrest bail petition was confirmed by learned trial Court. Admittedly there is dispute between the parties over possession of agricultural land. Offence with which petitioner is charged does not fall within prohibitory clause of section 497, Cr.P.C. Petitioner has already joined investigation. Sending him behind the bars at this stage would serve no useful purpose. Therefore, petition in hand is allowed and ad-interim pre-arrest bail already granted to the petitioner by this court is confirmed, subject to his furnishing bail bonds in the sum of Rs.1,00,000/- with one surety in the like amount to the satisfaction of trial Court.

WA/M-204/L Bail confirmed.

**2017 CrLJ 184**

**Before Ch. Mushtaq Ahmad, J. (Lahore)**

**CrI. Misc. No. 15618-B-15 accepted on 28.12.2015.**

**MUHAMMAD SARWAR---Petitioner**

**Versus**

**THE STATE---Respondent**

**Criminal Procedure Code (V of 1898)---**

S. 497(2). Accused facing charge for offences under Ss. 337L(ii), 452, 354, 147, 149, PPC released on bail as his co-accused attributed identical role had been released on bail and also none of the offences fell under prohibitory clause of S. 497(1).

(P. 185)

Rai Ashfaq Ahmad with petitioner.

Sarfraz Ahmad Khatana, DPG with Gulzar, ASI.

Complainant in person.

## **ORDER**

**CH. MUSHTAQ AHMAD, J.---** Petitioner Muhammad Sarwar sought pre-arrest bail in case FIR No. 370\2015, dated 8. 6. 2015, offence under Sections 377L (ii)\452\354\147\ 149, PPC, registered at Police Station Bhikhi, District Sheikhpura.

2. Allegation against petitioner is that he alongwith co-accused trespassed the house of complainant and caused injuries to complainant, Zainab and Shahnaz PWs.

3. Heard. Perused.

4. Co-accused of petitioner having similar roles have been admitted to bail by learned ASJ and role of petitioner being identical, he is also entitled to the same relief. During investigation, MLCs of injured of this case namely Zainab Bibi and Shahnaz were not produced. Case in hand seems to be a counter blast of case FIR No. 475/2015 already lodged by petitioner against complainant of this case. At present stage, guilt of petitioner needs further probe and his case calls for further inquiry. Moreover, alleged offences do not fall

within prohibitory clause. Resulttly, this petition is accepted and ad-interim bail already granted to the petitioner by this Court in confirmed subject to furnishing fresh bail bonds in the sum of Rs. 100,000\ - with one surety in the like amount to the satisfacation of learned Trail Court.

Bail Granted.

**K.L.R. 2017 Criminal Cases 78**  
**[Multan]**  
*Present: CH. MUSHTAQ AHMAD, J.*  
**Nosher Ali**  
*Versus*

**The State and another**

Crl. Appeal No. 1172 of 2010 and Crl. Revision No. 41 of 2011,  
decided on 16th May, 2016.

**CONCLUSION**

(1) *It is prime duty of the prosecution to prove its case beyond any shadow of reasonable doubt.*

**Criminal Procedure Code (V of 1898)---**

*---Ss. 410, 382-B, 544-A---Pakistan Penal Code, 1860, Ss. 302, 34---  
Doubtful circumstances---The entire case of the prosecution hinged  
on ocular account, medical evidence and recoveries---There was also  
a delay of 12 days in lodging of F.I.R.---It was beyond comprehension  
that a person, whose brother was severely wounded by making  
several fire shots in his presence, would not approach police for a  
period of twelve days in order to prosecute the culprits---It was  
admitted position that deceased had civil as well as criminal  
litigation with many other persons---Presence of witnesses at the  
place of occurrence, was highly doubtful, as such ocular account was  
neither credible nor it could be relied upon---**Held:** On re-appraisal  
of evidence, prosecution had failed to prove charge against appellant  
and findings of learned Trial Court were not sustainable---  
Resultantly, criminal appeal was allowed and conviction and  
sentence of the appellant through impugned judgment order was set  
aside. (Paras 7,10)*

[Through criminal appeals, the appellants challenged their convictions, which was allowed and the appellant were acquitted of charge on the basis of benefit of doubt extended to them].

*For the Appellant: Mudassar Altaf Qureshi, Advocate.*

*For the State: Ch. Ahmad Raza, Additional Prosecutor General.*

*For the Complainant: Rana Asif Saeed, Advocate.*

*Date of hearing: 16<sup>th</sup> May, 2016.*

## JUDGMENT

**CH. MUSHTAQ AHMAD, J. ---** This criminal appeal is directed against judgment dated 27.11.2010 passed by learned Additional Sessions Judge, Sahiwal, whereby appellant Nosher Ali was convicted under section 302(b) PPC and sentenced to imprisonment for life with payment of compensation to the tune of Rs.1,00,000/- to the legal heirs of deceased under section 544-A Cr.P.C., in default whereof, to further undergo six months' SI. Appellant was given benefit under section 382-B Cr.P.C. Complainant Daraz Hussain has filed criminal revision No.41 of 2011 seeking enhancement of sentence of appellant. Both the matters arising out of same judgment dated 27.11.2010, will be decided through this consolidated judgment.

2. Appellant alongwith his co-accused Anwar Ali and Muhammad Ali was tried in a private complaint titled "Daraz Hussain Vs. Nosher Ali and 2 others" for the offence under section 302, 34 PPC, which was lodged by Daraz Hussain PW-1, alleging therein that on the night falling in-between 28 and 29<sup>th</sup> of June, 2008, at about 01:00 A.M., complainant's brother Mureed Hussain was irrigating his agricultural land. Nosher Ali (appellant), Anwar Ali and Muhammad Ali (co-accused since acquitted), all armed with 12-bore guns, came there and raising lalkara to teach a lesson to Mureed Hussain for his pre-empting sale of agricultural land, made a fire, which attracted complainant (PW-1), Muhammad Ashraf (PW-1) and Qasim Ali to the spot. Complainant had a torch with him. In their view, Anwar Ali accused made fires and the shots hit Mureed Hussain on both arms. Nosher Ali (appellant) made a fire and the shot hit on buttocks of Mureed Hussain. Fire shot made by Muhammad Ali accused hit Mureed Hussain at left buttock, who fell down and the assailants fled away. Motive for the occurrence was that accused had purchased agricultural land about six months prior to occurrence, which transaction was pre-empted by Mureed Hussain (deceased then injured). Injured was shifted to hospital with police docket, where he was medically examined. FIR was got registered on 10.07.2008 as he was under the impression that FIR had been registered on his statement recorded on the night of occurrence at the

time of issuing police docket. During investigation, police declared Anwar Ali and Muhammad Ali co-accused as innocent, which fact necessitated filing of private complaint.

3. Prosecution examined three witnesses at trial whereas eight witnesses were examined as CW-1 to CW-8. Thereafter statements of accused were recorded under section 342 Cr.P.C., wherein they pleaded innocence. Certain documents were tendered by accused in defence evidence. On conclusion of trial, appellant was convicted and sentenced as mentioned in opening paragraph of this judgment, whereas both the co-accused Anwar Ali and Muhammad Ali were acquitted of the charge vide impugned judgment, hence this criminal appeal as well as revision.

4. Contention of learned counsel for appellant is that registration of FIR was delayed for twelve days, for which prosecution failed to give any plausible explanation as such delay itself suggests deliberation and consultation for falsely implicating the appellant; that it was a blind occurrence and none of the PWs witnessed it nor there was any source of light which was introduced for the first time in private complaint; that PWs are closely related to deceased, as such their testimony without independent corroboration cannot be relied upon; that statements of PWs are full of contradictions and inconsistent with the story narrated in the complaint; that there was no motive for the appellant and his co-accused to commit the alleged offence; that deceased was having civil as well as criminal litigation with many persons; that recovery is inconsequential; that two co-accused against whom evidence was same, were acquitted by learned trial court as prosecution evidence was disbelieved qua them by trial court, therefore, impugned judgment is not sustainable.

5. Appeal has been opposed by learned APG assisted by learned counsel for complainant. It was argued that matter was reported to police immediately after the occurrence, issuance of police docket and preparation of his injury statement is proof whereof, as such no adverse inference can be drawn from the factum of delay in registration of FIR which fault was on the part of police and not of the complainant. Further argued that deceased in his

statement when he was admitted in hospital in critical condition and had no ulterior motive in his mind, implicated the appellant, which sole statement was enough to record conviction; that source of light was explained by PWs and the same was also mentioned in the site plan and even the assailants were already known to PWs, as such, there was no question of their mis-identification; that despite lengthy cross examination presence of PWs at the place of occurrence at relevant time could not be shattered; that medical evidence as well as recovery corroborate ocular account, therefore, learned trial court rightly convicted the appellant. Learned counsel for complainant maintained that charge against appellant was fully proved through cogent and confidence inspiring evidence, as such he was awarded normal penalty of death.

6. I have heard learned counsel for the parties as well as learned A PG and gone through the record with their assistance.

7. Perusal of file reveals that entire case of the prosecution hinges on ocular account, medical evidence and recoveries. Since the vital role is that of ocular account, therefore, I would like to discuss it by making careful appraisal to draw conclusion as to whether presence of eye witnesses on the spot at the time of occurrence has been established by the prosecution and whether their testimony is credible and believable. Ocular account was furnished by complainant Daraz Hussain (PW-1) and Muhammad Ashraf (PW-2). Occurrence took place at 01:00 A.M . in the fields. As per private complaint, M ureed Hussain (deceased) was irrigating his agricultural land and the PWs attracted to the spot on hearing report of fire and then the assailants committed the occurrence in their view. However, while appearing in the witness box, PW-1 and PW-2 made improvement by stating that complainant (PW-1) and Mureed Hussain (deceased) were irrigating land whereas PW-2 Muhammad Ashraf and Qasim Ali PW were accompanying them. Many other improvements were also made by PWs, which were inconsistent to their earlier version. Mureed Hussain (deceased) in injured condition was shifted to hospital alongwith police docket, where he was medically examined. It was version of complainant that the occurrence was explained by him to police at the time of issuance

of police docket and his statement was also recorded by police at that time but despite that FIR was not registered. In this respect, it is pointed out that injury statement of Mureed Hussain (deceased) was bearing rapat No.14, however, copy of that rapat was not brought on record during trial. Version of defence that there was no mention of the occurrence in said rapat, due to which the same was not produced during trial, sounds logical. Complainant while appearing as PW-1 explained that he was under impression that FIR had been registered on his statement recorded on the night of occurrence, but when he contacted police in order to know about progress of case, it transpired that no FIR was registered till then; thereafter he submitted application Ex.P-A. It is beyond comprehension that a person, whose brother was severely wounded by making several fire shots in his presence, would not approach police for a period of twelve days in order to prosecute the culprits. Motive for the occurrence was institution of a suit for pre-emption by deceased against accused. It was admitted position that deceased had civil as well as criminal litigation with many other persons. Presence of the witnesses at the place of occurrence, was highly doubtful, as such ocular account was neither credible nor it could be relied upon. According to prosecution case, all the three accused were attributed firearm injuries, however, learned trial court proceeded to disbelieve statements of eye witnesses qua specific attribution of fire shots to each assailant and acquitted the co-accused. Another piece of evidence relied upon by prosecution was statement of M ureed Hussain (deceased) recorded on 12.07.2008 when he was admitted in hospital. As per learned counsel for complainant, statement of deceased recorded prior to his death has to be treated as dying declaration in which he had implicated present appellant alongwith his co-accused. However, it is worth noticing that the occurrence took place on 29.06.2008 whereas the FIR was got registered on 10.07.2008. Statement of M ureed Hussain, then injured, was recorded on 12.07.2008, two days after registration of FIR. Delay in recording statement of the injured was also not explained by prosecution. From the facts established on the record it can be inferred that reason for delaying registration of FIR was only that assailants were not known to the complainant party and they took



time in deliberation and consultation, whereafter the case was got registered. Learned trial court has rejected the statement of deceased on the ground that it was not recorded in presence of doctor or any other witness. For the above reasons, this piece of evidence is also not worth reliance.

8. As regards medical evidence, seven injuries were noted by doctor (PW-8) on the body of M ureed Hussain (deceased then injured), out of which four were firearm injuries. Cause of death according to PW-7, who conducted autopsy, was extensive infection and gangrene of the wound of surgical intervention (exploratory laparotomy and surgical repair of small gut) resulting septicemia causing the septicemia shock leading to death as consequent upon injury No.4. However, ocular account as discussed in preceding paragraph, was not reliable, therefore, medical evidence being only corroborative in nature did not advance the prosecution case.

9. Occurrence took place on 29.06.2008. During investigation a gun 12-bore was recovered from appellant on 24.07.2008. An empty was recovered on 31.08.2008, i.e. after two months of the occurrence, which was sent to Forensic Science Laboratory on 05.10.2008. Recovery of said empty itself is highly doubtful. Factum of its keeping with police till 05.10.2008 without any reason, in my view, makes the whole process of recovery doubtful. As such, evidence of recovery cannot be relied upon.

10. On re-appraisal of evidence, in my view, prosecution had failed to prove charge against appellant, as such findings recorded by learned trial court are not sustainable. Resultantly, criminal appeal No. 1172 of 2010 is allowed and conviction and sentence of the appellant awarded by learned trial court through impugned judgment are set aside. Appellant Noshier Ali is acquitted of the charge extending benefit of doubt to him. He is on bail. His surety stands discharged of the liability of bail bonds.

11. For the reasons recorded above, criminal revision No.41 of 2011 is dismissed.

Appeal allowed.

**K.L.R. 2017 Criminal Cases 86**  
**[Multan]**  
**Present: CH. MUSHTAQ AHMAD, J.**  
**Muhammad Saeed and another**  
**Versus**  
**The State and another**

CrI. Revision No. 428 of 2015, decided on 18th May, 2016.

**CONCLUSION**

(1) *It is the prime duty of the prosecution to prove its case beyond shadow of any reasonable doubt.*

**Criminal Procedure Code (V of 1898)---**

*---Ss. 202, 203, 204, 439---The complaint was filed after a considerable delay which was not explained by the complainant, even in such situation it raised suspicion as to its truthfulness---Delay in filing private complaint was not by itself fatal except under very special circumstances---Complaint lost its truthfulness with length of delay---More particularly when it was based on the oral evidence---Although no limitation was prescribed in the criminal law of prosecution, yet longer the complaint was delayed, the lesser would become the chance of believing its truth, particularly when the same was based entirely on oral evidence---**Held:** The Trial Court in the case had failed to perform its statutory duty to consider the material available and proceeded to summon the accused without applying judicial mind--In this backdrop, impugned order was not sustainable---The petition was allowed, the impugned order was set aside and the matter was referred to the learned Trial Court to decide it afresh applying judicial mind. (Paras 5,6)*

**Ref. 2010 SCMR 1816.**

[Through criminal revision, the petitioner challenged the impugned order of the validity of summoning the accused in private complaint, which was allowed and the impugned order was set aside alongwith a

direction to the learned Trial Court to decide it afresh applying judicial mind].

*For the Petitioners: Muhammad Usman Sharif Khosa, Advocate.*

*For the State: Ahmad Raza Ch., APG.*

*For the Respondent No. 2: Muhammad Nawaz Khan, Advocate.*

*Date of hearing: 18th May, 2016.*

## **ORDER**

**CH. MUSHTAQ AHMAD, J. ---** Through this petition, validity of summoning order dated 09.11.2015 has been called in question which was passed in private complaint titled Mst. Nasim Mai. Vs. Raham etc. under Sections 302/324/365/341/148/149 PPC filed on 28.04.2015 in respect of an incident dated 08.08.2014 wherein Mansoor Ahmad son of petitioner Muhammad Saeed and husband of respondent No.2 Mst. Nasim Mai, was done to death. Petitioner, father of the deceased lodged FIR No.356/2014 at Police Station Kot Chutta District Rajanpur against two accused namely Allah Yar son of Jumma and Wasim son of Iqbal. Investigation was conducted and on its completion challan was submitted before trial court against above mentioned two accused persons. Charge was framed against them on 15.10.2014 whereafter statements of the prosecution witnesses were also recorded. Mst. Nasim Mai, respondent, then moved a petition under Section 22-A,B Cr.P.C before learned Justice of Peace seeking direction to S.H.O to register second FIR regarding the same incident against different set of accused namely Raham, Nawaz sons of Haider, Manzoor and Juma sons of Raham and one Maqsood Ahmad son of Allah Bakhsh alleging that in fact they had murdered Mansoor Ahmad, her husband and not the accused nominated in the FIR lodged at the instance of father of deceased. Learned Justice of Peace allowed the petition directing the S.H.O to register second FIR vide order dated 23.12.2014 which was challenged by the proposed accused Maqsood Ahmad in writ petition No.157/15. The above writ petition alongwith writ petition No.171/2015 filed by Mst. Nasim Mai for implementation of the same order came up for hearing before this

Court on 08.04.2015 whereby the order passed by learned Justice of Peace dated 23.12.2014 was set-aside. Thereafter, Mst. Nasim Mai filed private complaint in which after recording cursory statements, the trial court summoned the accused vide order dated 09.11.2015, operative para of the same is reproduced as under:-

“Mst. Nasim Mai, the complainant herself appeared as PW-1, Dildar Parvaiz appeared as PW-2 and Muhammad Aqeel appeared as PW-3. On behalf of the complainant, private complaint as Ex.PA, copy of postmortem report of deceased as Ex.PB, attested copy of FIR No.356/13 u/s:324/34 PPC (added 302 PPC) Ex.PC, copy of writ petition No.171/2015 Ex.PD and copy of order dated 08.04.2015 in writ petition No.157/15 Ex.PE were produced in documentary evidence. The oral as well as documentary preliminary evidence produced by the complainant supported and corroborated the contents of the complaint Ex.PA. Prima facie, there is sufficient material on record to proceed against the accused for the offences u/s:302/341/148/149 PPC. Hence, the accused are summoned for 20.11.2015. The complainant is also directed to furnish copies of complaint, cursory statement of complainant and all other documents relating to the complainant on next date of hearing.”

2. Learned counsel for petitioners contends that the impugned order has been passed without applying mind to the material facts of the case and law on the subject laid down by the superior courts; that father of the deceased had already got criminal case registered for the murder of his son against Allah Yar and Muhammad Waseem who were challaned to face trial; that Waseem accused nominated in the FIR was real brother of Mst. Nasim Mai whereas Allah Yar was also her close relative; that order regarding registration of second FIR on application filed by Mst. Nasim Mai

was set-aside by this Court vide order dated 08.04.2015 passed in writ petition No.157/2015 and without going through the said order, learned Justice of Peace proceeded to summon the accused in private complaint in routine and in a mechanical way without application of judicial mind ignoring the law laid down by the superior courts in cases titled “Zafar and others V. Umar Hayat and others” reported in **2010 SCMR 1816**, “Muhammad Fiaz Khan V. Ajmer Khan and another” reported in **2010 SCMR 105** and “Abdul Wahab Khan V. Muhammad Nawaz and 7 others” reported in **2000 SCMR 1904**.

3. Petition has been opposed on the ground that husband of Mst. Nasim Mai was done to death by the accused who were not nominated in the FIR lodged by father of the deceased and that she was also restrained from disclosing the facts before investigating agency by lodging the FIR; that when she was set at liberty, a petition under Section 22-A,B Cr.P.C was moved by her before learned Justice of Peace on which order was passed which was set-aside by this Court while keeping the option of filing private complaint open to her; that after recording cursory evidence, accused were summoned by the trial court; and that impugned order was in accordance with law.

4. Heard. Perused.

5. I have gone through the impugned order and other material available on the file with the assistance of learned counsel for parties and have heard them at length. The contention of learned counsel for the petitioner that impugned order has been passed without applying judicial mind to the material facts of the case and law on the subject laid down by Apex Court, is convincing. In the impugned order no reference is made as to what facts were agitated in writ petition filed against the order passed by learned Justice of Peace directing the S.H.O to register second FIR. The learned trial court has noted in the impugned order that apart from complaint, cursory statements of the witnesses and copy of FIR already lodged regarding the same incident and copy of writ petition No.157/2015 and writ petition No.171/2015 alongwith copy of order dated 08.04.2015

passed in above writ petitions, were placed on record. The impugned order clearly reveals that above material was not even considered by the learned trial court and order was passed in a mechanical way stating that oral as well as documentary and preliminary evidence produced by the complainant supported and corroborated the contents of complaint(Ex.PA) which prima facie is sufficient material to proceed against the accused and they were summoned to face the trial. The litigation which remained pending on the question of registration of second FIR was altogether ignored before issuing process to the accused. In case titled "Zafar and others V. Umar Hayat and others" reported in **2010 SCMR 1816**, the scope of provisions of Section 202, 203 & 204 Cr.P.C was considered by the Apex Court and it was laid down that trial court must scrutinize supporting material in support of accusation, object intended to be achieved, possibility of victimization and harassment, to ensure itself that no innocent person against whom allegations are levelled should suffer the ordeal of protracted, time consuming and cumbersome process of law. It was observed that although no limitation is prescribed in criminal prosecution, yet longer the complaint is delayed, the lesser would become the chance of believing its truth, particularly when the same was based entirely on oral evidence. In other cited cases at the bar noted above, the same proposition came to be considered by the Apex Court wherein it was observed that when complaint is filed after a considerable delay which was not explained by complainant, even in such situation it raises suspicion as to its truthfulness. Delay in filing private complaint is not by itself fatal except under very special circumstances. Complaint loses its truthfulness with length of delay, more particularly when it is based on oral evidence. The learned trial court was required to consider the material facts of the case in the light of law laid down by the Apex Court as noted above and decide the question as to whether it was a fit case to issue process to the accused to face the trial. However, the learned trial court in this case has failed to perform its statutory duty to consider the material available and proceeded to summon the accused without applying judicial mind. In this backdrop, impugned order is not sustainable.

6. For the above reasons, this petition is **allowed**, impugned order is **set-aside** and the matter is referred to the learned trial court to consider the question of issuing process to the accused after going through the material available as noted above and then decide it afresh applying judicial mind.

Civil revision allowed.

**PLJ 2017 Cr.C. (Lahore) 705 (DB)**  
**[Multan Bench Multan]**

*Present:* QAZI MUHAMMAD AMIN AHMED AND CH. MUSHTAQ AHMAD, JJ.

**IQBAL NISAR *alias* BALA--Appellant**

versus

**STATE and another--Respondents**

Crl. A. No. 605 of 2011, M.R. No. 86 of 2011 and PSLA No. 83 of 2011,  
heard on 22.11.2016.

**Pakistan Penal Code, 1860 (XLV of 1860)--**

---S. 302(b)--Criminal Procedure Code, (V of 1898), S. 410--Conviction and sentence--Challenge to--Appeal against of Session Court--Law was set into motion on written application moved by complainant on basis of FIR u/Ss. 302, 148, 149, PPC--Being dissatisfied from investigation conducted by local police, complainant lodged private complaint--Prosecution case is structured on ocular account furnished by PW, medical evidence furnished by recoveries and motive--Even complainant who was allegedly accompanying his brother (deceased), was not targeted by assailants--Factum of not assaulting complainant, PW and his son by assailants makes presence of witnesses at place of occurrence at relevant time a doubtful affair--This doubt is further strengthened from contradictions noted in statements of PWs alleged eye-witnesses--FIR was registered on written application presented by complainant SI PW when latter met complainant at Adda Naai Wala Bangla--PW belied that factum by stating in cross examination that he informed police at police station and after that he returned to spot--However, he showed lack of knowledge as to where said application was written--This deposition was



contradicted by PW who deposed that he did not appear before I.O. at police station--It was stated by PW that statements of witnesses were recorded by I.O. at police station, whereas according to PW it was incorrect that his statement was recorded at police station rather he stated that same was recorded at spot--PW stated that Investigating Officer reached spot at 10:00 a.m., which time according ½-2 was 12:00 noon--According to prosecution case, fire shots hit to deceased on road, in such a situation, his falling in watercourse does not sound logical--As per complaint, occurrence was witnessed by PW and his son who were coming from village--PW in his examination in chief stated that he and his son were following complainant and his brother (deceased) at some distance when, a *tanga* crossed them and assailants murdered complainant's brother--PW was witness in abduction case of his daughter which was registered against brother of co-accused and others, then main enemy of assailants were PW and his son but leaving them alive and hitting he deceased by assailants was not understandable--All private witnesses produced in this case are closely related to complainant--Evidence of a family member cannot be discarded merely on ground of his close relationship but same has to be scrutinized with extra care--In instant case, presence of PWs at place of occurrence at relevant time was doubtful, as such their testimony could not be made basis of recording, conviction, Medical evidence alone is not sufficient for conviction when presence of eye-witnesses is found doubtful--Charge against appellant was not proved--Co-accused was also attributed fatal injury but trial Court disbelieved evidence to his extent and convicted appellant on same evidence--Appeal was allowed. [Pp. 707, 708 & 709] A, B & C

*Prince Rehan Iftikhar Sheikh*, Advocate for Appellant.

*Mirza Abdul Majeed*, D.P.G. for State.

*Mr. Tahir Shabbir Chaudhary*, Advocate for Complainant.

Date of hearing: 22.11.2016.

#### JUDGMENT

**Ch. Mushtaq Ahmad, J.**--Through Criminal Appeal No. 605 of 2011 filed under Section 410, Cr.P.C. Iqbal Nisar *alias* Bala (appellant) has assailed judgment dated 24.06.2011 passed by learned Additional Sessions Judge, Sahiwal in a private complaint titled "*Alamgir Sohail vs. Iqbal Nisar alias Bala and four others*", whereby he was convicted under Section 302(b), PPC and sentenced to death with payment of Rs. 50,000/- as compensation under Section 544-A, Cr.P.C. and in case of default in payment thereof, to further undergo

simple imprisonment for six months. Co-accused Farman *alias* Rana, Shan, Khan *alias* Khazan and Sultan were acquitted of the charge *vide* same judgment, challenging whose acquittal complainant has filed PSLA No. 83 of 2011. Murder Reference No. 86 of 2011 has been sent by learned trial Court for confirmation of death sentence awarded to appellant. All these matters arise out of impugned judgment, therefore, we shall decide the same through this consolidated judgment.

2. Brief facts of the case as disclosed in the private complaint are that on 28.03.2008 at about 09:30 a.m., Alamgir Sohail complainant (PW-1) and his brother Salman Rohail (deceased) were going by foot to Chak No. 174/9-L. Reaching near land of Muhammad Siddique, a *tanga* crossed them on which were boarding Iqbal Nisar *alias* Bala (appellant) armed with double barrel, gun, Shan armed with .12-bore gun, Farman *alias* Rana armed with .222 bore rifle, Khan armed with hatchet and Sultan armed with .30-bore pistol. De-boarding from *tanga*, accused raised *lalkara* to teach a lesson to them (complainant and his brother) for litigation and then started firing. Fire shot made, by Shan hit Salman Rohail, brother of complainant, on his head near left ear whereas fire shot made by appellant hit Salman Rohail on his left shoulder and he fell down in watercourse whereas complainant fled away to save his life. Occurrence was witnessed by complainant, Shafqat (PW-2) and his son Naveed who were coming from village, as well as other people. After commission of offence, assailants fled away on the same *tanga*.

Motive for the occurrence was that some months ago complainant's cousin *Mst.* Parveen was abducted by Shamoon son of Khazan. Case was being prosecuted by all of them, due to which grudge assailants had murdered Salman Rohail.

