

Judgment Sheet
**IN THE LAHORE HIGH COURT,
BAHAWALPUR BENCH, BAHAWALPUR.**
JUDICIAL DEPARTMENT
Criminal Appeal No. 245 of 2021
(*Abdul Ghaffar, etc. v. The State, etc.*)

JUDGMENT

Date of hearing:	10.05.2023
Appellants by:	M/s Syed Zeeshan Haider and Tahir Mehmood Jatoi, Advocates.
State by:	Mr. Zafar Iqbal Somro, Deputy District Public Prosecutor
Complainant by:	Nemo

Muhammad Tariq Nadeem. J:- Appellants Abdul Ghaffar and Abdul Sattar with the allegation of committing murder of their brother Muhammad Irshad and sister-in-law (*Bhabhi*) Shamim Bibi (deceased) faced trial in case FIR No.22 dated 22.01.2018, registered under sections 302, 34 PPC, at Police Station Saddar Yazman, District Bahawalpur and at the conclusion of trial in the aforesaid case, *vide* judgment dated 29.04.2021, the learned trial court convicted and sentenced them as under:-

Abdul Ghaffar appellant:-

- **Under section 302(b) PPC** to imprisonment for life for committing Qatl-e-Amd of his brother Muhammad Irshad. He shall also pay compensation of Rs.1,00,000/- to legal heirs of deceased Muhammad Irshad u/s 544-A of Cr.P.C. In case of non-payment of amount of compensation, he shall further undergo six months simple imprisonment.
- **Under section 302(b) PPC** to imprisonment for life for committing Qatl-e-Amd of his bhabhi Shamim Bibi. He shall also pay compensation of Rs.1,00,000/- to legal heirs of deceased Mst. Shamim Bibi u/s 544-A of Cr.P.C. In case of non-payment of amount of compensation, he shall further undergo six months simple imprisonment.

Abdul Sattar appellant:-

- **Under section 302(b) PPC** to imprisonment for life for committing Qatl-e-Amd of his brother Muhammad Irshad. He shall also pay compensation of Rs.1,00,000/- to legal

heirs of deceased Muhammad Irshad u/s 544-A of Cr.P.C. In case of non-payment of amount of compensation, he shall further undergo six months simple imprisonment.

- **Under section 302(b) PPC** to imprisonment for life for committing Qatl-e-Amd of his bhabhi Mst. Shamim Bibi. He shall also pay compensation of Rs.1,00,000/- to legal heirs of deceased Shamim Bibi u/s 544-A of Cr.P.C. In case of non-payment of amount of compensation, he shall further undergo six months simple imprisonment.

The said sentences of both the appellants were ordered to run concurrently and the benefit of section 382-B of Cr.P.C. was also extended to them.

Aggrieved by the said judgment, the appellants have filed the titled appeal against their conviction and sentences before this Court.

2. Tersely, the facts of the case as disclosed by Ghulam Shabbir Inspector (PW.2) as per crime report (Exh.PF) are that on 22.01.2018 at about 12:00 p.m. (noon), he received information through 15 wireless that at 10:30 a.m. Abdul Sattar (appellant) armed with Kasi and Abdul Ghaffar (appellant) armed with club committed the murder of Muhammad Irshad and Shamim Bibi in Chak No.112/DB Basti due to dispute of amount of cattle. On receipt of information, Ghulam Shabbir (PW.2) alongwith Sarwar 100/C and Tahir Iqbal 2177/C on official vehicle reached at the place of occurrence in Chak No.112/DB Basti and saw that dead bodies of Muhammad Irshad and Shamim Bibi were lying in the courtyard of a house without door. He observed injuries on head, right calf and foot of Shamim Bibi (deceased) and also observed reddish-blue marks on mouth and neck of Muhammad Irshad (deceased) and blood was oozing from his mouth. Muhammad Shehzad, real son of deceased persons, Mukhtiar Ahmad real brother of Shamim Bibi (deceased) and Muhammad Aslam Arian were present at the place of occurrence, who informed him that Muhammad Irshad (deceased) had to take an amount of Rs.90,000/- of cattle from his brothers Abdul Sattar and Abdul Ghaffar (appellants), who were not ready to return the said amount but Muhammad Irshad (deceased) was insisting to get the said amount from them at every cost. Upon this, Abdul Sattar (appellant)