3. Charge was framed against the appellant and his co-accused above mentioned, to which they pleaded not guilty and claimed trial. Thereafter, prosecution evidence was recorded; statements of accused were recorded under Section 342, Cr.P.C., in which they pleaded innocence and on conclusion of trial appellant was convicted and sentenced as mentioned above, whereas four co-accused were acquitted of the charge, hence, these matters.

4. We have given consideration to the arguments advanced by learned counsel for the parties and learned DPG and have perused the record with their assistance.

5. Law was set into motion on written application moved by complainant PW-1 on the basis of which FIR No. 135/2008 dated 28.03.2008 was registered at Police Station Dera Raheem under

Sections 302, 148, 149, PPC. Being dissatisfied from investigation conducted by local police, complainant lodged private complaint. Prosecution case is structured on ocular account furnished by PW-1 Alamgir Sohail and PW-2 Shafqat, medical evidence furnished by PW-4 Dr. Saeed Ahmad, recoveries and motive. As per prosecution story, complainant PW-1 and his brother Salman Rohail (deceased) were going to Chak No. 174/9-L on foot when a *tanga* crossed them and the appellant and his co-accused deboarded from that *tanga* and made firing. Two shots hit complainant's brother who fell in watercourse. Motive for the occurrence was that complainant's cousin *Mst. Parveen Bibi* was abducted some months earlier by Shamoon, real brother of Shan, co-accused since acquitted, and that case was being prosecuted by all of them. Admittedly neither complainant nor his brother Salman Rohail (deceased) were witnesses in said abduction case. Shafqat PW-2 and his son Naveed (since given up PW) were witnesses in that case who according to prosecution story were also present at the spot and motive, if any, in the minds of assailants was first of all against Shafqat PW-2 and his son who were witnesses in abduction case and not against complainant and his brother. On prosecution's own showing PW-2 and his son were not assaulted by the accused despite the fact that four out of five assailants were armed with fire-arm weapons and according to PW-2 they first crossed them when they were following the complainant and his brother for going to Chak No. 174/9-L. Even complainant who was allegedly accompanying his brother (deceased), was not targeted by the assailants. Factum of not assaulting the complainant, PW-2 Shafqat and his son Naveed by assailants makes presence of witnesses at the place of occurrence at relevant time a doubtful affair. This doubt is further strengthened from the contradictions noted in statements of PW-1 and PW-2, alleged eye-witnesses. FIR was registered on the written application presented by complainant PW-1 before Nazir Ahmad SI PW-5 when the latter met the complainant at Adda Naai Wala Bangla. PW-1 belied that factum by stating in cross-examination that he informed the police at police station and after that he returned to spot. However, he showed lack of knowledge as to where said application was written. PW-1 stated that the dead body was firstly shifted to police station and after preparing documents at police station, the same was sent to mortuary. Nevertheless, he expressed unawareness as to when dead body was sent to hospital. He also showed ignorance as to whether eye-witnesses accompanied the dead body to hospital or not. Complainant even expressed lack of knowledge as to whether eye-witnesses accompanied the dead body or not when it was brought to police station, however, he volunteered that eye-witnesses were accompanying the dead body at police station. This deposition was

contradicted by PW-2 who deposed that he did not appear before I.O. at police station. It was stated by PW-1 that statements of witnesses were recorded by I.O. at police station, whereas according to PW-2 it was incorrect that his statement was recorded at police station rather he stated that the same was recorded at the spot. PW-1 stated that Investigating Officer reached the spot at 10:00 a.m., which time according to PW-2 was 12:00 noon. According to prosecution case, fire shots hit to deceased on road, in such a situation, his falling in watercourse does not sound logical. As per complaint, occurrence was witnessed by PW-2 and his son Naveed who were coming from village. PW-2 in his examination in chief stated that he and his son Naveed were following the complainant and his brother (deceased) at some distance when a *tanga* crossed them and assailants murdered complainant's brother. As already discussed above, PW-2 was witness in the abduction case of his daughter which was registered against brother of Shan co-accused and others, then main enemy of the assailants were PW-2 and his son but leaving them alive and hitting the deceased by the assailants was not understandable. All the private witnesses produced in this case are closely related to complainant. Evidence of a family member cannot be discarded merely on the ground of his close relationship but the same has to be scrutinized with extra care. In the instant case, presence of PWs at the place of occurrence at relevant time was doubtful, as such their testimony could not be made basis of recording, conviction. Medical evidence alone is not sufficient for conviction when presence of eye-witnesses is found doubtful. In this backdrop, in our view, charge against appellant was not proved. Shan co-accused was also attributed fatal injury but learned trial Court disbelieved evidence to his extent and convicted the appellant on the same evidence. C

6. On re-appraisal of evidence, we have concluded that complainant failed to prove charge against appellant and his co-accused beyond reasonable doubt. Consequently, Criminal Appeal 605 of 2011 is **allowed** and conviction as well as sentence awarded to appellant Iqbal Nisar *alias* Bala through impugned judgment is set aside. Appellant be released forthwith if not required in any other case. Murder reference No. 86 of 2011 is answered in negative.

7. For the reasons recorded above, PSLA No. 83 of 2010 is dismissed.

(A.A.K.)

Appeal allowed.



**PLJ 2018 Cr.C. (Lahore) 54**  
**[Multan Bench Multan]**  
**Present: CH. MUSHTAQ AHMAD, J.**  
**MUHAMMAD SALEEM & 4 others--Petitioners**  
**versus**  
**STATE & another--Respondents**

CrI. Misc. No. 2864-B of 2017, decided on 24.5.2017.

**Criminal Procedure Code, 1898 (V of 1898)--**

---S. 497(2)--Foreign Regulation Act, 1947, Ss. 4/8, 23--Anti-Money Laundering Act, 2016, Ss. 3 & 4--Pakistan Penal Code, (XLV of 1860), Ss. 109 & 420--Bail after arrest--Allowed--Further inquiry--Allegation of--Money Laundering--Petitioner were found dealing in foreign Exchange--Bailable offence--Offence u/S. 4, 8 punishable u/S. 23 of Foreign Exchange Regulation Act, 1947 is bailable whereas offence u/S. 3,4 of Anti Money Laundering Act 2010 to extent of present petitioners, shall be determined by trial Court after recording of prosecution evidence--No material available on record to show that petitioners were involved in money laundering--Petitioners were behind bars and no more required for further investigation--Previous record of petitioners' being involved in such like cases, was not pointed out--In given facts and circumstances, guilt of petitioners needs further probe and their case calls for further inquiry--Petition was allowed. [P. 55] A

*Syed Jaffar Tayyar Bukhari*, Advocate for Petitioners.

Malik Mumtaz Hussain Wains, Assistant Attorney General for State.

Date of hearing: 24.5.2017.

**ORDER**

Petitioners Muhammad Saleem, Muhammad Younas, Muhammad Daood, Zuhaib and Shoaib sought post arrest bail in case FIR No. 10 dated 13.04.2017, offence under Sections 4/8-23 Foreign Regulation Act, 1947 & Sections 3 & 4 of Anti Money Laundering

Act, 2010, read with Sections 109, 420, PPC, registered at Police Station FIA/CBC, Multan.

2. Allegation against petitioners is that they were found dealing in foreign exchange without having been issued any authorization thereof when raiding team consisting of members of Federal Investigating Agency, Multan raided upon them.

3. Heard. Perused.

4. Offence u/S. 4, 8 punishable u/S. 23 of Foreign Exchange Regulation Act, 1947 is bailable whereas offence u/S. 3,4 of Anti Money Laundering Act, 2010 to extent of present petitioners, shall be determined by learned trial Court after recording of prosecution evidence. At present, there is no material available on record to show that petitioners were involved in money laundering. Petitioners are behind the bars and no more required for further investigation. Previous record of petitioners' being involved in such like cases, is not pointed out. In the given facts and circumstances, guilt of petitioners needs further probe and their case calls for further inquiry. Accordingly, this petition is **allowed** and petitioners be released on bail subject to furnishing bail bonds in sum of Rs 2,00,000/- each with one surety each in the like amount to the satisfaction of learned trial Court.

(A.A.K.)      Bail allowed

**PLJ 2018 Lahore 117**  
**[Multan Bench Multan]**  
**Present: CH. MUSHTAQ AHMAD, J.**  
**ABDUL MAJEED AWAN, PRINCIPAL GOVERNMENT**  
**COLLEGE OF COMMERCE, BUREWALA DISTRICT,**  
**VEHARI--Petitioner**  
**versus**  
**DISTRICT COORDINATION OFFICER, VEHARI and 6**  
**others--Respondents**

W.P. No. 13854 of 2013, decided on 7.4.2015.

**Constitution of Pakistan, 1973--**

---Art. 199--Constitutional Petition--Allegation of--Embezzlement of Funds--Preliminary inquiry--Question of--Whether any embezzlement has been committed or not--Commencement of such an inquiry cannot be termed as an adverse action against petitioner--Contention of petitioner that he being an officer in BPS-19 could not be proceeded against without prior permission of Chief Secretary as provided under Punjab anti Corruption Establishment Rules 1974 is also not applicable to rules have already been repealed and were not applicable to subject--Resultantly, petition in hand is dismissed. [Pp. 118 & 119] A

*Syed Jaffar Tayyar Bukhari*, Advocate for Petitioner.

*Mian Adil Mushtaq*, AAG with *Zafar Abbas* C.O., ACE  
and *Ms. Asma Khan*, Advocate for Respondents.

Date of hearing: 7.4.2015.

**ORDER**

This petition is directed to call in question the validity of letter dated 7.11.2013 issued by Respondent No. 2 and letter dated 25.10.2013 issued by Respondent No. 4 whereby the petitioner was required to join an inquiry before Anti Corruption Establishment in respect of embezzlement of funds pertaining to Government College of Commerce, Burewala where petitioner was posted as Principal.



2. It is case of the petitioner that the complaint was based on malafide; that departmental proceedings were in progress regarding the same issue when the impugned letters were issued by the Anti Corruption authorities which are against law on the subject and liable to be struck down.

3. Petition has been opposed on the ground that in preliminary inquiry only notices were issued to the petitioner to submit his explanation and till now no adverse action was taken against the petitioner. Hence, the petition was not maintainable.

4. Heard. Perused.

5. Record reveals that letter dated 07.11.2013 issued by Respondent No. 2 was a notice only to appear in person or through attorney in connection with a complaint lodged regarding embezzlement of funds. Similarly, letter dated 25.10.2013 is to the effect that the petitioner may appear before Circle Officer Anti Corruption Establishment District Vehari to explain his position. The preliminary inquiry has been initiated in order to see whether any embezzlement has been committed or not. Commencement of such an inquiry cannot be termed as an adverse action against the petitioner. Contention of petitioner that he being an officer in BPS-19 could not be proceeded against without prior permission of the Chief Secretary as provided under Punjab Anti-Corruption Establishment Rules, 1974 is also not correct as the above mentioned rules have already been repealed and were not applicable to the subject. Resultantly, the petition in hand is **dismissed**.

(Y.A.) Petition dismissed

**PLJ 2018 Lahore 125 (DB)**  
**[Multan Bench Multan]**  
**Present: CH. MUSHTAQ AHMED**  
**AND MUJAHID MUSTAQEEM AHMED, JJ.**  
**MUHAMMAD AFZAL--Petitioner**  
**versus**  
**STATE and 3 others--Respondents**

W.P. No. 16950 of 2016, decided on 17.10.2017.

**Criminal Procedure Code, 1898 (V of 1898)--**

---S. 397--Scope--Concurrent running of sentence--Power of Court--Validity--It contemplates that sentence awarded to a person in a subsequent trial would commence at expiration of imprisonment for which he had been previously sentenced, however discretion has been left with Court to direct concurrent running of sentence awarded in a subsequent trial. [P. 127] A

**Criminal Procedure Code, 1898 (V of 1898)--**

---S. 397--Scope--Concurrent sentence--Discretionary powers of Court--Duty of Court--Validity--It ought to be made at time of deciding case or appeal and if for any reason or due to some inadvertent omission, direction could not be issued at time, there is no embargo that same could not be passed after ward--The Court can exercise discretionary power any time to direct that sentences in two different trials would run concurrently--Petition was accepted. [Pp. 127 & 128] B

2016 SCMR 467, *ref.*

*Prince Rehan Iftikhar Sheikh*, Advocate for Petitioner.

*Mehr Nazar Abbass Chawan*, A.A.G. for State.

*Mr. Muhammad Siddique Moghal*, Advocate for Respondents No. 3 & 4.

Date of hearing: 17.10.2017.

**ORDER**

As a result of trial in private complaint case titled "*Riaz ul Haq v. Muhammad Akram etc.*" as well as State case F.I.R. No. 643 dated 30.11.2004 of Police

Station Farid Town, Sahiwal Muhammad Afzal, petitioner was convicted under Section 302(b), P.P.C. by the learned Sessions Judge, Sahiwal *vide* judgment dated 15.1.2010 and sentenced to death and also to pay compensation Rs.50,000/- to legal heirs of Muhammad Ashraf, deceased. The petitioner was also convicted by the learned Sessions Judge, Sahiwal under Section 302(b), P.P.C. *vide* judgment dated 15.1.2010 in another private complaint titled “*Muhammad Ali v. The State etc.* “ as well as State case bearing F.I.R. No. 644 dated 30.11.2004 of same police station and sentenced to death with a direction to pay compensation of Rs.50,000/- to legal heirs of *Mst.* Nasreen, deceased. Appeals filed by the petitioner bearing Cr. Appeal Nos. 133 of 2010 and 290-J of 2011 (against conviction in private complaint and State case F.I.R. No. 643/2004) and Cr. Appeal No. 86 of 2010 (against conviction in private complaint and State case F.I.R. No. 644 of 2004) were dismissed by this Court *vide* separate judgments dated 1.12.2015, however, with modification in the sentences from death to imprisonment for life in each case. As stated at Bar neither the petitioner nor the complainant or the State assailed said judgments of this Court before Apex Court.

2. By filing this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 the petitioner prays for concurrence of both the sentences awarded to him in above said two cases.

3. Relying on the provisions of Section 397 read with Section 35, Cr.P.C. learned counsel for the petitioner has contended that mandates of law required that the Court while awarding sentences of imprisonment ought to have passed appropriate orders for concurrent running of the sentences but the same has not been done as a result of which the petitioner is bound to undergo a sentence of about 50 years which is not intent of the legislature and consequently prays that sentences of imprisonment for life in both the cases be directed to run concurrently.

4. On the other hand learned counsel for the respondents have vehemently opposed the petition on the ground that under Section 397, Cr.P.C. relief sought by the petitioner could be granted only by the trial/appellate Court at the time of passing judgments of conviction and this constitutional petition cannot be substituted for

the said forums. Learned counsel for the complainant submits that the petitioner was convicted and sentenced in trials/appeals for the commission of two different offences and as such the sentences awarded to the petitioner should run consecutively.

5. We have given our anxious consideration to the arguments advanced by both sides and relevant law on the subject.

6. Though the sentences of imprisonment for life were awarded on conviction in two different trials/appeals, yet they pertain to one and the same person i.e. the petitioner. Section 397, Cr.P.C. contemplates that sentences awarded to a person in a subsequent trial would commence at the expiration of imprisonment for which he had been previously sentenced, however, discretion has been left with the Court to direct concurrent running of sentence awarded in a subsequent trial. It would be advantageous to reproduce relevant portion of said provision which runs as under:

**“397. Sentence on offender already sentenced for another offence.** When a person already undergoing a sentence of imprisonment or imprisonment for life, is sentenced to imprisonment, or imprisonment for life, such imprisonment, or imprisonment for life shall commence at the expiration of the imprisonment, or imprisonment for life to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence.”

It is manifest from above quoted provision of law that command of law for consecutive sentences is general rule while direction for concurrent sentences is discretionary power of the Court. Although appropriate order within the meaning of Section 397, Cr.P.C. ought to be made at the time of deciding the case or appeal but if, for any reason or due to some inadvertent omission, direction could not be issued at that time there is no embargo that the same cannot be passed afterward. In the safe administration of criminal justice, the Court can exercise discretionary power any time to direct that sentences in two different trials would run concurrently. While expounding this provision of law in the case titled *Sajjad Ikram and others v. Sikandar Hayat and others* (2016 SCMR 467) the Hon'ble Supreme Court held as under:

“12. The aggregate of punishment of imprisonment for several offences at one trial were deemed to be a single sentence. However, the position of an accused person is different who while already undergoing a sentence of imprisonment for life, is subsequently convicted and sentenced in another trial. Such subsequent sentence in view of Section 397, Cr.P.C. would commence at the expiration of imprisonment for life for which he had been previously sentenced but even then in such cases, the said provision expressly enables the Court to direct that the subsequent sentence would run concurrently with the previous sentence. It is clear from Section 397, Cr.P.C. that the Court, while analyzing the facts and circumstances of every case, is competent to direct that sentences in two different trials would run concurrently. In that eventuality, the Court has wide power to direct that sentences in one trial would run concurrently. The provision of Section 397, Cr.P.C. confers wide discretion on the Court to extend such benefit to the accused in a case of peculiar nature, like the present one. Thus extending the beneficial provision in favour of the appellant, would clearly meet the ends of justice.”

In the present case the petitioner was convicted and sentenced simultaneously and even his appeals were decided at the same time. It appears that while converting sentences of death into imprisonment for life passing appropriate orders for concurrent running of sentences escaped notice of this Court. Thus, to our mind, it would be in the fitness of things that benefit of this provision should be extended in favour of the petitioner in order to meet the ends of justice.

7. Resultantly, this petition is accepted and it is directed that sentence of imprisonment for life awarded to the petitioner by this Court *vide* judgment dated 1.12.2015 passed in Cr. Appeal No. 86 of 2010 shall run concurrently with the sentence of imprisonment for life awarded to the petitioner *vide* judgment dated 1.12.2015 passed in Cr. Appeals No. 133 of 2010 and 290-J of 2011.

(W.I.B)            Order accordingly

**PLJ 2018 Cr.C. (Lahore) 192**  
**[Multan Bench Multan]**  
**Present: CH. MUSHTAQ AHMAD, J.**  
**NOOR MUHAMMAD--Petitioner**  
**versus**  
**STATE & another--Respondents**

CrI. Misc. No. 5659-B of 2017, decided on 25.10.2017.

**Criminal Procedure Code, 1898 (V of 1898)--**

---S. 497(2)--Pakistan Penal Code, (XLV of 1860), S. 489-F--Bail after arrest--Grant of--Further inquiry--Allegation of--Dishonoured of cheque--Un-explained delay in lodging FIR--Admittedly, cheque in question was issued as 'guarantee--Business terms between parties are also admitted one--Petitioner already joined investigation--Question of issuing cheque in question, is yet to be established by prosecution during trial--Petitioner is behind bars and no more required for further investigation--At present stage, guilt of petitioner needs further probe and his case calls for further inquiry--Offence alleged against petitioner also does not fall within ambit of prohibitory clause--Petition was allowed. [P. 193] A & B

*Ms. Saeeda Asif*, Advocate for Petitioner.

*Mr. Hassan Mahmood Khan Tareen*, DPG for Respondents

*Mr. Dildar Ahmad Khan*, Advocate for Complainant.

Date of hearing: 25.20.2017.

**ORDER**

Petitioner Noor Muhammad sought post arrest bail in case FIR No. 408 dated 19.06.2017, offence under Section 489-F PPC registered at Police Station Gadai, District Dera Ghazi Khan.

2. Allegation against petitioner is that he issued a cheque to the complainant for the payment of Rs.30,00,000/- which was dishonored when presented before bank authorities.

3. Heard. Perused.

4. Delay of in lodging the FIR remained un-explained on the part of prosecution. Admittedly, cheque in question was issued as guarantee. Business terms between the parties are also admitted one. Petitioner already joined investigation. Question of issuing cheque in question, is yet to be established by the prosecution during trial. Moreover, complainant has also filed suit u/O. XXXVII Rule 2 C.P.C against petitioner which is pending adjudication before Court of competent jurisdiction. Petitioner is behind the bars and no more required for further investigation. At present stage, guilt of petitioner needs further probe and his case calls for further inquiry. Offence alleged against petitioner also does not fall within ambit of prohibitory clause. Consequently, this petition is **allowed** and petitioner be released on bail subject to furnishing bail bonds in the sum of Rs.2,00,000/- with one surety in the like amount to the satisfaction of learned trial Court.

(A.A.K.)      Bail allowed

**PLJ 2018 Cr.C. 601**  
**[Lahore High Court, Multan Bench]**  
**Present: CH. MUSHTAQ AHMAD, J.**  
**KHURSHID AHMAD--Petitioner**  
**versus**  
**STATE and another--Respondents**

CrI. Misc. No. 820-B of 2018, decided on 10.5.2018.

**Criminal Procedure Code, 1898 (V of 1898)--**

---S. 497--Pakistan Penal Code, (XLV of 1860), Ss. 496-A & 376--  
Post arrest bail, grant of--Abductee contracted marriage with co-  
accused, later on, appeared before Additional Sessions judge and  
filed harassment petition--Implication of accused is result of  
widening net, as real brothers of co-accused--Photograph  
of abductee affixed on first page of harassment petition and her  
thumb impression on order sheet--Earlier FIR was recommended  
for cancellation--Bail allowed. [P. 602] A

*Khawaja Qaisar Butt*, Advocate for Petitioner.

*Mr. Sarfraz Khan Khhichi*, D.D.P.P. for Respondents.

Date of hearing: 10.5.2018.

**ORDER**

Through this single order, I intend to dispose of instant Criminal Miscellaneous No. 820-B of 2018 filed by Khurshid Ahmad petitioner as well as Criminal Miscellaneous No. 1800-B of 2018 filed by Kazim Hussain and Khalid Hayat petitioners as both these petitions seeking post arrest bail have arisen from same FIR No. 119/2014 dated 25.02.2014 registered at Police Station Luddan District Vehari for the offences under Sections 496-A, 376, PPC.



2. In the earlier part of the day, learned counsel for complainant did not appear. Court was informed that he was busy before another Bench, as such file was kept in wait for arguments of learned counsel for complainant and was taken up again at 10:20 p.m. but learned counsel for complainant did not appear.

Arguments heard and record perused.

3. Allegation against the petitioners as per FIR is that on 03.02.2014, they along with co-accused Zahid *alias* Zahidi, *Mst.* Sidra Bibi, *Mst.* Hameeda Bibi and Muhammad Riaz abducted *Mst.* Arooj Zafar, daughter of the complainant, whose Nikah had been solemnized with one Shahid Yar but Rukhsati had not taken place so far. Alleged occurrence took place on 03.02.2014 and the matter was reported to police on 25.02.2014. FIR was initially registered for the offence under Section 496-A, PPC. Later on, offence under Section 376, PPC was added as the alleged abductee in her statement under Section 164, Cr.P.C. levelled allegation of rape against co-accused Zahid *alias* Zahidi. As per contents of FIR, on 03.02.2014, complainant was present at his house with his family members when his daughter (alleged abductee) accompanied co-accused *Mst.* Sidra and *Mst.* Hameeda as they were her relatives and later on complainant came to know that said ladies were seen taking away his daughter in a car whereas four co-accused including petitioners who were on two motorcycles, were escorting the car. Said stance of complainant was found incorrect by police during investigation as *Mst.* Sidra and *Mst.* Hameeda who are real sister and mother, respectively, of petitioners Khurshid Ahmad, Khalid Hayat and co-

accused Zahid *alias* Zahidi, were found innocent. Co-accused Riaz who too was named in the FIR, was also found innocent during investigation. After first investigation, FIR was recommended for cancellation on 15.11.2014 but later on case was re-investigated.

Learned counsel for petitioners contends that in fact the alleged abductee contracted marriage with co-accused Zahid *alias* Zahidi of her free consent through valid Nikah-nama dated 13.02.2014 and thereafter she appeared before learned Additional Sessions Judge, Lahore on 14.02.2014 as she filed a harassment petition against her father (complainant) and other relatives acknowledging her Nikah with co-accused Zahid *alias* Zahidi. Learned counsel further submits that implication of petitioners in this case is result of widening of net as Khurshid Ahmad and Khalid Hayat petitioners are real brothers of co-accused Zahid *alias* Zahidi whereas petitioner Kazim Hussain is their cousin.

Copy of Nikah-nama, marriage registration certificate, harassment petition as well as order dated 14.02.2014 passed by learned Additional Sessions Judge, Lahore are annexed with the petition. Perusal of said documents shows that photograph of the alleged abductee has been affixed on first page of harassment petition and her thumb impression has also been affixed on margin of the order sheet. Also important to note here is that in her statement recorded under Section 164, Cr.P.C., alleged abductee did not level allegation of rape against any of the petitioners.

4. In view of all the above mentioned facts circumstances, case against petitioners calls for further inquiry. Actual facts of the case can be surfaced after recording evidence. Material available on file at this stage prima facie does not connect the petitioners with commission of alleged offence. Petitioners are behind the bars and their persons are not required for further investigation. Therefore, both the petitions in hand are accepted and petitioners be released on bail, subject to their furnishing bail bonds in the sum of Rs. 2,00,000/- each with one surety each in the like amount to the satisfaction of trial Court.

(K.Q.B.)      Bail allowed

**PLJ 2018 Lahore 616**  
**[Multan Bench Multan]**  
**Present: CH. MUSHTAQ AHMAD, J.**  
**MUHAMMAD IMRAN--Petitioner**  
**versus**  
**ADDL. SESSIONS JUDGE, TEHSIL JAHANIAN, DISTRICT**  
**KHANEWAL and 2 others--Respondents**

W.P. No. 16818 of 2016, decided on 14.12.2016.

**Punjab Sound Systems (Regulation) Ordinance, 2015--**

---Ss. 3 & 6--Pakistan Penal Code, (XLV of 1860), S. 294-- Magistrate imposed Fine Rs. 5000/-, which was paid by convict-- Prosecution challenged his conviction and A.S.J. remanded case-- Small speakers alongwith tape record was recovered--Offence of playing songs was not covered by Ordinance 2015, when no private person was cited as witness to show that public servant was disturbed--Trial Court rightly convicted u/S. 294, PPC-- Petition Allowed. [P. 617] A

*Rana Muhammad Aftab*, Advocate for Petitioner.

*Mr. Ahmad Raza Ch.* APG for State.

Date of hearing: 14.12.2016.

**ORDER**

Petitioner being accused of FIR No. 15 dated 21.01.2015 registered u/S. 3/6 of Punjab Loud Speaker Ordinance, 2015 was convicted by learned Magistrate u/S. 294-PPC and imposed fine of Rs. 5000/- which was paid by him but prosecution challenged his conviction before learned Addl. Sessions Judge who set-aside the conviction and remanded the case holding that learned trial Court committed illegality by not recording confession of petitioner.

2. Heard. Perused.

3. Available record reveals that small speakers alongwith tape-record were recovered from the petitioner

which were affixed with tractor and petitioner was allegedly found playing songs on the same. Offence of playing songs was not covered by Punjab Loud Speaker Ordinance, 2015, especially when no private person was cited as witness to show that public peace was disturbed. Hence, learned trial Court rightly convicted the petitioner u/S. 294, PPC and observation of learned revisional Court that summary procedure was not adopted/ followed by the trial Court, does not carry weight, thus not sustainable. Resultantly, this petition is allowed and impugned order dated 20.08.2016 is set-aside.

(M.A.K.)      Petition allowed

**PLJ 2018 Cr.C. 728**  
**[Lahore High Court, Multan Bench]**  
**Present: CH. MUSHTAQ AHMED, J.**  
**MUHAMMAD SHEHZAD--Appellant**  
**versus**  
**STATE & another--Respondents**

CrI. Appeal No. 403 of 2017, decided on 25.6.2018.

**Criminal Procedure Code, 1898 (V of 1898)--**

---S. 426--Suspension of execution of sentence--Deeper appreciation of evidence--Tentative assessment--Petitioner is behind bars for last more than one year--Main stay at present stage for suspension of execution of sentence is statement of complainant/victim who is present before Court and submits that present petitioner is not her culprit and she has no objection on acceptance of this petition--She also submitted her affidavit in that regard--Petitioner could not be termed, in given and stated position to be hardened, desperate and dangerous criminal--A case for suspension of execution of sentence awarded petitioner, is made out--Sentence was suspended. [P. 729] A

*M/s.*

*Allah Bakhsh Khan Kulachi, Raheela Saleem Malik and Syed Jaffar T ayyar Bukhari, Advocates for Appellant.*

*Mr. Hassan Mahmood Khan Tareen, DPG for Respondent.*

*Rao Sajjad Ali, Advocate with Complainant.*

Date of hearing: 25.6.2018.

**ORDER**

**C.M. NO. 1 OF 2017**

Petitioner Muhammad Shahzad has moved this petition for suspension of execution of his sentences u/S. 426 Cr. P.C. on the ground that he was convicted on 8.3.2017 in case registered *vide* FIR No. 560 dated 7.8.2014 u/S. 376(i), PPC at Police Station City Lodhran and sentenced to imprisonment for 10-years R.I and also to pay fine of Rs.1,00,000/- in default of which to further under

six months S.I. Benefit of Section 382-B, Cr.P.C. was also extended to him.

2. Learned counsel for petitioner contended that present petitioner is behind the bars for the last more than one year; that complainant/victim of the case does not want to prosecute the case further, so, the sentence of petitioner may please be suspended.

3. Petition has been opposed vehemently by learned Deputy Prosecutor General, however, learned counsel for complainant has not opposed this petition.

4. Heard. Perused.

5. At the very outset, it is worth noticing that deeper appreciation or reappraisal of evidence is neither desirable nor proper at present stage and only a tentative assessment of the facts and circumstances are to be considered. Admittedly, petitioner is behind the bars for the last more than one year. The main stay at present stage for suspension of execution of sentence is statement of complainant/victim who is present before the Court and submits that present petitioner is not her culprit and she has no objection on acceptance of this petition. She also submitted her affidavit in that regard. Petitioner could not be termed, in the given and stated position to be hardened, desperate and dangerous criminal. In the above backdrop, a case for suspension of execution of sentence awarded petitioner, in my view, is made out.

6. Resultantly, by allowing the petition in hand, I suspend the sentence of petitioner Muhammad Shehzad and he be released subject to furnishing bail bonds in the sum of Rs.200,000/- with one surety each in the like amount to the satisfaction of Deputy Registrar (Judicial) of this Court. However, petitioner will appear before this Court of each and every date of hearing till final disposal of this appeal.

(A.A.K.)          Petition allowed

**PLJ 2018 Cr.C. 749**  
**[Lahore High Court, Multan Bench]**  
**Present: CH. MUSHTAQ AHMAD, J.**  
**SHAH MUHAMMAD & others--Appellants**  
**versus**

**STATE & another--Respondents**

CrI. A. Nos. 293, 304 of 2016 and CrI. Rev. No. 164 of 2016,  
decided on 24.5.2018.

**Pakistan Penal Code, 1860 (XLV of 1860)--**

---S. 302--Qatl-i-Amd--Reappraisal of evidence--Appeal dismissal  
of--Accused made fire shot on head of deceased--Both parties  
known to each other--Day light occurrence--Nominated accused  
with specific role--Fire is located slightly on the right side of the  
head, 9.c.m. above right ear, 7cm in length--PW's usually are not  
expert in giving exact locale hitting bullet--All injured receive  
serious injuries--PW's have no reasons to falsely implicate--  
Defence failed to bring on record, any reason to leave actual  
culprits and implicate present appellant--Accused already been  
dealt leniently on account of weakness of motive and awarded  
imprisonment for life--Appeal dismissed. [Pp. 752 & 753] A,  
B, C & D

*M/s. Mudassar Altaf Qureshi & Syed Athar  
Hassan Bukhari*, Advocates for Appellants.

*Syed Nadeem Haider Rizvi*, D.D.P.P for State.

*M/s. Muhammad Safdar Khan and Kh. Qaisar Butt*, Advocate for  
Complainant.

Date of hearing: 24.5.2018.

**JUDGMENT**

Appellant Shah Muhammad has challenged his conviction and  
sentence through Criminal Appeal No. 293 of 2016; appellant  
Muhammad Mansha has challenged his conviction and sentence  
through Criminal Appeal No. 304 of 2016 whereas Criminal Revision  
No. 164 of 2016 has been filed by complainant for enhancement of  
sentence of Shah Muhammad. They alongwith co-accused were tried  
by learned Additional Sessions Judge, Vehari in case FIR No. 473  
dated 24.09.2011 registered under Sections 302, 324, 337-F(v),  
F(iii),F(i), A(i), 148,149, PPC at Police Station Luddan, District



Vehari. I intend to dispose of all the matter through this single judgment.

2. On conclusion of trial, appellants were convicted and sentenced by learned trial Court *vide* judgment dated 30.01.2016 as under:-

Appellant Shah Muhammad

Convicted U/S. 302(b), PPC and sentenced to undergo **Imprisonment for life**. He was also held liable to pay Rs.100,000/- as compensation under Section 544-A Cr. P.C. to the legal heirs of deceased. In default thereof, to further undergo simple imprisonment for six months.

Convicted U/S. 337-A(i), PPC and sentenced to two years R.I. and was burdened to pay Daman of Rs.20,000/-.

Appellant Muhammad Mansha

Convicted U/S. 337-F(ii), PPC and sentenced to three years R.I. and was burdened to pay Daman of Rs.25,000/-.

Sentences of appellant Shah Muhammad were ordered to run concurrently and benefit under Section 382-B, Cr.P.C. was extended in favour of both the appellants. However, their co-accused were acquitted.

3. Complainant submitted his written complaint (Ex.PD) to police alleging therein that on 24.09.2011 at about 03.00 pm., he in the company of Allah Ditta and others namely Fayyaz Ahmad, Mansab, Muhammad Abbas, Talib Hussain, Iftikhar and Nazakat Hussain was returning back to his home on foot from fair (Maila) of Baba Nawaz Shah. When they reached in the area of Mor Amjad Khan, accused Mansha, Shah Muhammad, Abbas, Majid all armed with repeater gun, Imtiaz, *alias* Baggi armed with repeater gun, Afzal armed with repeater gun, Muhammad Amin armed with pistol .30-bore, Safdar *alias* Shaffa armed with repeater gun Nawaz armed with pistol .30-bore, Zafar armed with repeater gun, Hassan armed with repeater gun, Zahoor armed with repeater gun, Noshair armed with pistol .30-bore appeared on the scene from sugarcane crop where they were laying ambush. Appellants Mansha and Shah Muhammad raised *lalkara* that they be taught lesson for spying against them. Complainant raised alarm that accused would not leave them alive whereupon accused started firing. Complainant saved his life by lying in a pitch near the road. Noise of firing attracted witnesses

Muhammad Hussain, Muhammad Imran, Bahadar and other persons of locality. Accused Mansha gave repeater gun fire shot which landed on the head of Iftikhar. Second fire was made by accused Shah Muhammad which hit left side of head of Iftikhar. Accused Abbas gave repeater butt blow on the forehead of Iftikhar who fell on the ground. Accused Majid shot repeater fire on the right shin of Allah Ditta. Accused Imtiaz *alias* Baggi shot repeated fire which landed on the left rear side of head of Fayyaz. Accused Afzal shot repeater gun fire which hit right upper arm of Fayyaz. Accused Muhammad Amin gave pistol butt blow on the rear side of head of Mansab. Accused Dost Muhammad shot repeater fire which hit right elbow and forearm of Fayyaz. Accused Safdar *alias* Shaffa shot repeater gun-fire which hit right thigh of Mansab. Accused Nawaz gave pistol butt blow on the left fore-arm of Mansab. Accused Shah Muhammad shot repeater fire which hit Muhammad Abbas on his right ear. Accused Nawaz shot repeater gun fire which hit right leg and foot of Muhammad Abbas. Accused Mansha made fire which hit Muhammad Abbas on his right leg. Accused Zafar shot repeater gun fire which hit Talib Hussain on his left shin fracturing it. Accused Hassan shot repeater gun fire which hit Talib Hussain on his left leg. Accused Abbas shot repeater gun fire which hit Nazakat Hussain on his right forearm. Accused Zahoor shot fire which hit Nazakat Hussain on his right upper arm. Accused Noshair gave pistol butt blow on right thumb of Nazakat Hussain. Accused Imtiaz *alias* Baggi shot repeater fire which hit right palm of Nazakat Hussain. Occurrence was committed at the instance accused Muhammad Rafique. Bone of contention is that accused Shah Muhammad committed dacoity occurrence with one Rana Fayyaz Ahmad about two months ago and FIR was registered against him. Complainant told said Rana Fayyaz Ahmad about accused Shah Muhammad and a motorcycle was recovered from him, out of that grudge, occurrence was committed.

4. Investigation of this case was conducted by Falak Sher ASI (PW-3). After completion of investigation, report under Section 173, Cr.P.C. was submitted before trial Court, where appellants alongwith co-accused were charge-sheeted. They did not plead guilty and claimed trial. Prosecution in order to prove its case against accused, produced sixteen witnesses in all. After completion

of prosecution evidence, statements of appellants were recorded under Section 342, Cr.P.C., wherein they denied the allegations and professed innocence.

5. At conclusion of trial, appellants were convicted and sentenced *vide* impugned judgment as mentioned above whereas their co-accused were acquitted of the charge, hence these criminal appeals and revision.

6. Learned counsel for appellant *qua* Shah Muhammad (Mr. Muadassar Altaf Qureshi, Advocate) opened arguments that ocular account furnished by prosecution witnesses in this case is totally contradicted with medical evidence; that firing was opened by Muhammad Mansha and his fire according to prosecution witnesses hit at the head of deceased; second fire was made by appellant Shah Muhammad which according to prosecution targeted left side of head of deceased whereas according to Doctor (PW-1). the injury is located on right side of the head; that appellant Muhammad Mansha has been acquitted by the trial Court u/S. 302, PPC and no appeal has been filed against acquittal; that appellant has been convicted and sentenced for an injury which does not exist; that there is no matching report of any empty of the gun recovered from possession of appellant so recovery against appellant is inconsequential; that prosecution witnesses in their statements u/S. 161, Cr.P.C. and before the trial Court have made dishonest improvements; that various loopholes and contradictions have been noted but those have all been resolved in favour of prosecution and benefit of doubt has not been extended to appellant; that prosecution has failed to prove charge against the appellant, therefore, he is entitled to acquittal.

Syed Athar Hassan Bukhari Advocate, appearing on behalf of Muhammad Mansha appellant has argued that he has been acquitted u/S. 302, PPC and convicted and sentenced for causing injury to prosecution witness; that co-accused having similar role have been acquitted by the trial Court; that scenario of occurrence suggested that it was not possible for PWs to have seen the appellants causing injuries at them so, his case is not distinguishable to the case of his co-accused who have been acquitted, so he deserves acquittal.

8. Learned DDPP assisted by learned counsel for complainant opposed the submissions on the ground that appellant Shah

Muhammad has been attributed specific injury at most vital part i.e. left side of head of deceased. The doctor in his report has written that injury is located at front of the head slightly on right side so there is no big contradiction in between ocular account and medical evidence. It was a day light occurrence and parties were known to each other prior to occurrence so, the prosecution witnesses had no occasion to falsely implicate them in this case.

While opposing the appeal *qua* Muhammad Mansha, it has been argued that he has been attributed specific injury and in this regard statement of complainant has fully implicated the appellant supported by medical reports. He has already been treated leniently, so, he does not deserve any leniency.

9. Head perused.

10. It is case of prosecution that they seven in number were returning back after attending Maila and when they reached at Mor Amjad Khan, they were surprised by accused persons who were laying ambush in nearby crops. It is to be noted that there is no denial of the fact that both the parties known to each other prior to occurrence. It was a daylight occurrence. Appellants alongwith co-accused were nominated by the complainant with specific roles. It was Muhammad Mansha and his co-accused Shah Muhammad (appellants) who come forward and raised *lalkara* so, PWs had identified them. As per contents of FIR, the accused resorted to firing. Fire was opened by Muhammad Mansha repeater which hit Iftikhar (deceased) at his head. Thereafter, fire made by appellant Shah Muhammad hit at the left side of heard of deceased. In this way, there is no doubt as to making of fire shot at the deceased. Main stress of learned counsel for appellants is that any fire on left side of head of deceased does not exist because the fire is located at right side of head which has not been attributed to anyone. In this context, it is to be kept in mind that the prosecution witnesses in their statements before the police and in the Court remained consistent that the fire hit at left side of head of deceased. So for as the question that the medical officer has shown it as slightly on the right side of head of deceased, is concerned, doctor has explained the fire is located slightly at right side 9 cm above right ear 7 cm in length which has much significance for the defence because PWs had no doubt in their minds as for as attribution to the

present appellants. PWs usually are not experts in giving the exact locale hitting bullet and it is the doctor who is expert to give the locale of hitting injuries. It is pertinent to note that in this occurrence seven PWs received injuries at the hands of accused persons, out of them, four have appeared before the Court. All the injured received serious injuries. The witnesses have no reason to falsely implicate the appellants. They received injuries after receipt of injuries by the deceased at the hand of appellants so, they were in a better position to see the appellants while firing at the deceased. Though various suggestions were put to the PWs on almost all aspects of occurrence but defence failed to shatter regarding time, venue of occurrence and all of them remained consistent on all points. The defence failed to bring on record false implication *qua* the appellants and PWs had no reason to leave the actual culprits and implicate the present appellants on the charge of murder.

11. For above resume of evidence, I am of the view that prosecution has succeeded to prove the charge against appellant Shah Muhammad. He has already been dealt leniently on account of weakness of motive etc. so appeal to his extent is dismissed.

12. Coming to the case of Muhammad Mansha, he caused injury to injured during the occurrence who was medically examined and his, statement was corroborated by medical evidence and the injuries were not found self-suffered. Prosecution had no reason to falsely implicate him. He was found guilty during investigation. Weapon of offence was also recovered from his possession. So, I find no ground to extend benefit of doubt to him, so, his conviction is, therefore, maintained. However keeping in view the agony of trial, his sentence is reduced to the period already served out by him. As per his learned counsel, he has already paid the amount of Daman. Learned counsel for the complainant has not denied this fact. He is on bail; his surety stands discharged. With the above modification in quantum of sentence, his appeal is also dismissed.

13. For the reasons recorded above, a case for enhancement of sentence is also not made out, hence, Criminal Revision No. 164/2016 is also dismissed.

(K.Q.B.)          Appeal dismissed

**PLJ 2018 Cr.C. 796**  
**[Lahore High Court, Multan Bench]**  
**Present: CH. MUSHTAQ AHMAD, J.**  
**BASHIR AHMAD--Petitioner**  
**versus**  
**STATE and 2 others--Respondents**

CrI. Revision No. 5 of 2017, decided on 10.10.2017.

**Pakistan Penal Code, (XLV of 1860)--**

---Ss. 302 & 34--Criminal Procedure Code, (XLV of 1860), S. 540--  
Re-summoning of witness--Medical officer did not send samples  
for laboratory analysis in order to determine cause of death--  
Validity--No effort was made by petitioner/complainant to  
proceed against medical officer on departmental side for alleged  
inefficiency/*mala fide*--In circumstances, no illegality or  
irregularity committed by trial Court while passing impugned  
order--Petition stands **dismissed**. [Pp. 796  
& 797] A

*Mr. M.R. Fakhar Balouch*, Advocate for Petitioner.

*Mr. Hassan Mahmood Khan Tareen*, D.P.G. for State.

*Mr. Muhammad Ajmal Kanju*, Advocate for Respondent No. 2.

Date of hearing: 10.10.2017.

**ORDER**

Petitioner is complainant of case FIR No. 329/2014 dated 7.6.2014 registered at Police Station Saddar Jalalpur Pirwala for the offence under Sections 302, 34, PPC against Respondents No. 1 and 2. During trial, he filed an application for re-summoning of PW-3 Dr. Muhammad Arshad Sahu in order to cross examine him as proposed in the application, which was dismissed by trial Court *vide* order dated 28.11.2016, which has been assailed through this petition.

2. Heard. Impugned order has been perused.

3. Application for re-summoning of the witness was filed on 21.10.2016 i.e. after about two years of registration of FIR. Learned

counsel for petitioner/complainant was present before the trial Court at the time of recording statement of PW-3, however, no desire was expressed by him at that time to cross-examine said witness, despite the fact that the questions proposed in the application under Section 540, Cr.P.C. were already on surface/record. Grievance of petitioner/complainant is that the Medical Officer did not send samples for laboratory analysis correctly in order to determine cause of death.

Pertinent to note here is that no effort was made by petitioner/complainant to proceed against the medical officer on departmental side for alleged inefficiency/*mala fide*. In the circumstances, I see no illegality or irregularity committed by learned trial Court while passing the impugned order. Therefore, petition in hand stands **dismissed**.

(S.A.B.)          Petition dismissed

**2019 M L D 551**  
**[Lahore]**  
**Before Ch. Mushtaq Ahmad and Farooq Haider, JJ**  
**MUHAMMAD AZAM---Appellant**  
**Versus**  
**SHAHZAD AKHTAR and another---Respondents**

CrI. Appeal No.2045 of 2011, decided on 1st November, 2018.

**(a) Penal Code (XLV of 1860)---**

---Ss. 302 & 34---Qatl-i-amd, common intention---Appreciation of evidence---Appeal against acquittal---Prosecution case was that the accused along with his co-accused persons armed with deadly weapons assaulted on complainant party---Accused made straight firing upon the brother of the complainant, due to which he died--- Occurrence took place over a dispute of plot and some money transaction---Version of the complainant in his fard bayan was that on the day of occurrence accused/respondent along with his acquitted co-accused came at the place of occurrence and after raising lalkara, one of the acquitted co-accused fired with rifle .7-MM at the deceased, which hit on upper part of his left thigh and accused made two firearm shots upon deceased hitting at his back--Complainant had stated during trial that co-accused made fire which hit deceased, accused made two fires, which hit deceased on left side of hip--Said deposition was contradictory to his previous statement got recorded by him and during confrontation, it had been observed that complainant had dishonestly suppressed seat of injury allegedly caused by acquitted accused and also introduced dishonest improvement about locale of injuries allegedly caused by accused just to bring ocular version in line with medical evidence--



-Prosecution had alleged that three fire shots hit the deceased, one by acquitted accused and two by accused, but Medical Officer had observed two injuries at the hip of the deceased---Blackening was found on two injuries but according to site-plan, distance from where accused allegedly fired at deceased was thirteen feet--- Admittedly, in case of blackening, maximum range of firing was six feet, thus medical had contradicted ocular account---Record transpired that besides the complainant, the occurrence was witnessed by three other persons but they were not produced in court to prove the charge against accused by mentioning them as being won-over---Non-production of said witnesses, in circumstances, would go against the prosecution---Complainant, during cross-examination, denied his relationship with said witnesses but he had admitted relationship with them in his previous statement---Complainant had denied his relationship with a witness, whereas said witness had clearly stated during his statement that he was son of sister-in-law of complainant---Circumstances suggested that complainant had suppressed his relationship with prosecution witnesses---Complainant had also suppressed the factum of receipt of injury by acquitted accused which would go against the prosecution---Said facts and circumstances led to the conclusion that occurrence did not take place as alleged by the complainant---Evidently, three co-accused had been acquitted in the present case and now strong corroboration was required to prove charge against present accused/ respondent but prosecution failed to do so---Prosecution itself brought on record documentary evidence before the court to prove that accused/ respondent was not involved in the alleged occurrence rather he was in foreign country on the day of

occurrence of the case---No recovery of any incriminating material was made during investigation---Circumstances established that prosecution had failed to prove the charge against accused/respondent beyond shadow of doubt---Prosecution case was fraught with doubts---Appeal against acquittal was dismissed, in circumstances.

Mst. Jallan v. Muhammad Riaz and others PLD 2003 SC 644; Muhammad Ali v. The State 2015 SCMR 137; The State v. Iqbal and 3 others 1986 PCr.LJ 215; Mst. Zahida Saleem v. Muhammad Naseem and others PLD 2006 SC 427; Muhammad Rahim and others v. Bakht Muhammad and others 2006 SCMR 1217; Mst. Sughra Begum and another v. Qaiser Pervez and others 2015 SCMR 1142 and Irfan Ali v. The State 2015 SCMR 840 rel.

**(b) Criminal trial---**

---Abscondance---Scope---Mere abscondance is no proof of guilt--When direct evidence is not trustworthy and reliable then abscondance is of no avail and can not cure or repair defects of the case of prosecution---Abscondance is merely a suspicion and cannot prove charge as a substantive piece of evidence.

Rasool Muhammad v. Asal Muhammad and another 1995 SCMR 1373 rel.

**(c) Criminal Procedure Code (V of 1898)---**

---S. 417---Appeal against acquittal---Appreciation of evidence---Principles---Acquitted accused had acquired double presumption of innocence, with which the court did not interfere unless the

impugned order was found to be arbitrary, capricious, fanciful and against the record.

Haji Paio Khan v. Sher Biaz and others 2009 SCMR 803 rel.

**(d) Criminal Procedure Code (V of 1898)---**

---S. 417---Appeal against acquittal---Interference---Scope---  
Interference was to be made when it appeared that acquittal was result of misreading or non-reading of evidence.

Muhammad Usman and 2 others v. The State 1992 SCMR 498  
and The State v. Muhammad Sharif and others 1995 SCMR 635  
rel.

**(e) Criminal trial---**

---Benefit of doubt---Principle---Single circumstance creating a  
reasonable doubt in prudent mind about the guilt of accused would  
be sufficient to extend its benefit to the accused.

Muhammad Zaman v. The State and others 2014 SCMR 749  
and Muhammad Ashraf and others v. The State and another  
PLD 2015 Lah. 1 rel.

Waqar-ul-Mohsin Lak for Appellant.

**ORDER**

This appeal under Section 417(2-A), Cr.P.C. has been filed by appellant against the order of acquittal of respondent No.1 passed by the learned Sessions Judge, Mandi Bahauddin, vide judgment dated 17.10.2011 in case arising out of FIR No.527/2004 dated 20.8.2004 registered under Sections 302, 34, P.P.C. at Police Station Sadder Mandi Bahauddin.

2. Brief facts of the prosecution case as got recorded by complainant Muhammad Azam (present appellant) in his statement/Fard Bayan Exh.PG are that he was resident of Chelianwala and on 20.8.2004 he along with his brothers namely Mazhar Iqbal and Akhtar Iqbal were present in street for doing some work in a plot situated in front of his house when at about 9.00 AM, all of a sudden, accused namely Shahzad (present respondent No.1) along with his companions namely Naveed, Shabbir and Musthaq (since acquitted) armed with firearms weapons, came there and Shahzad raised lalkara that today Mazhar Iqbal should not go alive whereupon accused Naveed (since acquitted) made firearm shot hitting at left thigh of Mazhar Iqbal who ran to take shelter of the wall, then from behind Shahzad accused (present respondent No.1) made two firearm shots with his rifle .223 bore which hit Mazhar Iqbal at his back, as a result of which after few steps, he fell down.

Thereafter all the accused while making firing decamped from the place of occurrence. The occurrence was witnessed by Javed Akhtar son of Fazal Dad and Khalid Mehmood. Mazhar Iqbal was taken to RHC Chelianwala where he succumbed to the injuries. This occurrence took place over a dispute of plot and some money transaction.

3. On completion of investigation, incomplete challan report under section 173, Cr.P.C. was prepared and submitted in Court by placing the names of Naveed and Mushtaq Ahmad in column No.2 and that of Shabbir Ahmad accused in column No.3, however, name of Shahzad Akhtar (respondent No.1) was placed in column No.2 with red ink as his arrest was yet pending. Learned trial Court after receipt of said challan report, on the request of Muhammad Azam complainant (present appellant) summoned Shahzad Akhtar (respondent No.1) also but due to non-service of process, his proclamation under Section 87, Cr.P.C. was ordered to be issued, thereafter no further proceedings were done in this regard and even statement of Process Server was not recorded.

4. It would not be out of place to mention here that since respondent No.1 was not arrested so his trial was kept pending whereas his co-accused namely Naveed Akhtar, Shabbir Ahmad and Mushtaq Ahmad were tried by the trial Court and on completion of trial, they were acquitted vide judgment dated 30.9.2005 by extending them the benefit of doubt.

5. Shahzad Akhtar after getting protective bail joined investigation on 7.2.2011 and found not involved in the crime and his name was placed in column No.2 in the report prepared and submitted under Section 173, Cr.P.C. in the Court. Trial commenced and charge was framed on 3.5.2011, to which, he pleaded not guilty and claimed trial whereafter evidence of prosecution was summoned.

After completion of prosecution evidence, respondent No.1 got recorded his statement under Section 342, Cr.P.C. but he did not opt to record his statement under Section 340(2), Cr.P.C. on oath, however, he produced documentary evidence in his defence. Thereafter, the learned trial Court after hearing both the sides and scrutinizing the evidence produced from both sides, acquitted respondent No.1 from the charge by extending him benefit of doubt vide judgment dated 17.10.2011. Hence, this appeal.

6. Having heard the learned counsel for the appellant and gone through the record available on file, we find that nothing has been brought on record which could persuade us to hold that the conclusion arrived at by the learned trial court is against law and evidence produced during the trial. Further the judgment of learned trial court while acquitting respondent No.1 cannot be termed as perverse inasmuch as the reasons recorded therein for acquitting him are also not fanciful, capricious, speculative and artificial, in absence of which, the order of acquittal cannot be interfered with. The learned trial court has dealt with all the contentions of the learned counsel for the appellant, as agitated before us, in the judgment impugned. From the perusal of the impugned judgment, it reveals that according to the version of

complainant (present appellant) in his Fard Bayan (Ex.PG), on the day of occurrence, respondent No.1 along with his other acquitted co-accused came at the place of occurrence and after raising lalkara, one of the acquitted co-accused namely Naveed fired with rifle .7mm at Mazhar Iqbal deceased, which hit on upper part of his left thigh (Kulah) whereas Shahzad Akhtar (respondent No.1) made two firearm shots upon deceased Mazhar Iqbal hitting at his back but during trial complainant while appearing as PW-7 stated that "Naveed made fire which hit Mazhar, Shahzad accused made two fires, which hit Mazhar on left side of hip", as such, his said deposition is contradictory to his previous statements got recorded by him in Ex.PG and Ex.DB and during confrontation, it has been observed that complainant has dishonestly suppressed seat of injury allegedly caused by Naveed (since acquitted) and also introduced dishonest improvement qua locale of injuries allegedly caused by Shahzad Akhtar (respondent No.1) just to bring ocular version in line with medical evidence. Moreover, it is the case of the prosecution that three fire shots hit to the deceased, one by accused Naveed and two by accused Shahzad but PW-6 Dr. Shafique Ahmad observed two injuries at the hip of deceased during his autopsy. Blackening has been found on injuries Nos.1-A and 2 but according to site plan Ex.PM, distance from where Shahzad Akhtar allegedly fired at deceased is 13 feet. It is settled principle of Medical Jurisprudence that in case of blackening maximum range of firing is six feet. Thus medical has contradicted ocular account. Reliance is respectfully placed upon the cases of "Mst. Jallan v. Muhammad Riaz and others" (PLD 2003 SC 644) and "Muhammad Ali v. The State" (2015 SCMR 137). Moreover, the learned trial Court has observed major contradictions relating to taking the deceased to RHC Chelianwala, which also create serious doubt regarding the truthfulness of the prosecution story.