while armed with Kassi and Abdul Ghaffar (appellant) armed with club came at the place of occurrence, encircled safa around the neck of Muhammad Irshad (deceased) and gave fists and slaps on his face, one side of safa was pulled by Abdul Sattar (appellant) and other side was pulled by Abdul Ghaffar (appellant) and they throttled Muhammad Irshad (deceased). Shamim Bibi wife of Muhammad Irshad came to rescue her husband, then Abdul Sattar (appellant) made Kassi blow which hit on her head and Abdul Ghaffar (appellant) gave club blows to her. The above said witnesses, while witnessing the occurrence, reached the place of occurrence and on their arrival, the appellants succeeded in fleeing away from the spot, but Muhammad Irshad and Shamim Bibi succumbed to the injuries at the spot. The appellants had committed the occurrence due to the dispute of amount of cattle which was due upon appellants, hence, the FIR.

3. After registration of crime report, investigation of the case was entrusted to Shams-ud-Din S.I. (PW.12), who, on the same day, visited the place of occurrence; inspected the dead bodies of Muhammad Irshad and Shamim Bibi and prepared their injury statements (Exh.PK and Exh.PL); prepared inquest reports of Muhammad Irshad and Shamim Bibi (Exh.PM and Exh.PN), also prepared rough site plan of the place of occurrence (Exh.PO). He (PW.12) secured blood stained earth from underneath the dead body of Shamim Bibi, made it into sealed parcel and took the same in to possession vide recovery memo (Exh.PA). He (PW.12) recorded statements of PWs u/s 161 Cr.P.C. and sent the dead bodies of Muhammad Irshad and Shamim Bibi to THQ Hospital, Yazman, through Aftab Amin 1606/C (PW.5). On 23.01.2018, Aftab Amin 1606/C (PW.5) handed over to him (PW.12) post mortem reports of Muhammad Irshad and Shamim Bibi (Exh.PE and Exh.PJ), last worn clothes of deceased Muhammad Irshad as well as Shamim Bibi and seven sealed boxes, which he took into possession through recovery memo (Exh.PG), attested by PWs. He (PW.12) recorded statements u/s 161 Cr.P.C of three witnesses. On 11.02.20218, he (PW.12)

arrested Abdul Sattar as well as Abdul Ghaffar (appellants) and on 12.02.2018 he obtained their physical remand. On 18.02.2018, Abdul Ghaffar (appellant) got recovered weapon of offence i.e blood stained club in two pieces (P.1) from his residential room lying under the cot, which was taken into possession *vide* recovery memo (Exh.PB), attested by PWs. He (PW.12) prepared site plan of place of recovery (Exh.PP) and recorded statements of PWs u/s 161 Cr.P.C. On the same day, Abdul Sattar (appellant) got recovered weapon of offence i.e. blood stained Kassi (P.2) and safa (P.3) from his residential room lying under the cot, which were taken into possession *vide* recovery memo (Exh.PC), attested by PWs. He (PW.12) also prepared site plan of place of recovery (Exh.PQ) and recorded statements u/s 161 Cr.P.C of PWs. After completion of investigation, report under section 173, Cr.P.C. was submitted before the learned trial court.

4. After observing all pre-trial codal formalities, charge under sections 302, 34 PPC was framed against the appellants on 04.05.2018 to which they pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution produced as many as fifteen witnesses during the trial. Ghulam Shabbir Inspector (PW.2) is the complainant of the case, who got lodged FIR (Exh.PF), whereas Asghar Ali ASI (PW.4), being duty officer, chalked out FIR (Exh.PF). Ocular account has been furnished by Mukhtiar Ahmad (PW.1), Muhammad Shehzad (PW.7) and Muhammad Aslam (PW.8). Aftab Amin 1606/C (PW.5) escorted the dead bodies to the hospital for post mortem examination, whereas Muhammad Yaseen (PW.6) deposed about recovery of last worn clothes of deceased. Saeed Akhtar, draftsman appeared as (PW.9), who sketched the scaled site plan (Exh.PH) of the place of occurrence. Khadim Hussain (PW11) identified the dead bodies of deceased persons at the time of post mortem examination. Muhammad Sajid 1998/HC (PW.14) kept sealed parcels in safe custody of malkhana and Muhammad Nasrullah ASI (PW.15) transmitted sealed parcels to the office of Punjab