Another aspect of the matter is that besides the appellant, the occurrence was witnessed by Akhtar Iqbal, Javed Akhtar and Khalid Mehmood but they were not produced in Court to prove the charge against respondent No.1 by mentioning them as being won-over, and in that scenario, non-production of these witnesses goes

against the prosecution. Complainant during cross-examination denied his relationship with above mentioned eye-witnesses, he was confronted with his previous statement (Ex.DB) recorded on oath during previous trial, it was found that in said statement he has admitted that Khalid Mehmood and Javed Akhtar PWs were his "Khalazad". So he has denied admitted relationship. Similarly he has denied his relationship with Amir Mehmood PW-5 whereas Amir Mehmood PW-5 has clearly stated during his statement before the Court that he is son of sister in law (Saali) of complainant. So, the complainant suppressed relationship with PWs. Reliance is placed upon the case of "The State v. Iqbal and 3 others" (1986 PCr.LJ 215). It has also been found that complainant also suppressed the factum of receipt of injury by Shabbir accused (since acquitted) which goes against the prosecution and in this regard reliance is placed upon the cases of "Mst. Zahida Saleem v. Muhammad Naseem and others" (PLD 2006 SC 427) and "Muhammad Rahim and others v. Bakht Muhammad and others" (2006 SCMR 1217). These all facts lead to the conclusion that occurrence did not take place as alleged by complainant.

Three co-accused have been acquitted in the case and now strong corroboration required to prove charge against Shahzad Akhtar (respondent No.1) but prosecution remained failed to do so and in this regard, reliance is respectfully placed upon the cases of "Mst. Sughra Begum and another v. Qaiser Pervez and others" (2015 SCMR 1142), and "Irfan Ali v. The State"(2015 SCMR 840).

Another vital aspect of the case is that prosecution itself brought on record documentary evidence before the Court to prove that Shahzad Akhtar (respondent No.1) is not involved in the alleged occurrence rather he was abroad i.e. in foreign country on the day of occurrence of this case. Prosecution itself collected Passport Exs.P4, P5 and P6 of Shahzad Akhtar during investigation and verified his travelling record through letter Ex.PJ from Immigration Authorities and produced verification documents qua his travel history as Ex.PK and PK/1. Furthermore

Ex.DJ and DJ/1 along with its translation Ex.DJ duly verified by Sudan Embassy and Embassy of Pakistan Khartoum Sudan about his presence abroad on the fateful day of occurrence were also brought on record, which even were not challenged by the prosecution.

No recovery of any incriminating material was made during investigation. Mere abscondance is no proof of guilt, when direct evidence is not trustworthy and reliable, then abscondance is of no avail and cannot cure or repair defects of the case of prosecution. Abscondance is mere a suspicion and cannot prove charge as a substantive piece of evidence and in this regard reliance is placed upon the case of "Rasool Muhammad v. Asal Muhammad and another" (1995 SCMR 1373). Thus, learned trial Court while acquitting respondent No.1 has rightly observed in Para No.29 of its judgment, as under:--

"The upshot of the above discussion is that the prosecution remained failed to prove its case beyond all shadow of doubts against accused Shahzad Akhtar son of Ghulam Sarwar and I found that the prosecution case is not free from all doubts. In view of above, I have pondered over the plea of alibi of the accused. I found that the accused and the prosecution itself through documentary evidence produced plausible and reasonable evidence to substantiate the absence of the accused from Pakistan on the fateful day. Therefore, keeping in view such documentary evidence, which almost remained unchallenged, the first version of the accused i.e. plea of alibi is believed. So, the benefit of doubt is given to the accused Shahzad Akhtar"

7. The learned trial Judge has advanced valid and cogent reasons for arriving at the finding of acquittal in favour of respondent No.1 and we see no legal justification to disturb the same. Even otherwise, when an accused person is acquitted from the charge by a court of competent jurisdiction, then double presumption of innocence is attached to such order, with which



courts do not interfere unless the impugned order is found to be arbitrary, capricious, fanciful and against the record, which are not found available in the present case and in this regard reliance is placed upon the case of "Haji Paio Khan v. Sher Biaz and others" (2009 SCMR 803). Further in appeal against acquittal, interference is made only when it appears that acquittal is result of misreading or non-reading of evidence which too is missing in this case.

The ordinary scope of appeal against acquittal is considerably narrow and limited as held in the cases of "Muhammad Usman and 2 others v. The State" (1992 SCMR 498) and "The State v. Muhammad Sharif and others" (1995 SCMR 635). We have observed that prosecution has failed to prove the charge against respondent No.1 beyond the shadow of doubt. The case of the prosecution is fraught with doubts. Further respondent No.1 was not bound to establish number of circumstances creating a reasonable doubt in the prudent mind even a single circumstance is sufficient to extend the benefit of doubt to him. In this regard, reliance can be placed upon the cases of "Muhammad Zaman v. The State and others" (2014 SCMR 749) and "Muhammad Ashraf and others v. The State and another" (PLD 2015 Lahore 1).

8. In view of the foregoing discussion, we have not observed any legitimate exception to interfere in the well-reasoned judgment of the learned trial court. Consequently, the appeal in hand, having no merits, is hereby dismissed in limine.

JK/M-179/L Appeal dismissed.

**PLJ 2019 Cr.C. 11 (DB)**  
**[Lahore High Court, Multan Bench]**  
**Present: QAZI MUHAMMAD AMIN AHMED AND CH. MUSHTAQ**  
**AHMAD, JJ.**  
**STATE etc.--Petitioners**  
**versus**  
**MUHAMMAD RAMZAN, etc.--Respondents**

M.R. No. 37 of 2013, Crl. As. No. 253, 286 of 2013 and Crl. Rev. No. 219 of 2013, heard on 5.6.2018.

**Pakistan Penal Code, (XLV of 1860)--**

---S. 302(b)--Conviction and sentence--Challenge to--Re-appraisal of evidence--Night time occurrence with no source of light except moon light--As per site-plan witnessed occurrence from a distance of 27 Karams--In that situation from any stretch of imagination or methodology a human being cannot identify culprits from such a distance--Particulars qua name, age and caste of PW-9 contained in MLC as well as in his statement recorded before Court are altogether different from each other--In presence of different particulars, it cannot be said with certainty that PW-9 was same person who witnessed incident--For an injured witness whose presence at occurrence is not disputed it can safely be concluded that he had witnessed incident--However, more than one circumstances creating doubt qua presence of PW-9 at spot--So far as other pieces of evidence like, blood stained Sota, Baheen, etc. those do not advance prosecution case in any manner--During investigation .30 bore Pistol (P1) was recovered from appellant but in absence of any crime empty forensic report of Ballistic Expert is of no avail to prosecution case--From overall analysis of prosecution evidence, it is abundantly clear that occurrence did not take place in manner as alleged by prosecution--On re-appraisal of evidence as discussed above, that charge against appellants in this case was not proved by prosecution beyond reasonable doubt--Findings of conviction recorded by trial Court are not in line with facts established on record--Criminal Appeal filed by appellants is allowed. [Pp. 16 & 17] A, C & D

### **Prosecution Evidence--**

---Reliable or trustworthy--Proposition of Law--**Held:** It is settled proposition of law that at first Court has to see whether prosecution evidence is reliable and sufficient to record conviction--If it is concluded that prosecution evidence is trustworthy then, version of defence, if any, is to be considered in juxta position with prosecution version to see as to which of two is correct and more reliable--If prosecution evidence itself is doubtful and unreliable, in that eventuality plea taken by accused regarding different mode of occurrence will not be of much relevance. [P. 16] B

*Malik Muhammad Zafar Iqbal*, Advocate for Appellants (Rustam & Allah Ditta).

*Mr. Shahid Aleem*, Addl. P.G. for State.

*Syed Irfan Haider Shamsi*, Advocate for Complainant.

Date of hearing: 5.6.2018.

### **JUDGMENT**

**Ch. Mushtaq Ahmad, J.--**Muhammad Ramzan, Rustam and Allah Ditta appellants were tried by learned Additional Sessions Judge, Layyah in case FIR No. 53 dated 04.03.2012 registered under Sections 302/324/337-A(i)/337-F(vi)/34, PPC at Police Station Saddar Layyah, District Layyah.

2. Learned Additional Sessions Judge, Layyah *vide* judgment dated 28.05.2013 convicted and sentenced the appellants as under:

#### **RUSTAM**

Convicted u/S. 337-A(i), PPC and sentenced to undergo one year R.I as Tazir with payment of Rs. 20,000/- as Daman. If recovered to be paid to the victim, in default to be dealt with u/S. 337-Y(2), PPC.

#### **ALLAH DITTA**

Convicted u/S. 337-F(vi), PPC and sentenced to undergo three years R.I as Tazir with payment of Rs. 35,000/-

as Daman. If recovered to be paid to the victim, in default to be treated u/S. 337-Y(2), PPC.

**MUHAMMAD RAMZAN**

Convicted u/S. 302(b), PPC and sentenced to Death with fine of Rs. 3,00,000/- as compensation to the legal heirs of deceased in terms of Section 544-A, Cr.P.C. and in the event of default of payment of fine to undergo further simple imprisonment for 06 months S.I.

Benefit of Section 382(b), Cr.P.C. was given to them.

3. On receipt of guilty verdict they challenged their conviction and sentence through titled appeal whereas state sought confirmation of death sentence awarded to Muhammad Ramzan. Mushtaq Ahmad complainant/appellant filed appeal against acquittal of respondent/ accused Alam Sher and criminal revision for enhancement of sentence awarded to appellants Rustam and Allah Ditta which was ordered to be heard along with these matters. We propose to dispose of all the above matters through this judgment.

4. FIR (Ex.P.A/1) was registered on the statement of Mushtaq Ahmad complainant who alleged that his son Izhar-ul-Haq was running a grocery shop at Maqsood Chowk who told him that he had been invited by Alam Sher Chatri accused on feast (Sohbat) who alongwith Ejaz Ahmad (injured PW-9) left to join "Sohbat"/feast/dinner arranged by Alam Sher accused. At 01.30 a.m. (night), he was informed by Khan Muhammad Pathan through telephone that his son had been murdered, whereas Ejaz Ahmad (PW-9) was lying in injured condition near Peer Wala Hospital. He alongwith Bashir Ahmad reached at the spot and saw dead body of his son Izhar-ul-Haq (*deceased*) on the road side of Peer Wala Hospital and Ejaz Ahmad (PW-9) was lying there in injured condition. Meanwhile, Ghulam Fareed (PW-11) and Muhammad Ramzan (since given up PW) also reached at the spot. Ejaz Ahmad injured (PW-9) disclosed that he and Izhar-ul-Haq (*deceased*) when reached near the hospital, Muhammad Ramzan alongwith four others raised *lalkara* that he be taught a lesson for

developing illicit relations with his sister Nazeer Mai. Muhammad Ramzan (*appellant*) armed with pistol and Alam Sher Chatri accused armed with sota ran towards Izhar-ul-Haq (*deceased*) who did try to flee but Muhammad Ramzan (*appellant*) fired 3/4 pistol shots hitting the deceased Izhar-ul-Haq who collapsed. Alam Sher Chatri accused inflicted sota blows on his person. Rustam (*appellant*) inflicted Bahin of cot on his head. Allah Ditta (*appellant*) inflicted sota blow causing fracture of his arm.

5. Investigation was conducted by (PW-13), Muhammad Anwar S.I and (PW-14), Shahid Hussain S.I who after completion of investigation submitted report under Section 173, Cr.P.C. Accused were charged on 23.05.2012 but they denied the charge and claimed trial. Prosecution in order to prove charge produced 14 witnesses. (PW-12) Dr. Muhammad Aslam SMO provided medical report of Izhar-ul-Haq (deceased). After tendering in evidence report of Chemical Examiner (Ex.P.Q & Ex.P.R), report of Punjab Forensic Science Agency Ex.P.S and report of Serologist (Ex.P.T), prosecution closed its evidence after giving up Bashir Ahmad, Muhammad Ramzan, Khan Muhammad PWs being won over; whereas Aziz Ahmad and Muhammad Moosa as being unnecessary.

6. Thereafter statements of accused were recorded under Section 342, Cr.P.C.

7. Learned trial Court after hearing arguments, recorded conviction and awarded sentence to the appellants as mentioned in the opening paragraph of this judgment, whereas co-accused Alam Sher was acquitted from the charge.

8. Learned counsel for the appellants submits that ocular account stands contradicted by medical evidence; that post-mortem examination was admittedly got conducted on the next day; that the instant case was registered after due consultation and deliberation by falsely implicating the accused/appellants; that MLC of Ijaz Ahmad (PW-9) was fake and that learned trial Court has not correctly

appreciated the evidence, hence the appellants are entitled to acquittal.

9. On the other hand, learned Additional Prosecutor General assisted by learned counsel for the complainant argued that deceased Izhar-ul-Haq was done to death on suspicion of having illicit relations with the sister of Alam Sher accused; that medical evidence fully supported and corroborated the ocular account; that learned trial Court convicted and sentenced the appellant Muhammad Ramzan to death, whereas awarded lesser punishment to appellants Rustam and Allah Ditta and acquitted Alam Sher accused; that sentence awarded to appellants Rustam and Allah Ditta should be enhanced and accused Alam Sher be convicted and sentenced in accordance with law.

10. Arguments heard. Record perused.

11. This case relates to an occurrence which took place at odd hours of night (at 1.30 a.m.) on 4.3.2012 in Chah Peer Wala Mauza Bhand Nashaib falling within territorial jurisdiction of Police Station Saddar, District Layyah. Prosecution case is based on ocular account furnished by PW-9 Ijaz Ahmed and PW-10 Mushtaq Ahmed who was also architect of First Information Report. However, complainant was not the eye-witness of occurrence as he had reached at the place of incident on telephonic information conveyed by one Khan Muhammad Pathan and this fact is very much reflected from 'Fard Bayan' (Exh.PA) recorded by Shahid Hussain, S.I./PW-14 on 4.3.2012. As per prosecution version PW-9 at the relevant time was with the deceased. During occurrence he also sustained blunt weapon injuries on his skull and arm at the hands of Rustam and Allah Ditta, appellants. So, the entire prosecution case is based on the statement of PW-9 as he was the sole eye-witness of main incident.

12. Certainly, presence of injured witness cannot be doubted at the place of incident but the question is as to whether he was truthful witness or otherwise, because mere injuries on the person of a witness would not stamp him as truthful witness. While appearing before the Court PW-9 improved his statement when he was

confronted with his previous statement got recorded u/S. 161, Cr.P.C. qua salient features of the incident. In cross-examination PW-9 stated he had cell No. 0343-4218781 with him at the time of occurrence. Further stated that--

*“I sustained two injuries on this occurrence one at the head and other on left arm. I was in senses at that time and I remained in senses throughout till my medical examination. My clothes were not stained with blood. Volunteered same were stained with soil. “*

It is amazing to note that a person who himself admitted that after receiving blunt weapon injuries he remained in senses, then, why he did not inform the complainant about the occurrence from his cell phone who came to know about the incident through Khan Muhammad Pathan (*not produced*). As per record incident took place at 1.30 a.m. (*night*) whereas PW-9 was medically examined at 11.00 a.m. on 4.3.2012 *vide* MLC (Exh.PL) issued by Dr. Awais Fareed. Record shows that PW-9 did not record his statement to the police at the spot rather it was recorded in hospital after his medical examination. First Investigating Officer in his cross-examination stated so while appearing before the Court as PW-14. In cross-examination I.O. stated that he had not declared accused persons guilty in his investigation. Likewise duration of injuries sustained by PW-9 did not coincide with the timing of occurrence. Moreover Muhammad Jamal, Constable-515 who, as per prosecution, brought PW-9 for examination to Peerwala Hospital, Layyah did not appear before the Court to support prosecution version. From withholding of material witnesses (*Khan Muhammad Pathan and Muhammad Jamal, 515-C*) presumption under Article 129(g) of Qanun-e-Shahadat Order can fairly be drawn that they were not ready to support the prosecution. PW-9 in cross-examination, as mentioned above, stated that his clothes were not stained with blood after receiving injuries but his MLC (Exh.PL) shows that at the time of examination doctor noted multiple blood spots on his Shalwar and Kameez. The post-mortem report of deceased revealed that fire shots were made from close range as Dr.Awais Fareed who conducted autopsy on dead body of deceased noted blackening around the wounds. It is not believable that appellants after killing the deceased with fire-arm weapon, would

have spared PW-9 to become a witness against them. On prosecution own showing it was a night time occurrence with no source of light except moon light. As per site-plan (Exh.PB) PW-9 witnessed the occurrence from a distance of 27 Karams. In that situation from any stretch of imagination or methodology a human being cannot identify the culprits from such a distance. Besides this, particulars qua name, age and caste of PW-9 contained in MLC (Exh.PL) as well as in his statement recorded before the Court are altogether different from each other. In presence of different particulars, it cannot be said with certainty that PW-9 Ijaz Ahmed was the same person who witnessed the incident. For an injured witness whose presence at the occurrence is not disputed it can safely be concluded that he had witnessed the incident. However, in this case we have noted more than one circumstances creating doubt qua presence of PW-9 at the spot.

13. It is settled proposition of law that at first Court has to see whether prosecution evidence is reliable and sufficient to record conviction. If it is concluded that prosecution evidence is trustworthy then, version of defence, if any, is to be considered in juxta position with prosecution version to see as to which of the two is correct and more reliable. If prosecution evidence itself is doubtful and unreliable, in that eventuality plea taken by the accused regarding different mode of occurrence will not be of much relevance.

14. So far as other pieces of evidence like, blood stained Sota (Exh.PE), Baheen (Exh.PC), etc. those do not advance the prosecution case in any manner. During investigation .30 bore Pistol (P1) was recovered from Muhammad Ramzan, appellant but in absence of any crime empty, the forensic report of Ballistic Expert is of no avail to prosecution case.

15. From the overall analysis of prosecution evidence, it is abundantly clear that occurrence did not take place in the manner as alleged by the prosecution.

16. On re-appraisal of evidence as discussed above, we are of the view that charge against appellants in this case was not proved by



the prosecution beyond reasonable doubt. The findings of conviction recorded by learned trial Court are not in line with the facts established on record. Consequently, Criminal Appeal No. 253 of 2013 filed by appellants Muhammad Ramzan, Rustam and Allah Ditta is allowed. The conviction and sentences of the appellants *vide* judgment dated 28.5.2013 passed by learned Additional Sessions Judge, Layyah are set aside. They are acquitted of the charge. Appellants Rustam and Allah Ditta are on bail. Their bail bonds are discharged from the liability. Appellant Muhammad Ramzan shall be released from jail forthwith, if not required in any other case.

17. As a natural corollary to the above, Murder Reference No. 37 of 2013 for confirmation of death sentence awarded to convict Muhammad Ramzan is answered in Negative.

18. Likewise Criminal Appeal No. 286 of 2013 filed by Mushtaq Ahmad, appellant/complainant against acquittal of respondent Alam Sher and Criminal Revision No. 219 of 2013 for enhancement of sentence of respondents Rustam and Allah Ditta are dismissed in the light of findings given above.

(A.A.K.)      Appeal allowed

**PLJ 2019 Lahore 33 (DB)**  
**[Multan Bench Multan]**  
**Present: QAZI MUHAMMAD AMIN AHMED AND**  
**CH. MUSHTAQ AHMED, JJ.**  
**ALLAH DITTA--Petitioner**  
**versus**  
**STATE and 7 others--Respondents**

W.P. No. 8414 of 2017, decided on 2.5.2018.

**Pakistan Penal Code, 1860 (XLV of 1860)--**

---S. 302(b)--Anti-Terrorism Act, (XXV of 1997), S. 7--Sentenced to death--Compromise--Terrorism case--Occurrence committed in a Court room in backdrop of personal vendetta--Indicted for homicide read with Section 7 of ATA--Conviction was upheld till Supreme Court--Conviction could not be impliedly construed to be under Section 7 of ATA, merely on basis of forum of trial or joinder of charges under threat, thus, there was no occasion of learned judge, ATC to decline acceptance of request merely on this ground alone--Impugned order set aside--Petitioner's plea for acceptance of compromise shall be deemed pending before learned judge, ATC for decision in accordance with law, after due verification--Petition was allowed. [Pp. 35 & 36] A & B

*Malik Muhammad Saleem, Advocate for Petitioner.*

*Malik Riaz Ahmad Saghla, D.P.G for State.*

Date of hearing: 2.5.2018.

**ORDER**

Abdul Karim, accused in a case of homicide was gunned down while appearing in the Court of learned Sessions Judge Rajanpur; Allah Ditta, petitioner herein, assigned fatal shot, was arrested red handed alongwith weapon of offence. Tried by a learned Judge, Anti-Terrorism Court, Dera Ghazi Khan; he was convicted under Section 302(b) of the Pakistan Penal Code, 1860 read with Section 7 Anti-Terrorism Act, 1997, henceforth referred to as the Act, and sentenced to death *vide* judgment dated 1-10-2007; his appeal met with no better fate; death penalty awarded by the learned

trial Court was confirmed on 14-09-2011 and leave to appeal declined by the Supreme Court of Pakistan on 27-3-2012. Bracing the gallows, the petitioner managed to successfully persuade the legal heirs of Abdul Karim, deceased to compound the offence; in pursuance whereof, his execution scheduled for 16-12-2015 at 6:30 a.m was stayed by a learned Division Bench *vide* order dated 15-12-2015 in W.P. No. 18809 of 2015, with a direction to the learned trial Court to verify the factum of composition, if any. It was in this backdrop, that the learned trial Judge confirmed composition *vide* report dated 22.12.2015. Through another Constitutional Petition No. 9463 of 2016, petitioner sought to approach the learned trial Court for acceptance of compromise, while withdrawing W.P. No. 18809 of 2015 and thus, the issue came up before the learned Judge, Anti-Terrorism Court, for acceptance of compromise, the learned trial Judge confirmed the genuineness of compromise, however, declined to bless it with approval on the ground that petitioner's conviction alongside Section 7 of the Act stood in impediment to his acquittal, latter charge being noncompoundable.

2. Learned counsel for the petitioner contends that although the petitioner was tried by a Court constituted under the Act, nonetheless, he was not independently indicted under Section 7 of the Act and, thus, he could not be burdened with consequences thereof inasmuch as the venue of the crime brought his case before the Anti-Terrorism Court in view of enlistment in the Third Schedule to the Act. The bottom line is that the petitioner was never convicted under Section 7 of the Act as the substantive charge was that of homicide alone. Reliance is placed in the case of *Irfan & another vs. Muhammad Yousaf & another* (2016 SCMR 1190). The learned Law Officer has contested the plea, however, not with much enthusiasm.

3. Heard. Record Perused.

4. Petitioner was tried by the learned Anti-Terrorism Court for committing murder in a Court Room in the backdrop of a personal vendetta, however, having regard to the venue selected by him, he was indicted for homicide read with Section 7 of the Act in view of

the Third Schedule to the Act; he was convicted for homicide alone as is evident from trial Court's judgment dated 1-10-2007, upheld by this Court as well as the Supreme Court of Pakistan and, thus, he incurred no penal consequences under the Act so as to reflect upon the possibility of a composition, same view has been taken in the case of *Amjad Ali & others vs. The State* (PLD 2017 SC 661) wherein conviction recorded and sentence consequent thereupon under Section 7 of the Act *ibid*, in the backdrop of an incident, that partly occurred in a mosque, involving loss of three lives, has been set-aside; relevant portion is advantageously reproduced below:

*“The last aspect of this case highlighted in the leave granting order is as to whether the Courts below were justified in convicting and sentencing the appellants for an offence under Section 7(a) of the Anti-Terrorism Act, 1997 or not. We note in that context that a mere firing at one's personal enemy in the backdrop of a private vendetta or design does not ipso facto bring the case within the purview of Section 6 of the Anti-Terrorism Act, 1997 so as to brand the action as terrorism. There was no 'design' or 'object' contemplated by Section 6 of the Anti-Terrorism Act, 1997 involved in the case in hand. We further note that by virtue of Item No. 4 (ii) of the third Schedule to the Anti-Terrorism Act, 1997 a case becomes triable by an Anti-Terrorism Court if use of fire-arms or explosives, etc. in a mosque, imambargh, church, temple or any other place of worship is involved in the case. That entry in the Third Schedule only makes such a case triable by an Anti-Terrorism Court but such a case does not ipso facto become a case of terrorism for the purposes of recording convictions and sentences under Section 6 read with Section 7 of the Anti-Terrorism Act, 1997. The case in hand had, thus, rightly been tried by an Anti-Terrorism Court but the said Court could not have convicted and sentenced the appellants for an offence under Section 7(a) of the Anti-Terrorism Act, 1997 as it had separately convicted and sentenced the appellants for the offences of murder, etc committed as ordinary crimes.”*

In view of the law declared in the *supra* case, we confidently hold that petitioner's conviction could not be impliedly construed to be under Section 7 of the Act merely on the basis of forum of trial or joinder of charges under the Act, thus, there was no occasion for the learned Judge, Anti-Terrorism Court, to decline acceptance of request merely on this ground alone, if otherwise, he was satisfied about the genuineness thereof. Consequently, W.P. No. 8414 of 2017 is allowed and impugned order dated 1.6.2017 is set-aside; Petitioner's plea for acceptance of compromise shall be deemed as pending before the learned Judge, AntiTerrorism Court for decision in accordance with law, after due verification.

(K.Q.B.)          Petition allowed

**PLJ 2019 Cr.C. 169**  
**[Lahore High Court, Multan Bench]**  
**Present: CH. MUSHTAQ AHMAD, J.**  
**QASIM and another--Petitioners**  
**versus**  
**STATE and another--Respondents**

CrI. Misc. No. 7597-B of 2018, decided on 22.1.2019.

**Criminal Procedure Code, 1898 (V of 1898)--**

---S. 497--Pakistan Penal Code, (XLV of 1860), Ss. 337A(i)(vi)/F(v)/ L(ii), 379 & 148/149--Post-arrest Bail--Inordinate delay of three days in lodging FIR remained unexplained--Previous litigation between parties on criminal side is an admitted fact--Admittedly, petitioner's party also received injuries during incident at hand of complainant party against whom cross-version was lodged--Injuries sustained by accused party were not shown in FIR--It is a case of two versions; it is yet to be determined at trial that which of party was aggressor and which was aggressed upon--Bail allowed.

[P. 170] A

*Kh. Qaisar Butt*, Advocate for Petitioners.

*Syed Nadeem Haider Rizvi*, DPG for State.

*Mr. Abdul Rehman Tariq Khand*, Advocate for Complainant

Date of hearing: 22.1.2019

**ORDER**

Petitioners Qasim and Abdul Manan approached this Court for grant of post arrest bail in case FIR No. 369 dated 8.8.2018, offence under Sections 379, 337A(i), A(vi), F(v), L(ii), 148/149, PPC, registered, at Police Station Sadar Chichawatni, District Sahiwal.

2. Precise allegation against petitioners is that they alongwith coaccused while armed with different weapons caused injuries on the persons of PWs.

3. Heard. Perused.

4. Inordinate delay of three days in lodging the FIR remained unexplained on the part of prosecution. Previous litigation between the parties on criminal side is an admitted fact. Admittedly, petitioners' party also received injuries during the incident at the hand of complainant party against whom cross-version was lodged. The injuries sustained by accused party were not shown in the FIR. It is a case of two versions; it is yet to be determined at trial that which of the party was aggressor and which was aggressed upon. Petitioners are behind the bars for the last more than five months and no more required for investigation. In the given facts and circumstances, guilt of petitioners needs further probe and their case calls for further inquiry. Resultantly, this petition is allowed and petitioners be released on bail subject to furnishing bail bonds in the sum of Rs. 1,00,000/- each with one surety each in the like amount to the satisfaction of learned trial Court.

(K.Q.B.)      Bail allowed

**PLJ 2019 Lahore 514 (DB)**

**[Multan Bench, Multan]**

**Present: CH. MUSHTAQ AHMAD AND  
SARDAR MUHAMMAD SARFRAZ DOGAR, JJ.  
MUHAMMAD TAHIR--Petitioner**

**versus**

**GOVERNMENT OF PUNJAB, through SECRETARY HOME  
DEPARTMENT LAHORE and 6 others--Respondents**

Writ Petition No. 16750 of 2017, decided on 15.5.2019.

**Constitution of Pakistan, 1973--**

---Art. 199--Member of defunct Organization--"*Jaish-e-Muhammad*"--Mischievous and objectionable activities--Name of petitioner was placed on 4th Schedule of ATA 1997--Challenge to--During arguments when confronted as to whether any new evidence regarding involvement of petitioner in promoting cause of defunct organization "*Jaish-e-Muhammad*" for terrorism or sectarianism was collected by respondent authorities after his acquittal from case FIR No. 32/2015, as mentioned above, learned Assistant Advocate General was not in a position to furnish any plausible or valid reason in this regard except that name of petitioner was listed in 4th Schedule on basis of source information except this there is no other evidence available on record--No doubt name of a person can be inserted repeatedly in list of 4th Schedule of ATA, 1997 provided some fresh evidence or material is surfaced on record but in instant case there is no such evidence available with State functionaries present in Court--Respondents are directed to exclude name of petitioner from list of 4th Schedule, forthwith--Petition was allowed. [Pp. 515] A & B

*Syed Jaffar Tayyar Bukhari*, Advocate for Petitioner.

*Ch. Zulfiqar Ali Sidhu*, A.A.G. for Respondents.

*Mr. Tanvir Ahmed*, Assistant Director, D.C.

Office, Muzaffargarh with record.

*Mr. Mustafa Kamal*, D.O., CTD, Muzaffargarh in person.

Date of hearing : 15.5.2019.

**ORDER**



Through this petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 petitioner Muhammad Tahir has assailed vires of order dated 10.11.2017 whereby his name has been placed on 4th Schedule of ATA, 1997 being active Member of defunct organization "*Jaish-e-Muhammad*" involving in terrorist activities to spread panic and terrorism in the public-at-large.

2. The bottom line of arguments advanced by learned counsel for the petitioner was that in previous case *vide* FIR No. 32/2015 on the basis of which petitioner alleged to be active member of proscribed organization under reference has since been acquitted by this Court *vide* judgment dated 19.5.2016 passed in Criminal Appeal No. 2339 of 2015. He next argued that after that no new evidence was collected by the respondent authorities whereby it could be ascertained that present petitioner was involved in mischievous and objectionable activities prejudicial to public safety

3. Contentions have been opposed.

4. Arguments heard. Record perused.

5. During arguments when confronted as to whether any new evidence regarding involvement of the petitioner in promoting cause of defunct organization "*Jaish-e-Muhammad*" for terrorism or sectarianism was collected by the respondent authorities after his acquittal from case FIR No. 32/2015, as mentioned above, learned Assistant Advocate General was not in a position to furnish any plausible or valid reason in this regard except that name of the petitioner was listed in 4th Schedule on the basis of source information except this there is no other evidence available on record. No doubt name of a person can be inserted repeatedly in the list of 4th Schedule of ATA, 1997 provided some fresh evidence or material is surfaced on record but in the instant case there is no such evidence available with the State functionaries present in Court.

6. In this backdrop, we allow this petition. Orders dated 31.01.2017 and 10.11.2017 passed by Respondents No. 1 & 2 being illegal and unlawful are, hereby set aside. Respondents are directed to exclude name of the petitioner from the list of 4th Schedule, forthwith.

(MMR)                      Petition Allowed

**PLJ 2019 Lahore 534**  
**[Multan Bench, Multan]**  
**Present : CH. MUSHTAQ AHMAD, J**  
**ASIF HUSSAIN--Petitioner**  
**versus**  
**ADDL. DISTRICT JUDGE, SAHIWAL, etc.--**  
**Respondents**

Writ Petition No. 1101 of 2019, decided on 22.1.2019.

**Constitution of Pakistan, 1973--**

---Art. 199--Pakistan Penal Code, 1860--S. 381-A--Theft of Cars--  
Recovery of vehicles--Application for superdari of Car--Refused--  
ASJ handed over superdari to Respondent No. 3--Challenge to--  
Mere statement of an accused before police and report submitted  
by police before Court may not be relevant as compared to opinion  
of experts--Even otherwise by way of superdari only temporary  
arrangement has been made to save vehicle from any  
environmental damages both parties may establish their claim  
before appropriate forums as to ownership--No illegality has been  
noted in impugned order passed by learned Addl. Sessions  
Judge Sahiwal--Hence, constitutional petition being meritless,  
is dismissed--Petition was dismissed. [P. 530] A

*Syed Jaffar Tayar Bukhari, Advocate for Petitioner.*

Date of hearing : 22.1.2019.

**ORDER**

Petitioner has assailed orders dated 06.11.2018 and 03.1.2019 through which he has been refused superdari of a car.

2. Petitioner got registered case *vide* F.I.R No. 101/2018 under Section 381-A P.P.C P.S Civil Line District Sahiwal for theft of

his car Toyota Corolla GLI No. LWD 330 Engine No. X35 1074 Chasis No. NZE 1206027458 on 04.08.2018.

Respondent No. 3 herein also lost his car No. LEA-09378 Chasis No. ZZE 1229303060 Engine No. 4531119 blue Model 2005 Altas Corolla for which he got registered case F.I.R No. 429/2018 dated 05.07.2018 under Section 381-A PPC at P.S Ghalla Mandi Sahiwal.

Both the above cases were under investigation when an accused person namely Aamir Sohail who was arrested in case F.I.R No. 858 dated 14.08.2018 under Section 381-A P.P.C registered at P.S City Raiwind Lahore made a disclosure for recovery of two vehicles in the said case one Suzuki Mehran No. WH-226/IET Model 2013 Engine No. PKB 546686 Chasis No. PK 01086300 and another Car Toyota Corolla No. LEJ 1732 Colour blue Model 2007 Chasis No. 17E120/075696 whereas Engine and Chasis No. of Toyota Corolla were found tampered. Accused further made disclosure that he committed theft of Toyota Corolla within the vicinity of Sahiwal, hence he was roped in case F.I.R No. 108/18 dated 06.08.2018 under Section 381-A P.P.C P.S Civil Line Sahiwal got registered by the petitioner.

Petitioner as well as Respondent No. 3 the complainant of cases registered at Ghalla Mandi, Sahiwal both applied for superdari of Toyota Corolla car got recovered by P.S Raiwind City Lahore before learned Magistrate Section 30 Sahiwal who refused the superdari to both the complainants *vide* order dated 6.11.2018 but the learned Addl. Sessions Judge, Sahiwal *vide* order dated 3.1.2019 handed over superdari to Respondent No. 3.

3. In support of this petition, learned counsel for the petitioner has argued that the statement of the accused; report submitted by the police before the learned Magistrate and the remand papers support that infact it was the car of the petitioner which was stolen by the accused Aamir Sohail but the learned Addl. Sessions

Judge ignoring the available material has handed over superdari to Respondent No. 3 for reasons not sustainable in the eye of law on the subject.

4. After hearing learned counsel for the petitioner and going through the impugned order it has been noticed that as per report submitted by Punjab Forensic Science Agency the car subject matter of case got registered by petitioner was not verified to be the same.

During pendency of revision petitions with the consent of both the parties the vehicle in question was also examined through an expert by Toyota Sahiwal Motors who after examining the car has reported as under:--

*"The Toyota Corolla Car Registration number LEJ0701732 colour strong Blue parked in the Civil Line, police station, Sahiwal was inspected checked for tempering, modification and alterations. The subject car has been removed/lost all check points of vehicle identification and further wrong model VIN plate and Chasis number pasted. After inspection of car, it is observed, the car is not Toyota Corolla GLI. The body structure is Toyota Corolla Altis. This car is not matching with both documents, which were handed over to our team. "*

5. In view of above opinion *prima facie* the claim of the petitioner to retain the car does not appear to be co-gent. Mere statement of an accused before police and the report submitted by the police before the Court may not be relevant as compared to the opinion of experts. Even otherwise by way of superdari only temporary arrangement has been made to save the vehicle from any environmental damages both the parties may establish their claim before appropriate forums as to ownership.

No illegality has been noted in the impugned order passed by learned Addl. Sessions Judge Sahiwal. Hence, constitutional petition being meritless, is dismissed.

(MMR)          Petition dismissed

**PLJ 2019 Cr.C. 577 (DB)**  
**[Lahore High Court, Multan Bench]**  
**Present: CH. MUSHTAQ AHMAD AND SADIQ MAHMUD KHURRAM,**  
**JJ.**  
**ZEESHAN *alias* Sani and others--Appellants**  
**versus**  
**STATE and another--Respondents**

Crl. Appeals Nos. 670, 612 & Crl. Rev. 324 of 2009, heard on 11.2.2019.

**Pakistan Penal Code, 1860 (XLV of 1860)--**

---S. 302(c)--Conviction and sentenced--Challenge to--Appreciation of Evidence--Night time occurrence--Acquittal of--Prosecution failed to prove charge against two co-accused whereas the appellant had acted in exercise of right of self defence and caused injuries to the deceased and two injured PW's--Occurrence took place at night time--From the day one it was version of appellant that in fact deceased and PWs used to tease him for the purpose of committing sodomy and out of fear he used to keep a knife with him to save his honour and at the time of occurrence he was alone when they came and forced him to allow them to fulfill their nefarious design and in that situation he in exercise of self-defence caused injuries to them--Prosecution also attempted to create false evidence in the shape of dying declaration stating that before his death deceased made statement before the I.O. whereas according to statement of PW his condition was precarious and he was not in position to make any such statement--One thing is crystal clear from the statement of witnesses that they have concealed true facts of the case--The occurrence did not take place in the mode and manner stated by the witnesses--Presence of complainant was highly doubtful and prosecution evidence was neither reliable nor confidence inspiring which has rightly been rejected by trial Court--When the prosecution evidence itself was not reliable, conviction on plea of the accused/appellant was not justified--

conviction set aside and appellant acquitted. [Pp. 578, 582, 583 & 584] A, B, C, D & E

### **Appreciation of Evidence--**

---When prosecution evidence was found un-reliable conviction could not be based upon statement of accused as it was to be believed or rejected in toto. [P. 584] F

2006 SCMR 1139; 2013 SCMR 383, *ref.*

*Rana Muhammad Nadeem Kanjoo*, Advocate with Appellant.

*Mr. Adnan Latif*, DDPP for State.

*M/s. Khawaja Qaiser Butt and Ch.Faisal Aziz*, Advocates for Complainant.

Date of hearing: 11.2.2019

### **JUDGMENT**

**Ch. Mushtaq Ahmad, J.--***Zeeshan alias Sani* appellant alongwith two others was tried in case FIR No. 324 dated 30.08.2007 registered under Sections 302/324/337F(v)/34, P.P.C. at Police Station Chowk Azam, District Layyah. On conclusion of trial learned Additional Sessions Judge, Layyah *vide* his judgment dated 30.9.2009 convicted the appellant 'under Section 302(c), P.P.C. and sentenced him to 20-Years R.I. with payment of compensation to the tune of Rs. 50,000/- payable to legal heirs of Sajawal Pervez, deceased in terms of Section 544-A, Cr.P.C. and in the event of default thereof to undergo further simple imprisonment for six months. Benefit of Section 382-B, Cr.P.C. was extended to the appellant. The remaining two accused, namely, Allah Bakhsh and Muhammad Imran *alias* Chand were acquitted. Besides this appeal, complainant Manzoor Ahmed has filed Criminal Appeal No. 612/2009 against acquittal of respondents and Criminal Revision No. 324/2009 seeking enhancement of sentence to *Zeeshan alias Sani* appellant. We intend to decide all these matters through this single judgment.

2. The prosecution story narrated by Manzoor Ahmad complainant through his statement (Ex.P.N) before the police is that on 30.08.2009 he was present at his shop alongwith his son Sajawal

Pervez who used to work with him at the shop. At evening time, his son Sajawal Pervez was ready to go to house at his own motorcycle when Abdul Aziz and Aamir Nawaz on a motorcycle came there and then they all riding on motorcycles proceeded to his house. Thereafter, complainant alongwith Muhammad Ayub and Sajid Ali after closing the shop proceeded to his house. At about 8.00 P.M when they reached in the Chowk near the house of Ghulam Muhammad Arain, they heard noise and attracted to the place of occurrence where they saw that Allah Bakhsh accused was holding Aamir Nawaz and Muhammad Imran *alias* Chand was holding Aamir Nawaz into Japha whereas Zeeshan *alias* Sani appellant inflicted two Churri blows to Sajawal Pervez deceased out of which first blow landed on left side of his chest and second blow in-between abdomen and leg on his left side. Abdul Aziz tried to rescue Sajawal when Zeeshan *alias* Sani appellant inflicted a Churri blow at his abdomen and both fell down on the ground. Zeeshan *alias* Sani appellant also inflicted Churi blows to Aamir Nawaz underneath his left armpit. On hue and cry residents of the area attracted at the spot and tried to catch hold of accused but Zeshan *alias* Sani appellant threatened that if any one tried to come forward he would meet with the same treatment and then all the accused persons brandishing their respective weapons fled away in the street. Then all the three injured were taken to the hospital Chowk Azam but due to precarious condition Sajawal Pervez was shifted to Nishtar Hospital, Multan where he succumbed to the injuries.

Motive behind the occurrence was business hostility.

3. Investigation of the case was conducted by PW-11 Rabnawaz, SI who stated that on 30.08.2017 on receiving information about the occurrence he came to the hospital Chowk Azam. Three injured persons namely Sajawal Pervez, Abdul Aziz and Aamir Nawaz were present there. He recorded statement of Manzoor Ahmad complainant Exh.PN, prepared injury statements of all the three injured persons. He recorded statement of Sajawal Pervez (deceased) under Section 161, Cr.P.C. then he proceeded to the place of occurrence and prepared, un-scaled site-plan Ex.PY. He took blood-stained Qameez of Sajawal Pervez (P-2), blood-stained Qameez of



Abdul Aziz (P-3) and blood-stained Qameez of Aamir Nawaz (P-4). On 31.08.2007 dead body of Sajawal Pervez was handed over to him by authorities of Nishter Hospital and he escorted the same to the mortuary at RHC, Chowk Azam. He prepared his injury statement Exh.PJ and inquest report Exh.PK, Riaz Ahmad 148-C was deputed for post-mortem of the dead body. He added Section 302, P.P.C. after death of Sajawal Pervez. On 20.09.2007, he arrested accused Imran *alias* Chand and on 06.10.2007 appellant Zeeshan *alias* Sani was arrested and blood-stained Churri (P-5) was recovered on the pointation of appellant Zeeshan *alias* Sani.

4. After completing the investigation I.O. submitted challan at the Court concerned where the accused were charge sheeted under Sections 302/324/34, P.P.C. on 09.02.2008 to which they pleaded not guilty and claimed trial.

5. PW-1 Dr. Muhammad Yousif medically examined the deceased Sajawal Pervez while in injured condition and two other injured namely Abdul Aziz and Aamir Nawaz. Thereafter, on 31.08.2007, he conducted post-mortem examination of Sajawal Pervez deceased.

6. In order to prove its case, prosecution got examined as many as 11 witnesses.

7. After tendering in evidence reports of Chemical Examiner of blood-stained earth Exh.PZ, report of Chemical examiner regarding Churri Exh.PAA, report of Serologist Exh.PAB and Exh.PAC, prosecution closed its evidence.

8. Thereafter statement of accused-appellant under Section 342, Cr.P.C. was recorded. In reply to a specific question “why this case against you and why the PWs have deposed against you”, appellant Zeeshan *alias* Sani replied as under:

“All the PWs are related interse and near relative of the deceased. I have no dispute of business with deceased or the

complainant party as nature of business of both the parties is of different kind. So motive alleged by the prosecuting is frivolous, baseless and absolutely false. Prosecution also could not succeed in proving the same. All the prosecution evidence is improbable, un-believable and interested one. F.I.R. recovery memos. were prepared with ante dates and timing. Exh.PX is a fabricated document prepared after the death of the deceased *malafide* to strengthen the prosecution case. Had Sajawal Pervez deceased been able to make statement after sustaining injuries, then F.I.R would have been chalked out on his statement. Recoveries are planted and all the prosecution story is absolutely false. Infact deceased and injured PWs were member of a group of vagabonds and they used to tease and taunt me and persuaded me for sin i.e. un-natural act. Prior to the occurrence deceased alongwith his group came at my shop and on that day my uncle was not present there where they made nefarious gestures and taunted me upon which I abuse them and they left the shop while giving threats of dire consequences. I was having an apprehension in my mind that Sajawal Pervez etc in order to fulfill their lust may abduct me at any time due to which I use to keep a knife in the Naifa of my Shalwar. On the night of occurrence as usual I was going to play carom board at the house of my friend and on the way when I reached at the place of occurrence it was complete darkness at that time because of fault in grid station at Chowk Azam. All of sudden four motorcycle riders each having two persons on it came there from each street in the Chowk and intercepted me. Some of them were armed with sharp edged weapons. They in order to abduct me tried to board me on the motorcycle upon which I took out the knife from the Naifa and in order to frighten the assailants I pointed out the same towards them and the assailants made blows with sharp edged weapons which caused injuries to different persons. Due to darkness assailants were not identifiable and I was not in the knowledge to whom I have cause the injuries. Later on I came to know that such and such persons have sustained

injuries in the occurrence and out of which some have been concealed by the prosecution. All the injured shown to have sustained injuries in the occurrence by the prosecution were not caused by me. Some of them might have sustained injuries at the hands of their own party men. I do not intend to commit murder of Sajawal Pervez nor I intend to cause injuries to anyone. In order to save my honour, while exercising right of private defence, if had caused injuries to any one this is without any intention of murderous assault. Allah Bakhsh and Imran *alias* Chand accused were not present at the time of occurrence nor they have taken any part in the occurrence. I was all alone at that time. Anyhow, Sajid/M.Ayub and Manzoor PWs were not present at the time of occurrence nor they witnessed the occurrence. I am innocent my mother died in my childhood. I am alone brother of my alone minor sister. All prosecution story is concocted one and all pieces of evidence collected by prosecution are tainted with fabrication.”

9. Appellant did not opt to record his statement under Section 340(2), Cr.P.C. in disproof of the charge levelled against him

10. After conclusion of the case, learned trial Court convicted and sentenced the appellant Zeeshan *alias* Sani as mentioned in opening paragraph of this judgment, whereas co-accused were acquitted from the charge.

11. Learned counsel for the appellant Zeeshan *alias* Sani argued that learned trial Court has disbelieved the prosecution evidence; appellant has been convicted and sentenced on the basis of his statement recorded under Section 342, Cr.P.C.; in fact acquittal of the present appellant was not challenged by the prosecution under Section 302-B, P.P.C. rather his acquittal under Section 324, P.P.C. was questioned in CrI. Appeal No. 612/2009, however this Court while dismissing the appeal against acquittal as having not been pressed qua co-accused issued notice to the present appellant of his acquittal under Section 302-B, P.P.C. and that learned trial Court

should have acquitted the accused when the evidence of prosecution was disbelieved. He has placed reliance on the cases reported as *Waqar Ahmed vs. Shaukat Ali and others* (2006 SCMR 1139), *Azhar Iqbal vs. The State* (2013 SCMR 383).

12. On the other hand, learned DDPP assisted by learned counsel for the complainant has vehemently argued that learned trial Court has not correctly appreciated the prosecution evidence; the appellant Zeeshan *alias* Sani did not receive even a scratch from the hands of deceased and other prosecution witnesses; he has caused repeated blows to the deceased and injured; he has wrongly been convicted under Section 302-C, P.P.C.; the injured received severe injuries at his hands but he has been acquitted under Section 324, P.P.C. In the light of above submissions he has prayed for conviction of the appellant under Section 302-B, P.P.C. as well as under Section 324, P.P.C. for causing injuries to the injured PWs.

13. Arguments heard. Record perused.

14. Three accused persons were implicated by prosecution. In Criminal Appeal No. 612 of 2009 filed by complainant Manzoor Ahmad notice was issued to Respondent No. 2 Muhammad Zeeshan *alias* Sani. Criminal Appeal No. 670 of 2009 was filed by Zeeshan *alias* Sani appellant against his conviction recorded under Section 302-(c), P.P.C.

According to findings recorded by learned trial Court prosecution had failed to prove charge against two co-accused namely Allah Bukhsh and Muhammad Imran, whereas Zeeshan *alias* Sani appellant had acted in exercise of right of self defence and caused injuries to the deceased Sajawal Pervez and two injured PWs. Occurrence in this case had taken place at night on 30.08.2009. Manzoor Ahmad father of deceased had reported the crime stating that his son Sajawal Pervez used to work with him at shop; at evening time on the day of occurrence Abdul Aziz and Aamir Nawaz came at his shop on motorcycles and took his son Sajawal Pervez with them. After their departure complainant alongwith Muhammad Ayub and

Sajid Ali followed them on another motorcycle. At about 8.00 p.m, when they reached in the Chowk near the house of Ghulam Muhammad Arain, they heard noise and saw Allah Bukhsh accused (since acquitted) was holding Sajawal Pervez deceased in Japha. Place of occurrence was at some distance from the shop of the complainant. I.O. of the case reached at hospital where he recorded statement of the complainant. Another piece of evidence relied upon by the prosecution is statement of the deceased recorded under Section 161, Cr.P.C. at the time when he was shifted to hospital for treatment. PW-1 Doctor Muhammad Younis as explained in his statement before trial Court that condition of injured was critical. PW-1 has also not confirmed that certificate on request of I.O. was issued by him that injured was in a position to make statement before I.O. of the case which shows that an attempt was made by prosecution to improve its case by introducing statement of deceased in the form of dying declaration which in the given situation was un-reliable. Testimony of PW-10 Aamir Nawaz is also not reliable as admittedly he was close friend of the accused. In para No. 19 of the judgment, learned trial Court concluded that prosecution had failed to prove its case against accused Allah Bakhsh and Muhammad Imran *alias* Chand as they were neither armed with Churri nor they were assigned any role of causing injuries to anyone. It is pertinent to mention here that in appeal against acquittal, they were also arrayed as respondents but on first hearing appeal was not pressed to their extent which was accordingly dismissed. However, notice was issued to Zeeshan *alias* Sani Respondent No. 2 who was convicted by the trial Court not under Section 302(b), PPC but under Section 302(c), PPC on the ground that he exceeded right of self defence while causing injuries to Sajawal Pervez, whereas on the charge of causing injuries to Muhammad Aamir and Abdul Aziz he was acquitted. We have noticed that from the day one it was version of Zeeshan *alias* Sani appellant that in fact deceased Sajawal Pervez and PWs Muhammad Aamir and Abdul Aziz used to tease him for the purpose of committing sodomy and out of fear he used to keep a knife with him to save his honour and at the time of occurrence he was alone when they came and forced him to allow them to fulfill their nefarious design and in that situation he in exercise of self defence

caused injuries to them. We have observed that presence of complainant in this case was highly doubtful as such his testimony was not worth-reliance. Prosecution also attempted to create false evidence in the shape of dying declaration stating that before his death deceased made statement before the I.O. whereas according to statement of PW-1 his condition was precarious and he was not in position to make any such statement. As per prosecution the deceased was accompanied by his two companions Aamir Nawaz and Abdul Aziz as well as complainant Manzoor Ahmad alongwith Muhammad Ayub and Sajid Ali who were six in number, then in the presence of six persons how appellant Zeeshan *alias* Sani left the place of occurrence. One thing is crystal clear from the statement of witnesses that they have concealed true facts of the case. The occurrence did not take place in the mode and manner stated by the witnesses. As noted above presence of complainant was highly doubtful and prosecution evidence was neither reliable nor confidence inspiring which has rightly been rejected by learned trial Court. When the prosecution evidence itself was not reliable, conviction on plea of the accused/appellant was not justified. In case of *Azhar Iqbal vs. The State* (2013 SCMR 383), it was laid down as under:

*“Prosecution had failed to prove its case against accused beyond reasonable doubt, therefore, he should have been acquitted, even if he had taken plea and admitted to killing the deceased. It was however, laid down that statement of an accused recorded under Section 342, Cr.P.C. was to be accepted or rejected in its entirety and where the prosecution evidence was found to be reliable and the exculpatory part of such statement was established to be false and excluded from consideration then the statement might be read in support of prosecution’s evidence.”*

16. In the above backdrop when prosecution evidence was found un-reliable conviction could not be based upon statement of accused as it was to be believed or rejected in toto. So, conviction recorded by the learned trial Court under Section 302(c), P.P.C. was also not warranted.

17. For the reasons recorded above, Zeeshan *alias* Sani appellant is acquitted from all charges. He is on bail, his sureties are discharged.

18. For the same reasons Crl.Appeal No. 612 of 2009 and Crl. Revision No. 324 of 2009 filed by complainant Manzoor Ahmad are hereby dismissed.

(M.I.) Appeal allowed

**PLJ 2019 Cr.C. 1048 (DB)**  
**[Lahore High Court, Multan Bench]**  
**Present : QAZI MUHAMMAD AMIN AHMED AND**  
**CH. MUSHTAQ AHMAD, JJ.**  
**GHULAM ABBAS--Appellant**  
**versus**  
**STATE and another--Respondents**

Criminal Appeal No. 267 of 2018, decided on 5.4.2018.