Forensic Science Agency. Shams-ud-Din S.I./I.O. (PW.12) and Hassan Abbas S.I./I.O. (PW.13) being investigating officers stated about various steps taken by them during investigation of the case.

Medical evidence was furnished by Dr. Muhammad Daud Adnan, MO (PW.3), who conducted post mortem examination on the dead body of Muhammad Irshad (deceased) and prepared autopsy report (Exh.PE) and Lady Dr. Shafaq Khalid, WMO (PW.10) who conducted post mortem examination on the dead body of Shamim Bibi (deceased) and issued autopsy report (Exh.PJ).

The prosecution closed its evidence after tendering the Forensic DNA and Serology Analysis Report No.0000441641 (Exh.PR), Forensic DNA and Serology Analysis Report No.00004431371 (Exh.PS), Forensic Histopathology Report (Exh.PT), Forensic Toxicology Analysis Report (Exh.PU) and photocopy of death certificate of Rani Bibi as mark-A.

6. On completion of prosecution evidence, the appellants were examined under section 342 Cr.P.C. whereby they once again denied the allegations leveled against them and professed their innocence. While answering to a question, “*why this case against you and why the PWs have deposed against you?*” the appellants stated as under:-

Abdul Ghaffar appellant:-

“I have falsely been involved/implicated in this case. Mukhtiar Ahmad PW-1 who instigated the complainant to name me in this false case. Neither I am involved in the alleged occurrence nor I could think to kill my real brother and my Bhabhi. There was no dispute ever between me and my brother and a false motive is introduced by PW-1. In fact, Mukhtiar on account of dispute of rishta between my family and the family of Mukhtiar Ahmad PW-1 has falsely deposed against me. I had cordial relations with my brother, however, PW-1 was restrained by my deceased brother to visit his house. No independent person come forward to depose against me. Inmate of the house of the occurrence do not support the version of the complainant. None of the witnesses produced by the prosecution ever witnessed the alleged occurrence. Mukhtiar Ahmad on account of grudge of refusal of hand of my sister namely Shamshad Bibi falsely deposed against me. I am innocent and have committed no offence. I have been informed by the children of my deceased

brother that some unknown dacoits killed my brother and his wife. I am innocent.”

Abdul Sattar appellant:-

“I have falsely been involved/implicated in this case. Mukhtiar Ahmad PW-1 who instigated the complainant to name me in this false case. Neither I am involved in the alleged occurrence nor I could think to kill my real brother and my Bhabhi. There was no dispute ever between me and my brother and a false motive is introduced by PW-1. In fact, Mukhtiar on account of dispute of rishta between my family and the family of Mukhtiar Ahmad Pw-1 has falsely deposed against me. I had cordial relations with my brother, however, PW-1 was restrained by my deceased brother to visit his house. No independent person come forward to depose against me. Inmate of the house of the occurrence do not support the version of the complainant. None of the witnesses produced by the prosecution ever witnessed the alleged occurrence. Mukhtiar Ahmad on account of grudge of refusal of hand of my sister namely Shamshad Bibi falsely deposed against me. I am innocent and have committed no offence. I have been informed by the children of my deceased brother that some unknown dacoits killed my brother and his wife. I am innocent.”

The appellants neither opted to make statements on oath as provided under Section 340(2) Cr.P.C. nor produced any evidence in disproof of the allegations leveled by the prosecution against them.

7. The learned trial court, on conclusion of trial, *vide* judgment dated 29.04.2021, convicted and sentenced the appellants as mentioned hereinabove.

8. Learned counsel for the appellants argued that the FIR in this case was lodged with the delay of four hours and ten minutes after the incident and thereafter post mortem examinations on the dead bodies of deceased persons were conducted with further delay of 22 to 24 hours, which conclusively proved that it was an unseen occurrence; that though the prosecution tried to make it a case of direct evidence, but none of the alleged eye witnesses namely Mukhtiar Ahmad (PW.1), Muhammad Shehzad (PW.7) and Muhammad Aslam (PW.8) bothered to step forward and lodge crime report, which was actually lodged by a police officer with considerable delay; that amongst the alleged eye witnesses, Muhammad Shehzad (PW.7) did not claim

before the learned trial court to have himself witnessed the occurrence whereas Mukhtiar Ahmad (PW.1) and Muhammad Aslam (PW.8) could not justify their presence at the spot at relevant time and they both happened to be chance, related and interested witnesses; that when both the appellants were not armed with any formidable weapons, why the above mentioned eye witnesses did not physically intervene and attempted to apprehend them; that unnatural conduct of alleged eye witnesses also speaks volume about their non-availability at the scene of occurrence at relevant time; that in the absence of any trustworthy and confidence inspiring ocular account, medical evidence becomes irrelevant qua alleged culpability of appellants; that the recoveries of blood stained Kassi (P.1) from Abdul Ghaffar (appellant) as well as blood stained club (P.2) and safa (P.3) from Abdul Sattar (appellant) were fake and planted and with the passage of time, presence of blood on these articles was naturally impossible, which fact also creates doubt upon the veracity of PFSA reports; that the investigating officer had not probed about the alleged motive part of occurrence and no substantial evidence has been led by the prosecution in this regard, which makes the story of motive highly doubtful. Lastly contended that the prosecution has miserably failed to prove the case against the appellants and has prayed that the appellants may be acquitted of the charge levelled against them by accepting the instant appeal.

9. Conversely, learned Law Officer argued that the prosecution has successfully proved its case against the appellants beyond any shadow of doubt through convincing, unimpeachable and overwhelming evidence. He further submitted that the delay in lodging the FIR as well as conducting post mortem examination is not fatal to the prosecution's case; that the appellants had been duly nominated in the FIR and during trial the prosecution witnesses stood firm against them; that the appellants had committed the murder of two innocent persons, one of whom was their real brother and the other was their sister-in-law and the learned trial court has already

taken leniency while deciding the quantum of sentences. Finally, learned Law Officer has prayed for dismissal of appeal.

10. I have observed that according to the narration of F.I.R (Exh. PF) in the gory incident an innocent couple was done to death. The appellants have allegedly committed the heinous offence which has a stringent punishment, so principle of natural justice demands that prosecution should led evidence of such characteristic which needs to no other conclusion except the guilt of the accused without any hint of doubt and benefit of a single doubt in the prosecution case must be extended in their favour. So, I have to decide the instant appeal in the light of above mentioned principle of law.

11. As per prosecution story, occurrence had reportedly taken place on 22.01.2018 at about 10:30 a.m. but despite that the police station was merely sixteen kilometers away from the place of occurrence, the alleged eye witnesses of tragedy did not bother to inform the police about the occurrence. Mukhitar Ahmad (PW.1), who is one of the purported eye witnesses, has stated during his cross-examination as under:-

“.....I did not visit police station to inform the police about the occurrence on the day of occurrence nor I tried to bring the police. Neither I called at 1122 nor I arranged any vehicle for shifting the Irshad and Shamim Bibi to the hospital.....”

Similarly, Muhammad Aslam (PW.8), another alleged eye witness, has stated during his cross-examination as infra:-

“.....About three hours after the occurrence police reached at the place of occurrence. On the day of occurrence none of us went to police station to inform police. We did not try to shift Irshad and Shamim to any hospital prior to arrival of police. Neither we tried to serve water to Irshad and Shamim nor we tried to shift them on some clean place.....”

According to the narration of FIR (Exh.PF), Ghulam Shabbir Inspector (PW.2) reached at the place of occurrence at 01:15 p.m. but even at that very moment, none of the stated eye witnesses stepped forward to be complainant of the case and report the incident to him.