**Control of Narcotic Substances Act, 1997 (XXV of 1997)--**

---S. 9(c)--Qanun-e-Shahadat Order, 1984, Art. 133--Conviction and sentence--Challenge to--Right of cross-examination--Non availability of defence counsel--Allow solitary opportunity--On account of non-availability of defence counsel on a number of dates learned trial Court ultimately proceeded to forfeit appellant's right to cross examine witnesses--Cross examination is most important right of an accused--Accused is entitled to a fair trial which presuppose reasonable opportunity to defend himself-- However, given charge and possible consequences concomitant therewith, it would be expedient to allow solitary opportunity to petitioner to cross examine witnesses. [P. 1049] A and B

*Malik M. Majid Shahbaz Khokhar, Advocate for Appellant.*

*Mehr Nazar Abbas Chawan, A.A.G on Court's call.*

Date of hearing : 5.4.2018.

**ORDER**

Appellant is contesting indictment before learned Additional Sessions Judge at Karor; he was allegedly found in possession of some contraband attracting mischief of Section 9(c) of the Control of Narcotic Substances Act, 1997 *vide* Crime Report No.330 dated 7.8.2016 registered with Police Station Fatehpur, District Layyah; he claimed trial pursuant whereto prosecution evidence was summoned; as some of the witnesses were examined-in-chief, however, on account of non-availability of defence counsel on a number of dates learned trial Court ultimately proceeded to forfeit appellant's right to



cross-examine the witnesses; reasons cited in the impugned order are sound and logical; no doubt right to cross-examine the prosecution witnesses is most important right of an accused, certainly it goes without saying that an accused is entitled to a fair trial which presupposes reasonable opportunity to defend himself, nonetheless, once an opportunity is afforded to the accused it becomes incumbent upon him to avail it and he cannot hold in abeyance his response to point of time of his own choice. Similarly, it is a statutory duty cast upon a counsel to remain in attendance in order to provide services to his client paymaster; both are subservient to law and in this backdrop, step taken by the learned trial Judge cannot be excepted to, however, given the charge and possible consequences concomitant therewith, it would be expedient to allow solitary opportunity to the petitioner to cross-examine the witnesses. Disposed of.

(K.Q.B.)      Appeal disposed of

**PLJ 2019 Cr.C. 1066**  
**[Lahore High Court, Multan Bench]**  
**Present : CH. MUSHTAQ AHMAD, J.**  
**RABNAWAZ--Petitioner/Appellant**  
**versus**  
**STATE, and another--Respondents**

Crl. A. No. 500 of 2017 and C.M. No. 1 of 2017, decided on 29.5.2019.

**Criminal Procedure Code, 1898 (V of 1898)--**

---S. 426--Pakistan Penal Code, 1860, Ss. 302(b)/376/201--  
Suspension of sentence--Statutory ground--Evidence needs re-appraisal--Case was registered in year 2012 and prosecution case was structured on circumstantial evidence, like last seen evidence, extra judicial confession and recoveries--Delay of 6-days in reporting incident, till recovery of deadbody, crime was not reported by anybody--Petitioner has also earned statutory right and final hearing of appeal in near future is not in site--Sentence was suspended. [P. 1067] A

*Khawaja Qaisar Butt*, Advocate for Petitioner-Appellant.

*Mr. Ansar Yaseen*, DPG for State.

*Rana Muhammad Shakeel*, Advocate for Complainant.

Date of hearing : 29.05.2019

**ORDER**

**C.M No. 1 of 2017**

Through this petition under Section 426 Cr.P.C, Rabnawaz-convict has sought suspension of execution of his sentence imposed by learned Addl: Sessions Judge, Khanewal *vide* judgment dated 08.04.2017 whereby petitioner-appellant was convicted and sentenced as under:--

Under Section 302(b) PPC imprisonment for life with compensation Rs. 1,00000/- to the legal heirs of deceased and in default of payment further undergo 06 months S.I.

Under Section 376 PPC 10 years R.I with fine of Rs.20,000/- and in default of payment further undergo SI for three months.

Under Section 201 PPC to R.I 02 years with fine of Rs. 10,000/- and in default to further undergo for one month S.I.

All the sentences were directed to run concurrently. He was extended benefit of Section 382-B Cr.PC.

2. Heard. Impugned judgment has been gone through.

3. As per prosecution case deceased Shahnaz Bibi *alias* Shani disappeared on 26.09.2012 at 5:00 P.M when she went to fields in order to cut the grass. On 02.10.2012 her dead body was seen lying in the fields of cotton. Thereafter case was got registered on 02.10.2012 and the prosecution case was structured on circumstantial evidence, like last seen, extra judicial confession and recoveries. Co-accused of the petitioner had died during pendency of the trial. Admittedly, there was delay of 6 days, in reporting the incident. Till recovery of dead body/crime was not reported by anybody. In the above backdrop, evidence produced in this case needs re-appraisal. Apart from the above, petitioner has also earned statutory right of being released on bail. Appeal in this case was filed on 24.04.2017. Final hearing of appeal in hand in near future is not in sight. Petitioner is not contributory towards delay in disposal of appeal in hand. There is nothing on record to show that petitioner is a hardened or desperate criminal. In this state of affairs, this petition is accepted and execution of sentence of the petitioner is suspended. He be released on bail subject to his furnishing bail bonds in the sum of Rs, 200,000/- with one surety in the like amount to the satisfaction of Deputy Registrar (Judicial) of this Bench. However, petitioner will appear before this Court on each and every date of hearing till final disposal of this appeal.

(Q.Y.) Petition accepted

**PLJ 2019 Cr.C. 1068**  
**[Lahore High Court, Multan Bench]**  
**Present : CH. MUSHTAQ AHMAD, J.**  
**MUHAMMAD AZAM--Appellant**  
**versus**  
**STATE and another--Respondents**

CrI. A. No. 863 of 2016 and C.M. 2 of 2018, decided on 16.5.2019.

**Criminal Procedure Code, 1898 (V of 1898)--**

---S. 426--Pakistan Penal Code, 1860, Section 302(b)--Suspension of sentence--Statutory ground--Appeal of petitioner has not been disposed of so far--Statutory right has also accrued to petitioner-- There is no record of previous conviction--Petitioner's sentence is suspended. [Pp. 1068 & 1069] A

*M/s. Kh. Qaisar Butt and Faisal Aziz* and *Ch. Advocates* for Petitioner.

*Mr. Ashfaq Ahmad Malik*, DDPP for State.

*Mr. Muhammad Zeeshan*, Advocate for Complainant

Date of hearing : 16.5.2019

**ORDER**

**C.M. No. 02 of 2018.**

Through this petition under Section 426 Cr.P.C. Muhammad Azam petitioner seeks suspension of his sentence awarded to him by the learned Additional Sessions Judge, Dunya Pur *vide* judgment dated 22.10.2016, whereby he was convicted and sentenced as under:

Convicted under Section 302(b) PPC and sentenced to imprisonment for life and to pay Rs.2,00,000/- under Section 544-A Cr.P.C to legal heirs of deceased and in case of default to further undergo SI for four months.

Benefit of Section 382-B Cr. P.C was also extended to petitioner.

2. Heard. Perused.

3. Admittedly, petitioner was convicted and sentenced on 22.10.2016 and he preferred his appeal through his counsel on 17.11.2016 which is still pending and has not been disposed of so far. Statutory right to be released on bail has also accrued to petitioner.

Moreover, there is no record of previous conviction of petitioner in any such like case nor he, in any stretch of imagination can be termed as hardened, desperate or dangerous criminal. Further, learned counsel for complainant submits that complainant of the case in question has died and legal heirs of deceased have no objection on acceptance of this petition. All the above noted facts need re-appraisal of evidence.

4. For the above-stated reasons, I am inclined to suspend the sentence of petitioner Muhammad Azam and he be released subject to furnishing bail bonds in the sum of Rs.200,000/- with one surety in the like amount to the satisfaction of Deputy Registrar (Judicial) of this Court. However, petitioner will appear before this Court on each and every date of hearing till final disposal of this appeal.

(M.N.S.)      Petition accepted

**PLJ 2019 Cr.C. 1162**  
**[Lahore High Court, Multan Bench]**  
**Present : CH. MUSHTAQ AHMAD, J**  
**FAYYAZ HUSSAIN--Appellant**  
**versus**  
**STATE & another--Respondents**

Crl. A. No. 31-J of 2016, Crl. Misc No. 1 of 2018 decided on 15.5.2019.

**Criminal Procedure Code, 1898 (V of 1898)--**

---S. 426--Suspension of sentence--Application of--Petitioner was convicted and sentenced by trial Judge and he preferred this appeal through jail authorities--Since then his appeal is pending and has not been disposed of on merits--He moved this C.M for suspension of sentence--Statutory right to be released on bail has also accrued to petitioner as he has undergone more than two years after filing appeal before high Court--His co-accused were acquitted on same set of evidence--Perusal of file shows that appeal is pending since year 2016 and has not been finally decided due to rush of work--Further, there is no record of previous conviction of petitioner in any such like case. [Pp. 1163 & 1164] A

*Prince Rehan Iftikhar Sh.* Advocate for Petitioner.

*Mr. Ashfaq Ahmad Malik,* DDPP for State.

*Ch. Muhammad Sarwar,* Advocate for Complainant.

Date of hearing : 15.5.2019.

**ORDER**

**C.M. No. 01 of 2018.**

Through this petition under Section 426 Cr.P.C, Fayyaz Hussain petitioner seeks suspension of his sentence awarded to him by learned Addl. Sessions Judge, Muzaffargarh, *vide* judgment dated 30.01.2016 in case FIR No.250 dated 04.07.2007 u/S. 302, 34 PPC Police

Station Sadar, Muzaffargarh, whereby he was convicted and sentenced as under:--

Convicted u/S. 302-B PPC and sentenced to suffer imprisonment for life as Ta'azir and to pay Rs.5,00,000/- as compensation to legal heir of deceased in default whereof to further undergo six months SI.

Benefit of Section 382-B Cr. P.C was also extended to petitioner.

2. Heard. Judgment perused.

3. Admittedly, petitioner was convicted and sentenced by learned trial Judge on 30.01.2015 and he preferred this appeal through jail authorities on 08.02.2016. Since then his appeal is pending and has not been disposed of on merits. He moved this C.M for suspension of sentence on 05.07.2018. Statutory right to be released on bail has also accrued to petitioner as he has undergone more than two years after filing appeal before this Court. His co-accused were acquitted on the same set of evidence. Perusal of file shows that appeal is pending since the year 2016 and has not been finally decided due to rush of work. Further, there is no record of previous conviction of petitioner in any such like case.

4. For the above-stated reasons, I am inclined to suspend the sentence of petitioner Fayyaz Hussain and he be released on bail subject to furnishing bail bones in the sum of Rs.200,000/- with one surety in the like amount to the satisfaction of Deputy Registrar (Judicial) of this Court. However, petitioner will appear before this Court on each and every date of hearing till Final disposal of this appeal.

(A.A.K.) Sentence suspended

**PLJ 2019 Cr.C. 1202**  
**[Lahore High Court, Multan Bench]**  
**Present: CH. MUSHTAQ AHMAD, J.**  
**MAZHAR IQBAL--Petitioner**  
**versus**  
**STATE and another--Respondents**

CrI. Misc. No.2195-B of 2018, decided on 26.4.2018.

**Criminal Procedure Code, 1898 (V of 1898)--**

---S. 498--Pakistan Penal Code, 1860, Ss. 337-A(ii)/337-F(i)/148/149--Pre-arrest bail/Confirmation of--Allegation of gave a blow with hatchet on head of complainant--According to MLC, injury on his head was a lacerated wound--Complainant got recorded supplementary statement, whereby exonerated petitioner and stated that in fact co-accused gave a blow with Danda on his head--Said co-accused has already been allowed pre-arrest bail--Ad-interim pre-arrest bail is confirmed. [P. 1203] A

*Ch. Khalid Mehmood Arian-I*, Advocate for Petitioner.

*Mr. Sarfraz Khan Khhichi*, Deputy District Public Prosecutor for State.

*Ch. Usman Abid*, Advocate for Complainant.

Date of hearing : 26.4.2018.

**ORDER**

This petition has been moved by Mazhar Iqbal accused in case FIR No. 132/2018 dated 14.03.2018 under Sections 337-A(ii), 337-F(i), 148, 149 PPC registered at Police Station Saddar Mian Channu District Khanewal seeking pre-arrest bail.

2. Arguments heard and record perused.

3. Allegation against petitioner, as per FIR, is that he gave a blow with hatchet on head of the complainant. According to MLC of



complainant, injury on his head was a lacerated wound. Thereafter, complainant got recorded supplementary statement, whereby he exonerated the petitioner and stated that in fact Dilshad co-accused gave a blow with Danda on his head. Said Dilshad has already been allowed pre-arrest bail. In such backdrop, false implication of petitioner cannot be ruled out. So, sending the petitioner to police custody at this stage would serve no useful purpose. Therefore, petition in hand is allowed and ad-interim pre-arrest bail already granted to the petitioner by this Court is confirmed, subject to his furnishing bail bonds in the sum of Rs. 1,00,000/- with one surety in the like amount to the satisfaction of trial Court.

(K.Q.B.)      Bail confirmed

**PLJ 2019 Cr.C. (Note) 12**  
**[Lahore High Court, Multan Bench]**  
**Present: CH. MUSHTAQ AHMAD, J.**  
**IMRAN KHAN--Petitioner**  
**versus**  
**STATE and another--Respondents**

CrI. Misc. No. 5484-B of 2018, decided on 11.10.2018.

**Criminal Procedure Code, 1898 (V of 1898)--**

---S. 498--Pakistan Penal Code, (XLV of 1860), S. 337-A(ii)(i)/34--  
Pre-arrest bail confirmation of--FIR was registered against  
petitioner and his real brother alongwith an unknown accused--  
Allegation against petitioner was that he while armed with an iron  
rod, caused injuries on complainant's eye and cheek whereas co-  
accused gave blows with pistol on complainant's jaw, head and  
right cheek--According to FIR, five injuries have been specifically  
assigned to petitioner and co-accused--Medico legal certificate of  
complainant reflects only three injuries, one of which is on right  
cheek. Injury on right cheek of complainant was assigned to co-  
accused, who according to police investigation was not present at  
the place of occurrence at relevant time--Medico legal certificate  
of complainant *prima facie* does not support FIR version--False  
implication cannot be ruled out--Pre-arrest bail  
confirmed. [Para 3] A

*Mr. Muhammad Bilal Batt*, Advocate with Petitioner.

*Mr. Sarfraz Ahmad Khan Khhichi*, Deputy District Public  
Prosecutor for Respondents.

*Mr. Shahzad Hussain*, Advocate for Complainant.

Date of hearing: 11.10.2018.

**ORDER**

Through this petition, Imran Khan accused in case FIR No. 568/2018 dated 30.08.2018 registered at Police Station Mumtaz-abad, Multan for the offences under Sections 337-A(i), 337-A(ii), 34, PPC seeks pre-arrest bail.

2. Arguments heard and record perused.

3. FIR was registered against petitioner and his real brother Muhammad Ali alongwith an unknown accused. Allegation against petitioner was that he while armed with an iron rod, caused injuries on complainant's eye and cheek whereas co-accused Muhammad Ali gave blows with pistol on complainant's jaw, head and right cheek. According to FIR, five injuries have been specifically assigned to petitioner and co-accused Muhammad Ali. However, medicolegal certificate of complainant reflects only three injuries, one of which is on right cheek. Injury on right cheek of complainant was assigned to co-accused Muhammad Ali, who according to police investigation was not present at the place of occurrence at relevant time. In this backdrop, medicolegal certificate of complainant *prima facie* does not support FIR version. In view of above discussed circumstances, false implication cannot be ruled out. Therefore, sending the petitioner in police custody at this stage would serve no useful purpose for prosecution. Consequently, petition in hand is allowed and ad-interim pre-arrest bail already granted to the petitioner by this Court is confirmed, subject to his furnishing bail bonds in the sum of Rs. 1,00,000/- with one surety in the like amount to the satisfaction of trial Court.

(K.Q.B.)      Bail confirmed

**PLJ 2019 Cr.C. (Note) 93**  
**[Lahore High Court, Multan Bench]**  
**Present: CH. MUSHTAQ AHMED, J.**  
**MUHAMMAD SIDDIQUE and another--Appellants**  
**versus**  
**STATE and another--Respondents**

CrI. A. No. 28-J of 2014, decided on 5.6.2018.

**Criminal Procedure Code, 1898 (V of 1898)--**

---S. 426--Pakistan Penal Code, (XLV of 1860), S. 302(b)--  
Suspension of sentence--Conviction and sentence--Appeal is  
pending--Appellants moved this CM for suspension of sentence--  
They have undergone more than two years after filing appeal  
before High Court--They are behind bars--Their co-accused was  
acquitted *vide* impugned judgment on same set of evidence--  
Perusal of file shows that appeal is being  
fixed alongwith connected matters, however, it has not been  
finally decided due to rush of work--Further, there is no record of  
previous conviction of petitioners in any such like case nor they  
are hardened, desperate or dangerous criminal--Appeal is  
pending. [Para 3] A

*M/s. Prince Rehan Iftikhar Sh.*

& *Syed Athar Hassan Bukhari*, Advocates for Petitioners.

*Mr. Sarfraz Ahmad Khichi*, DDPP

*Mr. Muhammad Akmal Khan Sial*, Advocate for

Complainant.

Date of hearing: 5.6.2018

**ORDER**

**CM. No. 01 of 2016.**

Through this petition under Section 426, Cr.P.C.,  
Muhammad Saddique and Muhammad Rafique petitioners seek  
suspension of their sentence awarded to them by learned Addl.  
Sessions Judge, Burewala, *vide* judgment dated 14.03.2014 in case  
FIR No. 302 dated 22.08.2012 Police Station Sadar Burewala,  
whereby they were convicted and sentenced as under:--

Convicted u/S. 302(b) PPC and sentenced to suffer life imprisonment each as Ta'zir and to pay Rs. 50,000/- each to the legal heirs of deceased Shaukat Ali in default whereof, the amount shall be recovered as arrears of land revenue and convicts will undergo imprisonment for a period of 6 months each.

Benefit of Section 382-B, Cr.P.C. was also extended to petitioners.

2. Heard. Judgment perused.

3. Admittedly, petitioners were convicted and sentenced by learned trial Judge on 14.03.2014 and they preferred this appeal through jail authorities on 27.03.2014. Since then their appeal is pending and has not been disposed of on merits. They moved this CM for suspension of sentence on 27.04.2016. They have undergone more than two years after filing appeal before this Court. They are behind the bars since 28.09.2012. Their co-accused Muhammad Ramzan was acquitted *vide* impugned judgment on the same set of evidence. Perusal of file shows that appeal is being fixed alongwith connected matters, however, it has not been finally decided due to rush of work. Further, there is no record of previous conviction of petitioners in any such like case nor they are hardened, desperate or dangerous criminal.

4. For the above-stated reasons, I am inclined to suspend the sentence of petitioners Muhammad Rafique and Muhammad Saddique and release them on bail subject to furnishing bail bonds in the sum of Rs. 200,000/- each with one surety each in the like amount to the satisfaction of Deputy Registrar (Judicial) of this Court. However, petitioners will appear before this Court on each and every date of hearing till final disposal of this appeal.

Main case

Relist for 2.10.2018.

(A.A.K.)

Petition allowed.

**PLJ 2019 Cr.C. (Note) 126**  
**[Lahore High Court, Multan Bench]**  
**Present: CH. MUSHTAQ AHMAD, J.**  
**GULZAR AHMAD etc.--Appellants**  
**versus**  
**STATE etc.--Respondents**

Criminal Appeal No.815 of 2012 & Criminal Revision No.327 of 2012, heard on 16.10.2018.

**Pakistan Penal Code, 1860 (XLV of 1860)--**

---S. 302(b)/34--Conviction and sentence--Challenge to--Benefit of doubt--Four persons including present appellant are named in F.I.R. whereas one accused was mentioned as unknown. According to F.I.R., appellant was resident of Lahore and two co-accused were residents of Malakand Agency of Khyber Pakhtunkhwa province. As to how complainant came to know about names and complete addresses of assailants, was not mentioned in F.I.R. Only explanation given in F.I.R. in this respect was that names and addresses of assailants came into knowledge of complainant later--Through a written application moved by complainant before Investigating Officer on 25.08.2009, co-accused was implicated in this case with allegation of conspiracy. It was alleged in application that said co-accused had contact with appellant through mobile phone and she abetted assailants for crime. Version of complainant in application was that she had suspicion about someone's involvement in crime from locality--No motive for commission of crime has been alleged in F.I.R. Prosecution's case was not of attempt to commit robbery nor of *qatl-e-amd*--If this version of complainant/PW is believed to be true, then what was reason for her mentioning in F.I.R. that she came to know about names of accused later. As such, complainant's own statements are self-contradictory as to her knowledge about antecedents of assailants--Written application according to prosecution's case was submitted by complainant before SI. Perusal of Ex.P-E shows that its handwriting is quite matching with police proceedings written on its back and that too

with same ballpoint pen. Surprisingly, signatures of complainant on said application are made with different ballpoint. As such, there exists doubt qua submission of application by complainant at time--After commission of crime accused fled away in a car while firing as attempt was made by complainant and PWs to apprehend him, however, only one empty of .30 bore was collected from spot by Investigating Officer during his first visit allegedly made just after 25 minutes after occurrence--Only witness of crime was complainant/PW-6 whose testimony does not inspire confidence due to lack of explanation qua her knowledge about antecedents of assailants in promptly lodged FIR--Prosecution had failed to prove charge against appellant, as such findings recorded by trial Court are not sustainable. Resultantly, Criminal appeal is allowed and conviction and sentence of appellant awarded by trial Court through impugned judgment are set aside.

[Para 1, 5, 6, 8] A, B, C, D, E, F, G & H

*M/s. Khawaja Qaisar Butt and Ch. Muhammad Imran,*  
Advocates for Appellant.

*Mr. Ashfaq Ahmad Malik,* Deputy District Public Prosecutor  
for State.

*Syed Badar Raza Gillani,* Advocate for Complainant.

Date of hearing: 16.10.2018.

## **JUDGMENT**

This Criminal Appeal is directed against judgment dated 06.09.2012 passed by learned Additional Sessions Judge, Mianchannu, whereby appellant Gulzar Ahmad was convicted under Section 302(2)/34 PPC and sentenced to imprisonment for life with payment of compensation to the tune of Rs. 1,00,000/- to the legal heirs of deceased under Section 544-A Cr.P.C, in default whereof, to further undergo six months' SI. He was also convicted for the offence under Section 337-A(i) PPC and was sentenced to pay daman to the tune of Rs. 10,000/- to complainant/injured PW Tahira Jabeen. Co-accused Kashif was also convicted and sentenced to the same quantum; however, he was absent at the time impugned judgment was announced and has not been arrested so far, as such his case is not before this Court. Complainant *Mst.* Tahira Jabeen has filed Criminal

Revision No.327 of 2012 seeking enhancement of sentence of appellant and said co-convict. Both the matters arising out of same judgment dated 06.09.2012, will be decided through this consolidated judgment.

2. Appellant was tried alongwith co-accused Kashif (since convicted) and *Mst.* Shamim Akhtar (since acquitted) for the offences under Sections 302, 109, 148, 149 PPC in case FIR No.415/2009 dated 12.08.2009 got registered by *Mst.* Tahira Jabeen complainant (PW-6) at Police Station City Mianchannu, alleging therein that on 12.08.2009 at about 11:00 A.M., she was busy in her household affairs when her son Imran Abbas was also present there in a room. All of sudden, Abdul Jamal (co-accused since P.O.) and Kashif Ali (co-accused since convicted) armed with firearms entered her house through outer door and started requesting for charity. Complainant spoke them to get out of house, whereupon they both scuffled with her. On raising hue and cry by complainant, her son Imran Abbas came out of room. In the meanwhile, Gulzar (appellant) armed with firearm also entered the house from outer door and made fire which hit Imran Abbas on left side at chest and went through and through. On raising noise by complainant, Saif-ur-Rehman and Muhammad Aslam (PW-7) attracted there and witnessed the occurrence. In the meanwhile, co-accused Kashif gave a blow with batt of pistol on complainant's head. Asif co-accused alongwith an unknown person was standing outside the house alongwith a car bearing registration No.373/LEF. Assailants fled away in said car and in the meantime, one shopping bag which assailants were carrying in their hand, fell. Said shopping bag contained a broken number plate of car number 373, one black color shirt containing police badges and one pant. Imran Abbas succumbed to the injuries.

It was explained in the F.I.R. that names and addresses of the assailants came into complainant's knowledge later.

3. Case was interrogated by Muhammad Yousaf SI (PW-14). After submission of challan, appellant, co-accused Kashif and Shamim Akhtar were charge sheeted. They pleaded not guilty and claimed trial. Prosecution examined sixteen witnesses at trial and thereafter statements of accused were recorded under Section 342 Cr.P.C, wherein they again pleaded innocence. On conclusion of trial,



appellant and co-convict Kashif (since not arrested) were convicted and sentenced as described in opening paragraph of this judgment, whereas co-accused *Mst. Shamim Akhtar* was acquitted of the charge *vide* judgment dated 06.09.2012, hence this Criminal Appeal as well as Revision.

4. I have heard learned counsel for the parties, learned Deputy District Public Prosecutor and have gone through the record.

5. Occurrence took place in complainant's house at 11:00 A.M. Application (Ex.P-E) on the basis of which F.I.R. was registered, was moved by complainant herself to Muhammad Yousaf SI (PW-14) at 11:25 A.M. i.e. just 25 minutes after the occurrence. Four persons including present appellant are named in the F.I.R. whereas one accused was mentioned as unknown. According to F.I.R., appellant was resident of Lahore and two co-accused were residents of Malakand Agency of Khyber Pakhtunkhwa province. As to how complainant came to know about names and complete addresses of the assailants, was not mentioned in the F.I.R. Only explanation given in the F.I.R. in this respect was that names and addresses of the assailants came into knowledge of complainant later. Muhammad Yousaf SI before whom application Ex.P-E was presented, reached the spot immediately on receiving information about the crime. There is no delay in reporting the matter to police but on the same time, knowledge of complainant about antecedents of the accused is a matter requiring clarification. However, as narrated above, F.I.R. sans any such explanation. Important to note here is that through a written application Ex.P-S moved by complainant before the Investigating Officer on 25.08.2009, co-accused *Mst. Shamim Akhtar* was implicated in this case with allegation of conspiracy. It was alleged in the application Ex.P-S that said co-accused *Shamim Akhtar* had contact with appellant through mobile phone and she abetted the assailants for the crime. Version of complainant in the application Ex.P-S was that she had suspicion about someone's involvement in the crime from the locality, whereupon she was told by witnesses about involvement of *Mst. Shamim Akhtar* co-accused. However, no motive for commission of crime has been alleged in the F.I.R. Prosecution's case was not of attempt to commit robbery nor of *qatl-e-amd*. During cross-examination, complainant/PW-6

introduced a new stance to the effect that appellant and co-accused had visiting terms with co-accused *Mst. Shamim Akhtar*, due to which she had known them as she had also been visiting house of said co-accused off and on. Relevant portion of cross-examination of PW-6/complainant is reproduced as under:--

*"I had got recorded in my statement Ex.D-B that the accused persons present in the Court namely Gulzar, Abdul Jamal, kashif and Asif were previously known to me as they used to visit the house of Mst. Shameem accused and I also visited the house of Mst. Shameem off and on and I have seen the aforesaid accused Shameem prior to the occurrence".*

If this version of complainant/PW-6 is believed to be true, then what was reason for her mentioning in the F.I.R. that she came to know about names of accused later. As such, complainant's own statements are self-contradictory as to her knowledge about antecedents of the assailants.