Nothing is available on the record as to what was the reason which forced Ghulam Shabbir Inspector (PW.2) to himself become complainant of this murder case that too while claiming the presence of close relatives of deceased persons at the scene of occurrence. Delay in lodging the FIR (Exh.PF), is shouting louder than everything that the crime report was registered after due deliberation and consultation and the intervening time was consumed in collecting details about the relatives of deceased, what to say about their presence at the time of occurrence, they were not even present at the time of lodging FIR, because, if they were present there, one of them must have at least become the complainant of the case. While holding so, I am guided by the dictum of law laid down by the apex Supreme Court of Pakistan in the cases of “Muhammad Asif v. The State” (2008 SCMR 1001) and “Nazir Ahmad v. The State” (2018 SCMR 787).

12. I have further observed that it is not only a case of delayed reporting the matter to the police but also of delayed post mortem examination as according to prosecution’s own showing, post mortem examinations on the dead bodies of Muhammad Irshad (deceased) and Mst. Shamim Bibi (deceased) were conducted with the delay of 22 and 24 hours respectively, which casts further doubt upon the veracity of prosecution version. I have fortified my view from the dictum laid down in the cases titled “Sufyan Nawaz and another v. The State and others” (2020 SCMR 192), wherein the Hon’ble Supreme Court of Pakistan has held as under:-

“.... As per post mortem examination report, autopsy on the dead body of Kabeer Ahmad was conducted on 24.10.2005 at 10.00 p.m. The unexplained delay of about ten hours in autopsy of Kabeer Ahmad (deceased) alone creates dent in the prosecution story so far as presence of eye-witnesses at the place of occurrence is concerned.”

Further guidance has been sought from the cases of “Muhammad Adnan and another v. The State and others” (2021 SCMR 16), “Khalid Mehmood and another v. The State and others”

(2021 SCMR 810) and “Pervaiz Khan and another v. The State” (2022 SCMR 393).

13. FIR (Exh.PF) further uncovers that according to prosecution’s version, Mukhtiar Ahmad (PW.1), Muhammad Shehzad (PW.7) and Muhammad Aslam (PW.8), while witnessing the occurrence, reached the place of occurrence and on their arrival, the appellants succeeded in fleeing away from the spot. Out of the above said prosecution witnesses, Muhammad Shehzad (PW.7) was the real son of ill-fated couple and inmate of the house, but during his cross-examination, he himself categorically stated that he was not present in his house at the time of occurrence and had not witnessed the tragedy with his own eyes and he further destructively stated that even nobody else was present at the place of occurrence when he came to his house and found the dead bodies of his parents lying there. Relevant portion of his cross-examination is reproduced as infra:-

“...I went to school on the day of occurrence of this case. I went to school at 8:00 a.m. Time of closing of school was 1:00 p.m. It is correct that attendance of students is always marked in the school. My attendance was also marked in the school on the day of murder of my parents. When I was learning my lesson in the school my younger brother Muhammad Afzal came in the house and he informed me that my parents have been murdered. I on foot rushed to my house and reached there within 6/7 minutes. When I reached home nobody was present in my house, however, few children were playing in the street. When I reached in my house I found dead bodies of my parents and due to this reason I failed to raise alarm. My maternal uncle Mukhtar Ahmad firstly met me in THQ hospital Yazman on the day of occurrence wherefrom we came to police station Saddar Yazman. Mukhtar Ahmad was not present in my house when I reached there. I met with Mukhtar Ahmad in police station Saddar Yazman at 3:00 p.m. I firstly saw Mukhtar Ahmad in Yazman at 2:00 p.m in THQ Yazman. Muhammad Aslam PW is not my neighbourer. Volunteered we reside in Basti whereas house of Muhammad Aslam is in Chak. House of Muhammad Aslam is 3/4 kilometers away from my house. Aslam PW was not present in my house when I reached there. Aslam met me firstly on the day of occurrence at 1:00 p.m on the road. Aslam is a cultivator. Aslam PW used to work for police and he also visits police stations for the work of people and manages give and take between people of area and police. We were not willing to cite Aslam as PW but police forcibly

introduced Aslam as witness. Muhammad Aslam and Mukhtar were not present at the place of occurrence when my parents were murdered.”

Above reproduced portion from the statement of Muhammad Shehzad (PW.7), alone, would be enough to brush aside the whole prosecution case, however, to satisfy my conscience, I would further dig out the prosecution case, particularly the statements of other two prosecution witnesses namely Mukhtiar Ahmad (PW.1) and Muhammad Aslam (PW.8). Deep scrutiny of their statements has led this Court to hold that they were nothing but chance witnesses who had miserably failed to advance any plausible reason for their presence at the place of occurrence at relevant time. Mukhtiar Ahmad (PW.1) in his cross-examination, has stated that his house is about 50-kilometers away from the place of occurrence. He (PW1) has further stated in his cross-examination which is as under:-

I did not raise hue and cry to attract the people of vicinity.

I did not visit police station to inform the police about the occurrence on the day of occurrence nor I tried to bring the police. Neither I called at 1122 nor I arranged any vehicle for shifting the Irshad and Shamim Bibi to the hospital.

As per my statement before this Court I was present at the place of occurrence as per chance and then this occurrence happened.

I did not make any phone call to police at 15. I did not produce any witness of any transaction of amount between deceased and accused persons.

Likewise, Muhammad Aslam (PW.8) though claimed during his cross-examination that his house was at a distance of 3 squares from the place of occurrence but according to Muhammad Shehzad (PW.7), real son of the deceased persons, the house of Muhammad Aslam (PW.8) was 3 kilometers away. In addition to the above,

Mukhtiar Ahmad (PW.1) and Muhammad Aslam (PW.8) were unable to give any plausible reason for their presence at the spot at the time of occurrence. In this context, Muhammad Shehzad (PW.7) has stated in his cross-examination that his father Muhammad Irshad (deceased) had dispute with Mukhtiar Ahmad (PW.1) and they were not in talking terms with him. He (PW.7) further stated that his parents (deceased persons) had restrained Mukhtiar Ahmad (PW.1) from visiting the houses of each other and they were having eliminated relations even for marriages and death occasions. So far as Muhammad Aslam (PW.8) is concerned, he was not related to the deceased persons and according to the statement of Muhammad Shehzad (PW.7), he appears to be a stock witness of police. The relevant portion of statement of (PW8) reads as under for ready reference:-

On the day of occurrence none of us went to police station to inform police. We did not try to shift Irshad and Shamim to any hospital prior to arrival of police. Neither we tried to serve water to Irshad and Shamim nor we tried to shift them on some clean place.

It is correct that as per my statement before the police and as per my statement before this Court neither I nor any other person intervened during the occurrence.

Keeping in view the aforementioned peculiar circumstances of the case, it is vivid that the place of occurrence in this case was the one where Mukhtiar Ahmad (PW.1) and Muhammad Aslam (PW.8) should have not normally been present exactly at the time of occurrence and when this fact is taken into account along with considerable delay in lodging the FIR as well as conducting post mortem examination on the dead bodies of deceased persons, I find no option but to declare them related, interested and chance witnesses and as such their evidence is not free from doubt. Reference in this respect may be made to the cases titled as “Mst. Mir Zalai v. Ghazi Khan and others” (2020 SCMR 319), “Ibrar Hussain and another v.

The State” (2020 SCMR 1850) and *“Liaqat Ali and another v. The State and others”* (2021 SCMR 780).

14. Apart from the above, the behavior of above cited eye witnesses remained tremendously unnatural. Mukhtar Ahmad (PW1) appeared in the witness box before the learned trial court and has stated as under:-

“Neither we apprehended any accused nor snatch kasi or danda from them.

Similarly, Muhammad Aslam (PW8) has admitted in so many words before the learned trial court which is as under:-

“Dead bodies remained lying at the place of occurrence for about 5-hours and 30-minutes. I did not apprehend any accused on the day of occurrence. Neither I nor Mukhtar followed the accused persons. Volunteered that accused persons threatened us. Accused persons were not armed with any fire arm. Neither I nor Mukhtar or other persons tried to rescue the deceased persons from the accused persons. None of us sustained any scratch. Neither I nor Mukhtar raised alarm to attract the persons of vicinity”.