Reading the F.I.R., complainant/PW-6 never went outside her house during occurrence but quite surprisingly, she claimed to have knowledge qua antecedents of accused standing outside the house, which version also does not sound logical.

Another fact relevant to be mentioned here is that written application Ex.P-E, according to prosecution's case was submitted by complainant before Muhammad Yousaf SI. Perusal of Ex.P-E shows that its handwriting is quite matching with the police proceedings written on its back and that too with same ballpoint pen. Surprisingly, signatures of the complainant on said application are made with different ballpoint. As such, there exists doubt qua submission of application Ex.P-S by the complainant at the time and in the way as claimed by prosecution.

6. As per contents of F.I.R., Saif-ur-Rehman and Muhammad Aslam (PW-7) witnesses attracted to the place of occurrence i.e. house of complainant after appellant had fired on Imran Abbas deceased. However, while appearing as PW-7 Muhammad Aslam claimed to have witnessed the appellant while making fire on Imran Abbas deceased. Therefore, statement of PW-7 is in contradiction with the contents of F.I.R. Saif-ur-Rehman, other witness was not examined by prosecution.

Also relevant to mention here is that as per F.I.R., after commission of crime accused fled away in a car while firing as attempt was made by complainant and PWs to apprehend him, however, only one empty of .30 bore was collected from the spot by Investigating Officer during his first visit allegedly made just after 25 minutes after the occurrence.

Above discussion leads me to infer that the only witness of the crime was *Mst. Tahira Jabeen*, complainant/PW-6 whose testimony does not inspire confidence due to lack of explanation qua her knowledge about antecedents of the assailants in the promptly lodged FIR. Even otherwise, her testimony does not find corroboration from any other witness. True picture of the facts has not been brought on the surface by prosecution, which creates reasonable doubt qua the mode of happening of occurrence as well as presence of the witnesses at relevant time. In these circumstances, appellant is entitled to be given benefit of doubt.

7. As regards medical evidence and recoveries, as discussed in previous paragraph, main stay of prosecution i.e. ocular account does not inspire confidence in that eventuality, medical evidence as well as recoveries, which are corroboratory pieces of evidence, are of no help to prosecution's case, as such need not be discussed.

8. On re-appraisal of evidence, the conclusion I have come to is that prosecution had failed to prove charge against appellant, as such findings recorded by learned trial Court are not sustainable. Resultantly, Criminal Appeal No.815 of 2012 is allowed and conviction and sentence of the appellant awarded by learned trial Court through impugned judgment are set aside. Appellant Gulzar Ahmad is acquitted of the charge extending benefit of doubt to him. He is in jail. He be released forthwith if not required in any other criminal case.

9. For the reasons recorded above, Criminal Revision No. 327 of 2012 is dismissed.

(A.A.K.) Appeal allowed

**2020 P Cr. L J 310**  
**[Lahore (Multan Bench)]**  
**Before Ch. Mushtaq Ahmad and Sadiq Mahmud Khurram, JJ**  
**MUHAMMAD JUNAID UR REHMAN---Petitioner**  
**Versus**  
**The STATE and another---Respondents**

Criminal Miscellaneous No. 3783 of 2019, decided on 30th September, 2019.

**Criminal Procedure Code (V of 1898)---**

---S. 497--- Anti-Terrorism Act (XXVII of 1997), Ss. 11-EE(4), 11-F(2), 11-F(5), 11-F(6), 11-J, 11-N, 11-H, 11-I & 11-W(2)--- Proscription of person, membership, support and meetings relating to a proscribed organization, collection of money for proscribed organization, funding arrangements for the purpose of terrorism, fund raising, use and possession of money for the purpose of terrorism, projection of proscribed organization---Bail, grant of--- Further inquiry---Non-availability of private witnesses---Accused was alleged to have issued receipts to the public after receiving money in the name of a proscribed organization, but not a single person from the public was associated with investigation who could say that the accused was collecting money in the name of said proscribed organization---No person from the vicinity who had given money to the accused came forward to support prosecution version---Trial Court had to determine after recording evidence as to whether alleged money recovered from the accused was to be spent on terrorism or anti-State activities---Guilt of accused required further probe and his case fell within the ambit of S. 497(2), Cr.P.C.---Offences with which the accused was charged did not fall within the prohibitory clause of S. 497, Cr.P.C.--- Petition for grant of bail was allowed, in circumstances.

Malik Arab Hassan Asif and Hafiz Haris Mehmood for Petitioner.

Ch. Muhammad Akbar, Deputy Prosecutor-General and Latif Ahmed, Inspector/CTD, Multan with record for the State.

## **ORDER**

Petitioner Muhammad Junaid-ur-Rehman son of Mehfoz-ur Rehman Anwar moved this petition for the grant of post arrest bail in case FIR No.47 dated 24.5.2019 registered under sections 11-EE(4)/ 11-F(2) / 11-F(5) / 11-F(6) / 11-J / 11-N / 11-H / 11-I/11-W(2) of Anti-Terrorism Act, 1997 by Counter Terrorism Department (CTD),. Multan on the allegation of collecting funds from the people at large in the name of a proscribed organization, namely, 'Lashkar-e-Jhangvi'.

2. Arguments heard. Record perused.

3. As per allegation petitioner was issuing receipts to the people after receiving money in the name of defunct organization ('Lashkar-e-Jhangvi') involving in terrorism activities but not a single person from public was associated with the investigation who could say that petitioner was collecting money in the name of said proscribed organization. Even not a single person from the vicinity who gave money to the petitioner came forward to support prosecution version. In this backdrop, it is yet to be determined by the trial court after recording evidence as to whether alleged money recovered from the petitioner was to be spent on terrorism or anti-State activities. In the circumstances guilt of the petitioner requires further probe and his case falls within the ambit of section 497(2), Cr.P.C. Moreover, the offences with which the petitioner has been charged do not fall within the prohibitory clause.

4. For the reasons recorded above, we allow this petition. Petitioner is directed to be released on bail subject to his furnishing bail bonds in the sum of Rs. 1,00,000/- with one surety in the like amount to the satisfaction of the trial court.

SA/M-174/L Bail granted.

**2020 P Cr. L J Note 28**  
**[Lahore]**  
**Before Ch. Mushtaq Ahmad and Ch. Abdul Aziz, JJ**  
**MUHAMMAD ASIF alias ACHHI and another---Appellants**  
**Versus**  
**The STATE---Respondent**

Criminal Appeal No. 471-J and Murder Reference No. 309 of 2016, heard on 2nd April, 2019.

**(a) Penal Code (XLV of 1860)---**

---Ss. 302, 324, 337-F(v), 148 & 149---Qatl-i-amd, attempt to commit qatl-i-amd, causing hashimah, rioting armed with deadly weapons, unlawful assembly--- Appreciation of evidence--- Sentence, reduction in---Prosecution case was that the accused party made firing on the complainant party, due to which son of the complainant died while his father sustained injuries--Motive for the occurrence was dispute between the accused and complainant as complainant repeatedly asked the accused to refrain from unlawful activities and for that reason they committed murder of son of complainant and caused injuries to his father--- Record showed that the presence of the eye-witnesses in the case at the place of occurrence at the relevant time, was well explained as it was a daylight occurrence---Complainant party and the accused were also related inter se---No possibility of mistaken identity existed---Occurrence was not a pre-planned affair-- Testimony of the eye-witnesses that it was accused/appellant who fired at the deceased was confidence inspiring--Formation of unlawful assembly for the purpose of committing the offence by all the accused persons was not constituted and the accused at the most could be held liable for their individual acts committed during the occurrence, as it was not a case of vicarious liability--- Admittedly co-accused/appellant had not caused any injury to deceased nor to any witness---Commonality of object between all the accused persons was missing---Charge against co-accused/ appellant was not proved on record---Appeal was allowed to the extent of co-accused by setting-aside conviction and sentences

awarded to him by the Trial Court---Ocular account furnished by the witnesses that accused/appellant committed qatl-i-amd of deceased was confidence inspiring; motive alleged by the prosecution against him was not proved and he was alleged to have fired a single shot---Conviction of accused/appellant was sustained, however death penalty awarded to accused was not warranted and alternate punishment of imprisonment for life was sufficient to meet the ends of justice---Appeal was partly allowed, accordingly.

**(b) Penal Code (XLV of 1860)---**

---Ss. 302, 324, 337F(v), 148 & 149---Qatl-i-amd, attempt to commit qatl-i-amd, causing hashimah, rioting armed with deadly weapons, unlawful assembly---Appreciation of evidence---Recovery of weapon of offence from the accused---Reliance---Scope---On 26.08.2012 all the accused led to the recovery of pistols---Pistols were sent to the office of Forensic Science Agency through Police Official/witness on 18.09.2012---Said witness had transmitted crime empties along with sealed parcel containing blood stained cotton on 06.08.2012---Report of Forensic Science Agency showed that pistols were found in operating condition, however, cartridges cases were identified as having been fired by pistol which according to the report was said to be recovered from accused---Ocular account was thus, supported by report of Forensic Science Agency---Appeal was partly allowed, in circumstances.

Ms. Nighat Saeed Mughal and Tahir Mahmood Mughal for Appellants.

Ch. Amin Rehmat for the Complainant.

Tariq Javed, DPP for the State.

Date of hearing: 2nd April, 2019.

**JUDGMENT**

**CH. MUSHTAQ AHMAD, J.**---This judgment will dispose of Criminal Appeal No.471-J/2016 filed by appellants who were convicted by learned Additional Sessions Judge, Gujranwala, in case FIR No.518 dated 11.07.2012 registered under sections 302,

324, 337-F(v), 148, 149, P.P.C. at Police Station Garjakh vide impugned judgment dated 19.05.2016 and sentenced as under:-

Death as Ta'zir under sections 302(b)/149, P.P.C. to each appellant.

R.I for three years each under section 148, P.P.C.

R.I for 07-years each under sections 324/149, P.P.C. and to pay fine of Rs.50,000/- each in default of which to further undergo RI for six months each.

R.I for 04-years each under section 337F(v)/149, P.P.C. and to pay fine of Rs.50,000/- each in default of which to further undergo RI for six months each.

All the sentences were ordered to run concurrently and benefit of section 382-B, Cr.P.C. was extended to appellants.

Feeling aggrieved, appellants preferred this appeal whereas Murder Reference No.309 of 2016 captioned above, was sent under section 374, Cr.P.C. for confirmation of death sentence awarded to the convict. We propose to decide both the matters through this consolidated judgment.

2. Case was registered on the complaint (Ex.PA) of Muhammad Ikram (PW-1) in which it was alleged that complainant was resident of Muslim Town Masjid Gulzar Madina Street Gujranwala. At about 11.00 a.m. on 11.07.2012 he was present in the street. Accused Vicky Butt (since P.O) and Umair alias Marry (since P.O) were quarrelling with one Waseem. Complainant asked them to refrain from the same on which accused Umair alias Marry started abusing the complainant and gave a fist blow on his face, which resulted in dislocation of his tooth. Accused Vicky Butt made phone call to his o-accused who were all vagabonds and proclaimed offenders. In a few minutes, accused Asif alias Achhi armed with pistol, Naveed alias Needu armed with pistol (since P.O), Atif alias Aati armed with pistol, Wallayat alias Wallayata armed with pistol along with eight unknown persons came there. Accused Umair alias Marry raised a Lalkara to teach lesson to the complainant and his companions for quarrelling with the accused. Naveed alias Needu fired a shot from his pistol which hit Muhammad Faazil (PW-5), father of the complainant on left foot.



Muhammad Ramzan son of the complainant tried to rescue his injured grandfather when accused Asif alias Achhi fired a shot from his pistol which hit Muhammad Ramzan on left side of upper chest near the neck and he fell down after receiving that injury. Other accused persons made reckless firing in the air and fled away from the scene. They left their motorcycle (P4) on the place of occurrence. Muhammad Ramzan son of the complainant succumbed to the injuries on the way to hospital. The occurrence was witnessed by Muhammad Adnan (PW-4), Abdul Razzaq and Muhammad Faazil, besides the complainant.

Motive behind the occurrence was dispute between the accused and complainant as complainant repeatedly asked the accused to refrain from unlawful activities and for that reason they committed murder of Muhammad Ramzan and caused injuries to father of complainant.

3. PW-13 Muhammad Afzal SI/I.O. reached the spot, took into possession deadbody of deceased, sent the same to the mortuary for postmortem examination, prepared injury statement (Ex.PQ), inquest report (Ex.PL), rough site plan (Ex.PP) and recovery memos, recorded statements of witnesses, arrested the accused and after usual investigation, submitted report.

4. PW-14 Major Dr. Atiq-ur-Rehman conducted postmortem on the dead body of Muhammad Ramzan and noted one injury. According to him, sole firearm injury causing damage to vital organ of left chest led to hemorrhage and shock resulted in death. The injury was ante-mortem. According to him, probable time between injury and death was within half an hour and that between death and post mortem was 08 to 12-hours.

5. During trial prosecution produced 15 witnesses apart from report of chemical examiner (Ex.PV), report of serologist (Ex.PW) and report of PFSA (Ex.PX). Statements of accused were recorded under section 342, Cr.P.C. wherein they denied the charges and professed innocence.

6. At conclusion of trial, appellants were convicted and sentenced as mentioned above, hence this appeal.

7. Learned counsel for appellants contended that injuries on the person of PW-1 Muhammad Ikram and PW-5 Muhammad Faazil were self inflicted and they had not witnessed the occurrence nor they were present at the place of occurrence at the relevant time and that both the appellants were falsely implicated in this case who were entitled to acquittal. Further added that appellant Muhammad Atif alias Aati was assigned no effective role during the occurrence, hence, his case is being distinguishable and he was entitled to acquittal.

8. Conversely, learned DPP assisted by learned counsel for complainant has supported the conviction recorded against appellants and further submitted that both the accused were nominated in the FIR; that Muhammad Asif alias Achhi appellant had fired at Muhammad Ramzan (deceased) during the occurrence and the weapon of offence i.e. pistol (P4) was sent to the Forensic Science Agency which wedded with the crime empties already sent for the comparison, thus the ocular account was corroborated by recovery of pistol as well as medical evidence.

9. Arguments heard. Record perused.

10. Occurrence took place at about 11.00 a.m. in Gujranwala City within the area of Police Station Garjakh. Muhammad Ramzan was gunned down by appellant Muhammad Asif alias Achhi who was son of PW-1 Muhammad Ikram and grand son of Muhammad Faazil (PW-5). PW-1 Muhammad Ikram and Muhammad Faazil (PW-5) were injured during the occurrence, as per version contained in the FIR. Muhammad Faazil (PW-5) sustained fire arm injury at the hand of Naveed alias Needu (accused since P.O) whereas complainant Muhammad Ikram (PW-1) had received a fist blow at the hand of Umair alias Marry accused. As per prosecution version, one Vicky Butt and Umair alias Marry accused were quarrelling with one Waseem.

Complainant forbade them on which accused Umair alias Marry started abusing him and his companion Vicky called co-accused on telephone who came at the spot carrying weapons. Four nominated accused along with eight unknown came at the spot out of them appellant Asif alias Achhi fired with pistol and the shot hit Muhammad Ramzan which resulted in his death. Other accused also resorted to aerial firing. It is pertinent to mention here that six accused including present appellants were charged sheeted in this case on 27.08.2013 on multiple charges. During trial, four accused namely Naveed alias Needu, Muhammad Shahbaz, Muhammad Willayat and Umair alias Mary escaped and present appellants being in jail faced the trial and were convicted on conclusion of the case. Presence of the eye-witnesses in this case at the place of occurrence the relevant time, is well explained. It was a daylight occurrence. Complainant party and the accused are also related inter-se. No question of mistaken identity was involved. The occurrence was not a pre-planned affair. It is mentioned in the FIR that accused Vicky and Umair alias Marry were quarrelling with one Waseem when complainant forbade them. Accused abused the complainant and then called their companions who rushed to the place of occurrence out of them Asif alias Achhi appellant fired at Muhammad Ramzan, son of the complainant.

11. Medical evidence in this case was provided by PW-14 Major Dr. Atiq ur Rehman who noted a fire arm wound of entry below left clavicle without exit. Bullet was removed from back of left-side of middle of chest. As per opinion of PW-14, fire arm injury caused damage to vital organs of the left chest. Time between injury and death was within half an hour and between death and postmortem 08 to 12 hours. PW-14 had also medically examined Muhammad Ikram (PW-1) and Muhammad Faazil (PW-5) who were brought by the police.

12. PW-13 Muhammad Afzal SI had conducted investigation in this case who reached at the place of occurrence on receiving information along with Ashiq ASI and other officials and found the complainant along with other witnesses at the spot. He handed

over deadbody to the police constable. He arrested the accused Asif and Atif appellants along with Naveed (accused since P.O) on 17.08.2012. On 26.08.2012 all the accused led to the recovery of pistols. Pistols were sent to the office of Forensic Science Agency through Azmat Ali (PW-8) on 18.09.2012. The same witness (PW-8) had transmitted crime empties along with sealed parcel containing blood stained cotton on 06.08.2012. Report of Forensic Science Agency (Ex.PX) was produced before the court which shows that pistols were found in operating condition, however, cartridges cases were identified as having been fired by pistol (P4) which according to the report was said to be recovered from accused Muhammad Asif alias Achhi. The ocular account was thus supported by report of Forensic Science Agency. The testimony of the eye-witnesses that it was appellant Muhammad Asif alias Achhi who fired at deceased Muhammad Ramzan, was confidence inspiring.

13. Learned trial court in this case has also recorded conviction against present appellants under section 324, P.P.C. read with section 149, P.P.C. for causing fire arm injury to Muhammad Faazil (PW-5) as well as under section 337-F(v), P.P.C. with compensation of Rs.50,000/- on each count with the direction to run all sentences concurrently, however, we have noticed that the occurrence was not a pre-planned affair in this case, it took place suddenly when the accused abused the complainant by whom they were forbidden to quarrel with one Waseem.

14. In the given scenario, the formation of unlawful assembly for the purpose of committing the offence by all the accused was not constituted and the accused at the most could be held liable for their individual acts committed during the occurrence, as apparently it was not a case of vicarious liability.

15. Admittedly appellant Muhammad Aatif alias Aati had not caused any injury to deceased nor to any witness. In the peculiar facts and circumstances noted above in our opinion commonality of object between all the accused was missing. In the given

situation Charge, against appellant Aatif alias Aati was not proved on record. Consequently, we allow appeal to his extent and set-aside conviction and sentences awarded to him by the trial court. He shall be released forthwith, if not required in any other case. Death sentence awarded to him is not confirmed and murder reference is answered in negative.

16. However, on reappraisal of evidence, we have concluded that conviction recorded against appellant Asif alias Achhi was sustainable for the reason that ocular account furnished by the witnesses that he committed Qatl-i-amd of Muhammad Ramzan (deceased), was confidence inspiring. However Death penalty awarded to him, in our view was not warranted and alternate punishment of imprisonment for life was sufficient to meet the ends of justice for the reason that motive alleged by the prosecution was not proved on record against appellant and only a single fire shot was fired by him when all the accused came at the spot on a telephone call. It is also matter of record that appellant Asif alias Achhi did not cause injury to Muhammad Faazil (PW-5). On prosecution's own showing a fire arm injury was caused to him by Naveed alias Needeu (accused since P.O). Appellant Muhammad Asif could not be held liable for an injury caused by his co-accused. In the above backdrop, conviction recorded by trial court under section 324, P.P.C. and section 337-F(v), P.P.C. read with section 149, P.P.C. against appellant, is set aside.

17. Consequently, maintaining the conviction recorded by trial court against appellant Muhammad Asif alias Achhi under section 302(b), P.P.C. we convert the death sentence to imprisonment for life as Ta'azir with benefit under section 382-B, Cr.P.C., with the direction to appellant to pay compensation of Rs.2,00,000/ under session 544-A to the legal heirs of deceased in default of which, to further undergo SI for six months. In the above terms, Criminal Appeal No.471-J of 2016 is partly allowed and Murder Reference No.309 of 2016 is answered in negative and death sentence awarded to appellants is not confirmed. JK/M-161/L Appeal partly allowed.

**PLJ 2020 Cr.C. (Lahore) 1**  
**[Multan Bench, Multan]**  
**Present: CH. MUSHTAQ AHMAD, J.**  
**MUHAMMAD ISHFAQ--Petitioner**  
**versus**  
**STATE etc.--Respondents**

CrI. Misc. No. 4445-B of 2019, decided on 23.8.2019.

**Criminal Procedure Code, 1898 (V of 1898)--**

---S. 497--Pakistan Penal Code, (XLV of 1860), Ss. 420, 468, 471--  
Prevention of Corruption Act, 1947, S. 5--Bail after arrest, grant  
of--Allegation of--Forged documents pertaining to land owned by  
complainant by using his forged name and shown himself as  
owner of land--Co-accused of the petitioner has already been  
bailed out by High Court--Possession is still with the complainant  
and entries have been corrected in the record--Offences alleged  
against the petitioner do not fall within the prohibitory clause--  
Petitioner is behind the bars for the last 8 months and his trial is  
not in progress--**Held:** Speedy trial is right of an accused person--  
Petitioner's involvement in the commission of crime would be  
determined at trial stage--Petition is allowed. [P. 2] A

*Mr. Iftikhar Ibrahim Qureshi*, Advocate for Petitioner.

*Mr. Ashfaq Ahmad Malik*, DDPP for State.

*Mr. Muhammad Nawaz Bhatti*, Advocate for Complainant.

Date of hearing: 23.8.2019.

**ORDER**

Petitioner seeks post arrest bail in case FIR No. 02/2018 dated 26.01.2018, under Sections 420/468/471, PPC lead with Section 5 of Prevention of Corruption Act, 1947, at Police Station ACE, Multan.

2. Allegation against the petitioner is that he forged documents pertaining to land owned by complainant by using his name Muhammad Ashfaq instead of Ashfaq Ahmad complainant and

in the record he was shown as owner of the land. It is alleged that with the connivance of co-accused he tried to deprive the complainant of his property.

3. After hearing the learned counsel for parties and going through the record, it has been noticed that co-accused of the petitioner has already been bailed out by this Court. It has been brought on record that possession is still with the complainant and entries have been corrected in the record. Even otherwise offences alleged against the petitioner do not fall within the prohibitory clause. Petitioner is behind the bars in connected with this case for the last 8 months and his trial is not in progress. Speedy trial is right of an accused person. Petitioner's involvement in the commission of crime would be determined at trial stage. In the above backdrop, this petition is allowed and petitioner is admitted to post arrest bail in the sum of Rs. 2,00,000/- with one surety in the like amount to the satisfaction of learned trial Court.

(A.A.K.) Bail allowed

**PLJ 2020 Cr.C. (Note) 21**  
**[Lahore High Court, Multan Bench]**  
**Present: CH. MUSHTAQ AHMAD, J.**  
**SHAUKAT ALI--Petitioner**  
**versus**  
**STATE and another--Respondents**

CrI. Misc. No. 6325-B of 2017, decided on 3.11.2017.

**Criminal Procedure Code, 1898 (V of 1898)--**

---S. 498--Pakistan Penal Code, (XLV of 1860), S. 406--Pre-arrest bail, confirmed--Allegation of--Misappropriate the amount--Allegation against petitioner according to FIR is that he misappropriated an amount of Rs. 2,10,000/-which was given to him by complainant as trust--Matter was reported to police after about 1½ year of the alleged occurrence--According to police investigation, matter was criminal breach of trust--In such backdrop, case against petitioner calls for further inquiry--Petitioner has already joined investigation--Sending him behind the bars at this stage would serve no useful purpose--Petition was allowed. [Para 3] A

*Rana Jahan Zaib Khan*, Advocate with Petitioner.

*Mr. Hassan Mahmood Khan Tareen*, Deputy Prosecutor  
General for State.

Complainant in Person.

Date of hearing: 3.11.2017.

**ORDER**

This petition has been moved by Shaukat Ali accused in case FIR No. 350/2017 dated 23.09.2017 under Section 406, PPC registered at Police Station Kacha Khooh, District Khanewal seeking pre-arrest bail.

2. Arguments heard and record perused.



3. Allegation against petitioner according to FIR is that he misappropriated an amount of Rs. 2,10,000/- which was given to him by complainant as trust. Matter was reported to police after about 1½ year of the alleged occurrence. According to police investigation, matter was not of criminal breach of trust. In such backdrop, case against petitioner calls for further inquiry. Petitioner has already joined investigation. Sending him behind the bars at this stage would serve no useful purpose. Therefore, petition in hand is allowed and ad-interim pre-arrest bail already granted to the petitioner by this Court is confirmed, subject to his furnishing bail bonds in the sum of Rs. 1,00,000/- with one surety in the like amount to the satisfaction trial of Court.

(A.A.K.)      Bail Confirmed

**PLJ 2020 Cr.C. (Lahore) 300**  
**Present: CH. MUSHTAQ AHMAD, J.**  
**Rana SANAULLAH KHAN--Petitioner**  
**versus**  
**STATE and another--Respondents**

CrI. Misc. No. 70510-B of 2019, decided on 23.12.2019.

**Criminal Procedure Code, 1898 (V of 1898)--**

---S. 497--Control of Narcotic Substances Act, (XXV of 1997), S. 9(c)--Post arrest bail--Grant of--Recovery of 15-KG Heroin--Accused riding on double cabin vehicle, on checking handing over a suit case and admitted that it contains heroin--Heroin alongwith suit case weighed 21.500 kilograms--Complainant took the accused and heroin police station and where all proceedings were conducted in the presence of pw's--Heroin powder on weighting came to 15-kilograms, out of which 20-grams powder were separated for sample--No recovery memo regarding alleged recovered narcotics was prepared rather the accused as well as case property were taken to police station wehre necessary documentation was don--As per contents of FIR, petitionerwas involved in smuggling of narcotics operating a net work but on the next day, no request was made by I.O. for his physical remand--Peittioner a vocal political leader of opposition party, this aspect of case could not be ignored as political victimization in our country is an open secret--Bail allowed. [Pp. 302, 303, 304 & 305] A, C, D & E

**Criminal Procedure Code, 1898 (V of 1898)--**

---S. 497--Second bail petition--Withdraw of first bail petition--maintained--Second bail petition on fresh ground--First bail petition was withdrawn at the very outset without arguing the case on merits--Withdrawal simplicitor does not bar second bail petition.

[P. 303] B

## **Criminal Procedure Code, 1898 (V of 1898)--**

----S. 497--Bail--Seriousness of allegation is not a ground for refusal of bail if on merits it is found that prosecution's case is doubtful as benefit of doubt always goes to the accused even at bail stage.

[P. 305] F

*M/s. Syed Zahid Hussain Bukhari, Ahsan Bhoon Azam Nazee r Tarar Mian Hafeez-ur-Rehan, Farhad Ali Shah and Syed Ali Muhammad Zahid Bukhari, Advocates for Petitioner.*

*M/s. Rana Inaam Amin Minhas, Chaudhry Ahtasham-ul-Haq, Malik Muhammad Irfan, Rao Zaigham Ali and Danish Mashkoor Siddique, Special Prosecutors for A.N.F.*

*Mr. Tariq Majeed, Deputy Director (Law) and Aslam Inspector A.N.F. with record.*

Date of hearing: 23.12.2019.