It is prosecution’s personal version that the alleged eye witnesses have been three male participants while the two appellants have been now not armed with any bold weapon to terrify them from saving the deceased individuals. It isn't appealable to a prudent thought that if the above mentioned eye witnesses have been present at the house of incident, then what impeded them from bodily intervention to apprehend the appellants after the incidence or let them break out unhurt. Under the occasions, it could be thoroughly held that the above stated eye witnesses had been neither present on the spot at the applicable time, nor they had witnessed the occurrence. I may refer here the case of *“Liaqat Ali v. The State”* (2008 SCMR 95). Similar view was reiterated by the august Supreme Court of Pakistan in the cases of *“Pathan v. the State”* (2015 SCMR 315), *Mst. Rukhsana Begum and others vs. Sajjad and others* (2017 SCMR 596), *“Zafar v. The State and others”* (2018 SCMR 326), *Tariq Mehmood vs. The*

State (2021 SCMR 471) and **“Shaukat Hussain v. The State” (2022 SCMR 1358).**

15. Another exciting element of the case which created similarly doubt upon the veracity of alleged eye witnesses is that as according to inquest report (Exh.PM) of Muhammad Irshad (deceased) as well as the assertion of Dr. Muhammad Daud Adnan (PW.3) who performed autopsy on his lifeless frame, the mouth and eyes of Muhammad Irshad (deceased) had been found opened. Similarly, as in keeping with inquest report (Exh.PN) of Shamim Bibi (deceased) as well as the statement of Lady Dr. Shafaq Khalid (PW.10) who carried out post-mortem on her dead body, her eyes were discovered opened. This fact shows that no person had afflicted to close the eyes and mouth of Muhammad Irshad (deceased) as well as the eyes of Shamim Bibi (deceased), which couldn't have befell in the presence of eye witnesses. Reliance is placed upon the cases titled as **“Muhammad Asif vs. The State” (2017 SCMR 486)**, **“Zahir Yousaf and another v. The State and another” (2017 SCMR 2002)** and **“Muhammad Rafique alias Feeqa v. The State” (2019 SCMR 1068).**

16. Another important aspect of the case, which cannot lost sight of is that the witnesses of ocular account, Mukhtiar Ahmad (PW.1), Muhammad Shehzad (PW.7) and Muhammad Aslam (PW.8) are not witnesses of inquest reports (Exh.PM and Exh.PN) as well as post mortem reports (Exh.PE and Exh.PJ) pertaining to Muhammad Irshad (deceased) and Shamim Bibi (deceased). If they were present at the scene of the occurrence at the relevant time, they must have been the witnesses of inquest reports. Similarly, they should have escorted the dead bodies to the hospital being the close relatives and their names should have been incorporated in the post mortem reports in the column of identification of the dead bodies. This fact has constrained me to hold that supra mentioned PWs were not present at the time and place of occurrence. Reliance is placed upon the following case laws

titled as “Abdul Jabbar alias Jabri v. The State” (2017 SCMR 1155) and “Nadeem alias Kala v. The State and others” (2018 SCMR 153).

17. Coming to the evidentiary worth of medical evidence, it is settled law that medical evidence may confirm the ocular evidence with regard to the seat of injury, nature of the injury, kind of weapon used in the occurrence but it would not connect the accused with the commission of offence. Reference in this respect may be made to the cases titled as “Sajjan Solangi v. The State” (2019 SCMR 872) and “Naveed Asghar and 2 others v. The State” (PLD 2021 SC 600).

18. I have also noted that Mukhtar Ahmad (PW1) and Muhammad Aslam (PW8) have made dishonest improvements in their statements before the learned trial Court and the relevant parts of their statements during cross-examination, read as under:-

PW-1 Mukhtar Ahmad

“Whatever I stated before the court in verbatim I narrated before the police. I never disclosed before the police that on 21.01.2018 in evening time I along with Rani Bibi went to the house of Shamim Bibi to see her. I did not disclose before the police in my statement u/s 161 of Cr.P.C. that I and my mother Rani Bibi were sitting in the room of house of Irshad and on hearing hue and cry, we came out from the room. I got recorded in my statement that Abdul Sattar accused encircled safa around the neck of Irshad deceased. Confronted with Exh. DB where it is not recorded.