### **ORDER**

Petitioner Rana Sanaullah Khan has approached this Court seeking post-arrest bail in a case registered *vide* FIR No. 47 dated 01.07.2019 under sections 9(c)/15/17 of Control of Narcotic Substances Act, 1997 read with Sections 186/189/225/353 PPC with Regional Director, Anti Narcotic Force, Lahore.

2. As per prosecution case contained in FIR, an information was received by Aziz Ullah, Deputy Director (Operations), Regional Directorate, Anti-Narcotics Forces, Lahore that present petitioner, Rana Sanaullah Khan, Member of National Assembly was involved in smuggling of narcotics and would come with huge quantity of narcotics in his Toyota Land Cruiser Jeep V.8 Bearing No. BF-0601 (Sindh) alongwith his personal squad. A raiding party headed by complaint was constituted consisting of police officials whose names and designations are mentioned in the body of FIR. The raiding party at about 01:00 p.m. started supervising the vehicles/cars coming on motorway entering in Lahore at Ravi Toll Plaza, Lahore. At about 03:25 p.m., a Toyota Land Cruiser mentioned above alongwith VIGO double cabin Bearing No. FH-225/Islamabad of black colour reached. Both the

vehicles were stopped. Three persons in each vehicle were found sitting. They disclosed their names as mentioned in the FIR. In the presence of witnesses, Rana Sanauallah Khan on asking of raiding party, handed over a suitcase of blue colour and admitted that it contained '*Heroin*' which was taken into possession. In the meanwhile, gunmen of the petitioner started grappling with Anti-Narcotics Force staff and attempted to rescue Rana Sanauallah Khan forcibly, however petitioner, Rana Sanauallah Khan and his gunmen were dis-armed by the raiding party. '*Heroin*' alongwith suitcase was weighed which came to 21.500 Kilograms. In the meanwhile, private persons passing in their vehicles started gathering and apprehending breach of peace, complainant took the accused alongwith '*Heroin*' and arms recovered from them to Regional Directorate, A.N.F., Lahore where all the proceedings were conducted in the presence of the witnesses. '*Heroin*' powder recovered from suitcase on weighing came to 15 Kilograms, out of which 20 grams of '*Heroin*' powder was separated for preparation of sample to be sent to Chemical Examiner and remaining '*Heroin*' was secured through another sealed parcel. Arms recovered from the accused were also secured through recovery memos. Vehicles were also taken into possession and the instant case was registered.

3. Learned counsel representing the petitioner argued that false case was registered for political victimization as petitioner being a vocal leader of opposition was openly criticizing the policies of sitting Government; that co-accused of the petitioner were granted post-arrest bail by learned trial Court which order was not challenged by the prosecution and on the same set of evidence present petitioner was refused bail by learned trial Court; that proceedings at the place of recoveries were not conducted rather on prosecution's own showing petitioner and his co-accused were taken to Regional Director, A.N.F. Lahore at a distance of 22 Kilometers from Ravi Toll Plaza, Lahore and all necessary documents were prepared at Police Station which act of prosecution/officials of Anti-Narcotics Force makes the whole prosecution case doubtful; that after registration of this case, Electronic as well as Print Media openly criticized the registration of case which is evident from clippings of

Daily Newspapers and that story as narrated by the prosecution in the FIR on the face of it is implausible. Lastly argued that in the given circumstances case for grant of post-arrest bail was made out. Learned counsel for petitioner relied on cases titled as *Tahir Khan vs. The State* (2019 MLD 361), *Abdul Basit vs. The State and others* (2018 SCMR 1425) *Muhammad Ashraf vs. The State* (2019 PCr.LJ Note 134) *Ashiq Ali vs. The State* (2018 PCr.LJ 225), *Shaukat Ali vs. The State and others* (2017 PCr.LJ 1020), *The State through Deputy Director Anti-Narcotic Force, Karachi vs. Syed Abdul Qayyum* (2001 SCMR 14), *Ikram-ul-Haq vs. Raja Naveed Sabir and others* (2012 SCMR 1273), *Muhammad Ali vs. The State*, (2012 YLR 1060), *The State through Advocate General Khyber Pakhunkhwa vs. Abdul Sattar* (2012 YLR 2352), *Ishaq Ahmad vs. The State through ANF Police Station Airport Road, Gilgilt* (2017 PCr.LJ 522), *Muhammad Farooq Khan vs. The State* (2007 PCr.LJ 89), *Gulab Din vs. The State*, (2013 PCr.LJ 1160), *Janib Ali Zardari vs. The State* (2014 YLR 632), *Ziarat Khan vs. The State* (2010 MLD 1908) and *Jamal-ud-Din alias Zubair Khan vs. The State* (2012 SCMR 573).

4. Conversely, learned Special Prosecutor for ANF associated by other colleagues contended that first bail petition filed by the petitioner before this Court was withdrawn on the ground that petitioner wanted to file bail petition before learned trial Court on fresh ground, which ground having been agitated before trial Court was rejected and present petition on the grounds already agitated in the first petition was not maintainable; that huge quantity of contraband 'Heroin' was recovered from exclusive possession of the petitioner against whom complainant and other officials had no enmity or ill-will and they had no occasion to falsely implicate the petitioner in a case of serious nature; that most of the contentions raised by learned counsel for the petitioner pertain to domain of deeper appreciation which is not permissible at bail stage; that offence allegedly committed by the petitioner was punishable upto Death penalty and Section 51 of Control of Narcotic Substances Act, 1997 creates a bar to grant of bail in cases of extreme

penalty; the learned trial Court has considered all grounds agitated and there is sufficient material available on record which connects the petitioner with commission of alleged offence; that alleged offence falls within prohibitory clause, hence case for grant of bail was not made out. Learned Special Prosecutor for A.N.F. relied upon cases titled as *Anti-Narcotics Force through its Regional Director/Force Commander, A.N.F. Rawalpindi vs. Qasim Ali* (2019 SCMR 1928), *Asfandyar and another vs. Kamran and another* (2016 SCMR 2084), *Ayub Masih vs. The State* (2019 MLD 30).

5. Arguments heard. Record perused.

6. First of all I would like to dispose of objection raised by learned Special Prosecutor for A.N.F regarding maintainability of this petition. It is submitted that petition in hand is second in number and earlier moved by the petitioner (Criminal Miscellaneous No. 57571-B of 2019) was disposed of as withdrawn on the ground of approaching the Court of first instance on fresh ground which ground having been turned down by the trial Court second petition on the same grounds was not maintainable. However, on this point, learned counsel representing petitioner has drawn attention of this Court to the order dated 03.10.2019 which shows that petition was withdrawn at the very outset without arguing the case on merits. Petition was not withdrawn after arguing the matter at some length, rather it was withdrawal simplicitor. Proposition is by now well settled that withdrawal simplicitor does not bar second petition on the same grounds, hence objection raised by learned Special Prosecutor for A.N.F. is turned down.

7. Coming to the merits of the case, it has been noticed after going through the contents of FIR and other material available on record with able assistance of learned counsel for the parties that raiding party headed by Aziz Ullah, Deputy Director (Operations), Lahore was constituted after receiving prior information about arrival of the petitioner at Ravi Toll Plaza, Lahore. As per FIR, members of raiding party were, Aziz Ullah complainant, Imtiaz Ahmad, Assistant Director, Nauman Ghous, Muhammad Aslam and Ahsan Azam,

Inspector, Anjum Shakeel, Fida Ali hassan, Sub-  
Inspectors, Toufiq Ahmad, Muhammad Younas, Head Constables,  
Ahmad Aftab, Waseem Mukhtar, Mudassar Hussain,  
Muhammad Aslam,  
Muhammad Asif, Farooq Ashraf, Waseem Akram, Touseef and  
Muhammad Adnan, Constables, Shahbaz Anjum, Head Constable,  
Muhammad Ishfaq and Imam Bakhsh, C.D, who were twenty one in  
number. Petitioner alongwith his gunmen, (five in number) was  
stopped at Ravi Toll Plaza, Lahore and all of them were disarmed by  
the raiding party. It is mentioned in FIR that gunmen of the petitioner  
started grappling with members of raiding party in order to rescue the  
petitioner forcibly but they were overpowered and disarmed.  
Thereafter, a suitcase was found lying in the vehicle and on weighing,  
it came to 21.500 kilograms but said suitcase alongwith petitioner and  
his gunmen as well as vehicles was brought at Police Station,  
Regional Directorate A.N.F. Lahore and proceedings were conducted  
at said police station including preparation of recovery memos and  
sealed parcels etc. Sample parcel of only 20 grams out of 15  
kilograms 'Heroin' was prepared for sending to the Office of  
Chemical Examiner. It is admitted position in this case evident from  
the record of prosecution that at the place of recovery *i.e.* Ravi Toll  
Plaza, Lahore no recovery memo regarding alleged recovered  
narcotics was prepared rather the accused as well as case property  
were taken to police station where necessary documentation was  
done. Explanation furnished regarding non-preparation of documents  
at the place of recovery was that people passing in their vehicles  
started gathering at Ravi Toll Plaza, Lahore due to which accused as  
well as case property alongwith vehicles were brought to police  
station. In the presence of raiding party consisting of more than  
twenty members there was hardly an occasion not to conduct  
proceedings at the place of recovery. So explanation furnished for not  
conducting proceedings at the spot was neither plausible nor  
convincing. Generally, in cases of recovery of narcotics, proceedings  
at the place of recovery are conducted in order to ensure fairness and  
transparency in the proceedings so that doubts may not be entertained  
by the public regarding action taken by the Investigating Agency.

8. It is also worth noticing that as per contents of FIR, present petitioner was involved in smuggling of narcotics operating a network in Faisalabad and Lahore but when accused were produced before learned Court on the next day no request was made by the Investigating Officer for grant of physical remand of the accused in order to investigate about network allegedly operating under the supervision of present petitioner in Faisalabad and Lahore which indicates that the Investigating Agency was not interested in unearthing the activities of the petitioner regarding smuggling of narcotics. Investigating Officer had simply requested the Court to send the accused to jail on judicial remand. Generally, Investigating Agency in order to unearth involvement of the accused in such like cases request for physical remand. That course was not adopted by the Investigating Agency for the reasons best known to them.

9. Learned counsel for petitioner also argued that case was registered for the reasons that petitioner was a vocal Member of Opposition Party and was criticizing the policies of incumbent government and on that account he was put behind the bars. Though such argument at bail stage is not attached much weight for the reason that deeper appreciation at the stage of bail is not permissible nor desirable. However, in the context of petitioner being a vocal political leader of Opposition Party, this aspect of the case could not be ignored as political victimization in our country is an open secret. Law is also well settled that seriousness of allegation is not a ground for refusal of bail if on merits it is found that prosecution's case is doubtful as benefit of doubt always goes to the accused even at bail stage. Incarceration of accused before conviction in cases of doubtful nature is never approved by the Courts. Lapses in the prosecution case noted above are visible on surface of record like non-preparation of recovery memos at the place visible on of recovery, non-investigation regarding involvement of petitioner in running a network of smuggling of narcotics and sending only 20 grams of contraband out of total quantity of 15 kilograms 'Heroin' allegedly recovered from possession of petitioner do indicate *prima facie* that guilt of the petitioner needs further probe and his case calls for further inquiry. Co-accused of the petitioner were granted post-arrest bail by



the trial Court in this case which order has not been challenged by the prosecution.

10. In the light of discussion made above and reasons recorded, I am of the view that a case for grant of post-arrest bail to the petitioner is made out. Resultantly, this petition is allowed and petitioner is directed to be released on bail subject to his furnishing bail bonds in the sum of Rs. 10,00,000/- (*one million*), with two sureties each in the like amount to the satisfaction of learned trial Court.

(K.Q.B.)      Bail allowed

**PLJ 2020 Cr.C. (Lahore) 439**  
**[Multan Bench Multan]**  
**Present: CH. MUSHTAQ AHMAD, J.**  
**MUHAMMAD ASGHAR--Petitioner**  
**versus**  
**STATE and another--Respondents**

CrI. Misc. No. 2874-B of 2019, decided on 30.5.2019.

**Criminal Procedure Code, 1898 (V of 1898)--**

---S. 498--Pakistan Penal Code, (XLV of 1860), S. 462-C--Pre-arrest, bail--Confirmed--Allegation of--Petitioner was found stealing sui gas by connecting a pipeline with main sui gas line--Petitioner himself is consumer of gas and admittedly he is not defaulter--During investigation it came to light that the pipe line alleged to have been installed by petitioner, was in fact installed by political figures interference--Petitioner's involvement/liability would be determined after recording evidence--Petitioner's person is not required by police for the purpose of effecting any sort of recovery--He has already joined investigation--Sending the petitioner behind the bars at this stage would serve no useful purpose--Bail was confirmed. [P. 440] A

*Malik Muhammad Afzal Pahore*, Advocate for Petitioner.

*Mr. Ansar Yaseen*, DPG for State.

*Malik Ghulam Sarwar Langrial*, Advocate for Complainant.

**ORDER**

This petition has been moved by Muhammad Asghar accused in case FIR No. 184/2019 dated 11.4.2019 for the offences under Sections 462-C, 379, PPC registered at Police Station Saddar Muzaffargarh seeking pre-arrest bail.

2. Arguments heard, record perused.

3. Allegation against petitioner, briefly, is that he was found stealing sui gas by connecting a pipe line with the main sui gas line. Petitioner himself is consumer of gas and admittedly he is not defaulter. During investigation it came to light that the pipe line alleged to have been installed by petitioner, was in fact installed by political figures interference. That being so, petitioner's involvement/liability would be determined after recording evidence. Petitioner's person is not required by police for the purpose of effecting any sort of recovery. He has already joined investigation. Sending the petitioner behind the bars at this stage would serve no useful purpose. Therefore, petition in hand is allowed and ad-interim pre-arrest bail already granted to the petitioner by this Court is confirmed, subject to his furnishing bail bonds in the sum of Rs. 100,000/- with one surety in the like amount to the satisfaction of trial Court.

(A.A.K.)      Bail confirmed

**PLJ 2020 Cr.C. (Lahore) 753**  
**[Multan Bench Multan]**  
**Present: CH. MUSHTAQ AHMAD, J.**  
**HAFEEZ ULLAH and 3 others--Petitioners**  
**versus**  
**STATE and another--Respondents**

CrI. Misc. No. 340-B of 2020, decided on 24.2.2020.

**Criminal Procedure Code, 1898 (V of 1898)--**

---S. 498--Pakistan Penal Code, (XLV of 1860), Ss. 386/447/337-F(i)/ 511/148/149--Bail before arret, confirmed--Further inquiry--Medical report--Petitioners duly armed alongwith 40-50 co-accused forcibly entered into APV stand and caused injuries to prosecution--Both parties were transporters but fact was not disclosed in FIR--Re-examination of injured were ordered but injured did not appear before D.S.M.B on stipulated date--Injured appeared before medical board after two months and report is still awaited--Non appearance before at relevant time indicates malafide--Pre-arrest bail was confirmed. [P. 754] A & B

*Khawaja Qaisar Butt*, Advocate for State.

*Mr. Adnan Latif*, Deputy Prosecutor General with Afzal SI.

*Mr. Muhammad Zahid Habib*, Advocate for Complainant.

Date of hearing: 24.2.2020.

**ORDER**

Through this petition, Hafeez-Ullah, Khalil, Salamat and Liaqat accused in case FIR No. 626/19, dated 25.09.2019 for the offences under Sections 386, 447/511, 337-F(i), 148, 149, PPC registered at Police Station City Jalalpur Pirwala District Multan seek pre-arrest bail.

2. Arguments heard and record perused.

3. FIR was registered on the complaint made by Riaz Hussain. As per FIR, petitioners duly armed alongwith co-

accused 40-50 in number, forcibly entered into APV vehicle stand of which complainant was contractor. On complainant's refusal to pay an amount of Rs. 40,000/-, petitioners caused injuries on the person of complainant, and his nephews Muhammad Imran and Kamran. In investigation conducted by Deputy Superintendent of Police Regional Investigation Branch Multan, allegation of extortion was found doubtful. As per said report, both the parties were transporters but said fact was not disclosed in the FIR. Medicolegal reports of injured were challenged by petitioners/accused, whereupon re-examination of the injured was ordered but injured did not appear before District Standing Medical Board, due to which they could not be re-examined, which fact is evident from copy of report of District Standing Medical Board dated 02.12.2019. During arguments learned counsel for complainant pointed out that the injured appeared before Medical Board on 12.02.2020 and now report is awaited. In this regard, it is pointed out that injuries as declared in the Medicolegal reports of injured are not of the nature that the same could be re-examined with exactitude at this belated stage. Non-appearance of injured before District Standing Medical Board at relevant time, *prima facie* indicates *mala fide* on the part of complainant party.

4. Above discussion shows that true facts of the case have not been disclosed in the FIR. Therefore, guilt of the petitioners needs further probe and their case calls for further inquiry. For the reasons recorded above, petition in hand is allowed and ad-interim pre-arrest bail already granted to petitioners is confirmed subject to their furnishing fresh bail bonds in the sum of Rs. 1,00,000/-each with one surety each in the like amount to the satisfaction of trial Court.

(K.Q.B.)      Bail confirmed

**PLJ 2020 Cr.C. (Lahore) 1648**  
**Present: CH. MUSHTAQ AHMAD, J.**  
**MUHAMMAD AFZAL--Appellant**

**versus**

**MUHAMMAD HUSSAIN and 3 others--Respondents**

CrI. A. No. 650 & CrI. P. No. 1450-M of 2013, heard on 22.9.2020.

**Pakistan Penal Code, 1860 (XLV of 1860)--**

---Ss. 420, 458, 471 & 109--Sentence--Challenge to--Cheating and dishonestly--Essential ingredients--False document was missed--Appreciation of evidence--Evidence which does not establish commission of forgery and leaves an impression that respondents were responsible for alleged forgery cannot be made basis for conviction under Section 466, PPC--Though it can be used as a strong piece of corroborative evidence--Allegation against one of respondents made false report while other dishonestly entered mutation knowing it to be factually incorrect, it was held that giving false information and entry thereof would not amount to make false document within meaning of forgery as defined under Section 463 PPC and Punishable under Section 468 PPC--Moreover, prosecution has not led any evidence regarding connivance of respondents with respondent Chokidar to make false entry in register Amwaat regarding death of deceased--Appeal was dismissed. [P. 1650] A

*Mr. Usman Sher Gondal*, Advocate for Appellant.

*Mr. Muhammad Navid Umar*, DPG for State.

Date of hearing: 22.9.2020.

**JUDGMENT**

Through this appeal, Muhammad Afzal complainant has prayed for setting aside judgment dated 06.04.2013 passed by learned Additional Sessions Judge, Hafizabad, whereby Respondents No. 1 to 3 were acquitted from the charge.

Appellant is complainant of case FIR No. 17 dated 21.03.1981 registered at Police Station Vanike Tarar, District Hafizabad under Sections 420, 468, 471, 109, PPC, Respondents No. 1 to 3 Muhammad Hussain, Muhammad Hayyat and Ghulam Haider were tried by learned Magistrate Section 30, Hafizabad who convicted and sentenced the respondents as under:

- i) Under Section 420 PPC 6 months R.I.
- ii) Under Section 468 PPC 06 months R.I
- iii) For making forgery of public record (without mentioning section of PPC) and sentenced them to 6 months R.I and
- iv) Muhammad Hussain and Muhammad Hayat under Section 471 PPC and sentenced them to 6 months. R.I. and
- v) Muhammad Hussain and Muhammad Hayat under Section 471 PPC and sentenced them to 6 months. R.I. All the sentences were directed to run concurrently. Benefit of section 382-B Cr.PC was given to the respondents.

2. Brief facts of the case are that one *Mst. Afzal Bibi* d/o Muhammada wife of Ghulam Muhammad so Elahi Muhammad), died two years' prior to the establishment of Pakistan. Her husband Ghulam Muhammad also died since long. Respondents/accused Muhammad Hussain and Muhammad Hayat were sons of *Mst. Afzal Bibi*. They in order to get personal gain, connived with respondents/accused Ghulam Haider Chowkidar and made bogus death entry of *Mst. Fazal Bibi* instead of Afzal Bibi showing the date of her death entry of her death as 19.11.1979 in the register Amwaat for the year 1979 of village Kot Jan Muhammad. Thereafter, they obtained copy of bogus death entry and obtained undue benefit on the basis thereof. On the application Ex.PB, inquiries were conducted by Project

Manager and the Area Magistrate and thereafter FIR Ex.PC was lodged by the order of the then Assistant Commissioner.

3. After investigation, respondents/accused were found involved in the case and sent up for trial. Learned Magistrate, convicted and sentenced the respondents as mentioned above. Feeling aggrieved, respondents/accused filed appeal before learned Additional Sessions Judge which was allowed *vide* Judgment dated 06.04.2013 and conviction and sentence recorded *vide* judgment dated 02.03.2013 was set aside. Criminal revision filed by r appellants was dismissed.

4. After hearing learned counsel for the appellants and learned DPG, it has been noticed that admittedly inquiry reports were neither proved nor produced and exhibited in evidence by the prosecution. Cheating and dishonestly inducement for delivery of property are essential ingredients of said sections. Prosecution has not led any evidence whatsoever in this regard. PW-3 Allah Ditta, Secretary Union Council, deposed that he issued copy of register Amwaat as per record and said entry was made by the Secretary who was posted prior to him. Thus, one of the essential ingredients of making false document is missing in this case. The evidence which does not establish commission of forgery and leaves an impression that the respondents were responsible for alleged forgery cannot be made basis for conviction under Section 466, PPC. Though it can be used as a strong piece of corroborative evidence. Allegation against one of the respondents made false report while the other dishonestly entered mutation knowing it to be factually incorrect, it was held that giving false information and entry thereof would not amount to make false document within the meaning of forgery as defined under Section 463 PPC and Punishable under Section 468 PPC. Moreover, the prosecution has not led any evidence regarding connivance of respondents Muhammad Hussain and Muhammad Hayat with respondent Ghulam Haider Chokidar to make the false entry in the register Amwaat regarding the death of *Mst.* Fazal Bibi.



5. For the reasons recorded above, learned appellate Court has rightly set-aside conviction and sentence of the respondents. I find no illegality in the impugned judgment. Hence, this appeal is dismissed.

6. In view of above discussion, Criminal Petition No. 1450-M of 2013 is dismissed.

(S.A.B.)      Appeal dismissed

**PLJ 2020 Cr.C. (Lahore) 1738**  
**Present: CH. MUSHTAQ AHMED, J.**  
**MUHAMMAD BOOTA and another--Petitioners**  
**versus**  
**STATE and another--Respondents**

CrI. Misc. No. 67070-B of 2019, decided on 23.1.2020.

**Criminal Procedure Code, 1898 (V of 1898)--**

---S. 498--Pakistan Penal Code, (XLV of 1860), S. 406--Pre-arrest bail, confirmed--Allegation of--Dispute of civil nature--Recovery of amount--FIR was registered--As per FIR itself amount in question was given by complainant to petitioners as price of a house, as such, it *prima facie* cannot be termed as entrustment within meanings of Section 405, PPC--Moreover, prior to registration of instant FIR, complainant had already filed a civil suit for specific performance of contract against petitioners qua disputed house on basis of story as mentioned in FIR, implying thereby dispute between parties was of civil nature--That being so attempt has been made by complainant to convert dispute of civil nature into criminal one--Therefore, false implication cannot be ruled out--Handing over petitioners' custody to police for recovery my amount at this stage would not proper--Therefore, petition in hand is allowed and ad-interim pre-arrest bail granted to petitioners is confirmed. [P. 1739] A

*Ch. Mubashar Iqbal*, Advocate with Petitioners.

*Sh. Muhammad Nauman Siddique*, Deputy Prosecutor  
General for State.

*Mr. Javed Iqbal Malik*, Advocate for Complainant.

Date of hearing: 23.1.2020.

**ORDER**

Muhammad Boota and Ghulam Haider, petitioners have prayed for pre-arrest bail in case FIR No. 351/2019 dated 09.10.2019 registered at Police Station Satrah, District Sialkot for the offence under Section 406 PPC.

2. Arguments heard and record perused.

3. FIR was registered of complainant of Muhammad Iqbal. As per FIR itself amount in question was given by complainant to the petitioners as price of a house, as such, it *prima facie* cannot be termed as entrustment within the meanings of Section 405, PPC. Moreover, prior to registration of instant FIR, complainant had already filed a civil suit for specific performance of contract against petitioners qua the disputed house on the basis of story as mentioned in the FIR, implying thereby dispute between the parties was of civil nature. That being so attempt has been made by complainant to convert dispute of civil nature into criminal one. Therefore, false implication cannot be ruled out. Handing over petitioners' custody to police for the recovery of any amount at this stage would not proper. Therefore, petition in hand is allowed and ad-interim pre-arrest bail granted to petitioners is confirmed subject to furnishing bail bonds in the sum of Rs. 1,00,000/- each with one surety each in the like amount to the satisfaction of learned trial Courts.

(A.A.K.)      Bail confirmed

**PLJ 2020 Lahore 96**  
**(Multan Bench, Multan)**  
**Present: Ch. Mushtaq Ahmad, J.**  
**Mumtaz Ahmad—Petitioner**  
**Versus**  
**State and 9 others—Respondents**

W.P. No. 12333-Q of 2017, decided on 23.1.2019

**Constitution of Pakistan, 1973—**

--- Art. 199—Pakistan Penal Code, (XLV of 1860), S. 182—  
Application for registration of F.I.R.--- Application was marked for  
inquiry – inquiry report—Recommendations for proceedings against  
petitioner – Preparation of qalanfra – Challenge to Inquiry report  
dated 25.08.2017 and subsequent qalandra impugned herein are  
without any substance and appear to be based on mala fide, hence noy  
sustainable—Therefore, petition in hand is allowed and impugned  
qalandra is hereby quashed—Petition was allowed.

P.97 A

Mr.Nadeem hmad Tarar, Advocate for Petitioner.

Mr. Nadir Sultan, Advocate vice council for Private Respondents.

Dated of hearing 23.1.2019

**ORDER**

Petitioner is aggrieved by preparation of qalandra dated  
26.08.2017 under Section 182 PPC against him.

2. Arguments heard and record perused.

3. Petitioner moved an application before District Police  
Officer, Vehari seeking registration of F.I.R. against private  
respondents and officials of Police Station Saddar Vehari. Said  
application was marked by District Police Officer Vehari to DSP  
Saddar Circle for inquiry. Vide inquiry report dated 25.08.2017, DSP  
Saddar Circle Vehari recommended proceedings against petitioner  
under Section 182 PPC observing that the application moved by  
petitioner was false. Consequently, Respondent No. 4\Station House

Officer prepared impugned qalandra. Pertinent to note here is that no FIR was registered on petitioner s application rather after conductin aforesaid inquiry, impugned qalandra was prepared against him by respondent mo. 4\Station House Officer who was one of the accused in petitioner s application. Copy of Inquiry report dated 25.08.2017 in annexed with the petition in hand, perusal of which shows that only statements of two propose accused were recorded and thereafter opinion was formed to the effect that petitioner’s application wsas false. In such backdrop, inquiry report dated 25.08.2017 and subsequent qalandra impugned herein are without any substance and appear to be based on mala fide, hence not sustainable.

Therefore, petition in hand is allowed and impugned qalandra is hereby quashed.

M.M.R

Petition Allowed.