PW-8 Muhammad Aslam

“I never stated before the police that I and Mukhtar PW reached at the place of occurrence on hearing hue and cry of Shehzad. Confronted with Exh. DA where it is so recorded.

Due to the dishonest improvements, made in their statements of supra mentioned PWs, I am of the view that both the PWs are not truthful witnesses and their evidence is not worthy of reliance. It is cardinal principle of law that any statement improved during trial is not worth relying, which is also deprecated by the principle enunciated in two salutary judgments by august Supreme Court of

Pakistan. In the case of “*Saeed Ahmed Shah vs. The State*” (1993 SCMR 550), it has been held that the statement of any witness improved at trial is not worth relying rather such improvement creates serious doubt about his veracity and credibility. Similar view was taken in another case reported as “*Muhammad Rafique and others vs. The State and others*” (2010 SCMR 385).

19. I am also conscious of the fact that the prosecution has made an abortive attempt to strengthen its case through the recovery of weapons of offence i.e. club (P.1) at the instance of Abdul Ghaffar appellant on 18.02.2018 from his house *vide* possession memo (Exh.PB), Kassi (P2) and safa (P.3) at the instance of Abdul Sattar appellant on 18.02.2018 from his house *vide* possession memo (Exh.PC) and the report (Exh.PR) of the Punjab Forensic Science Agency, Lahore, according to which human blood was found present on club (P.1) and Kassi (P.2). It does not appeal to a prudent mind that after committing the incident, the said appellants would keep the weapons of offence i.e. club, kassi and safa, stained with human blood, in safe custody for about 27 days as they had ample opportunity during the above mentioned period to destroy such a corroborative evidence. In an identical case reported as “*Basharat and another vs. The State*” (1995 SCMR 1735), Hon’ble Supreme Court of Pakistan, while disbelieving the evidence of blood stained *chhuri* allegedly recovered from the accused after ten days from the occurrence, observed as under:-

“11. The occurrence took place on 20-4-1988. Basharat appellant was arrested on 28-4-1988. The blood-stained Chhuri was alleged recovered from his house on 30-4-1988. It is not believable that he would have kept blood-stained Chhuri intact in his house for ten days when he had sufficient time and opportunity to wash away and clean the blood on it...”

Moreover, the alleged recoveries were effected after twenty seven days of the occurrence and subsequently the recovered articles were received in the office of Punjab Forensic Science Agency on 19.04.2023 i.e. two months and twenty eight days after the

occurrence, thus, it was also not likely that the blood would not disintegrate in the meanwhile. I fortify my view from the case titled as “Muhammad Jamil v. Muhammad Akram and others” (2009 SCMR 120) and “Faisal Mehmood v. The State” (2016 SCMR 2138). In the light of above circs, these pieces of evidence are not helpful to the prosecution.

20. The motive alleged by prosecution was that Muhammad Irshad (deceased) had to take an amount of Rs.90,000/- of cattle from his brothers Abdul Sattar and Abdul Ghaffar appellants, who were not ready to return the said amount but Muhammad Irshad (deceased) was insisting to get the said amount from them at every cost. It is noteworthy that there is a haunting silence regarding the minutiae of motive alleged by the prosecution. Muhammad Shehzad (PW7) has disclosed in his cross-examination as infra:-

“There was no dispute between my father and his brother named as accused in this case prior to the occurrence.

Even Shams-ud-Din S.I./I.O. (PW.12) has stated in his cross-examination as under:-

“None deposed before me as to when, where and in whose presence transaction of amount between deceased and accused took place. None claimed to witness of said transaction. Neither I investigated the motive part of the occurrence nor I gave any finding with regard to the motive. ”

I have observed that neither he (PW12) investigated the motive part of the occurrence nor he gave any finding with regard to the motive. Although prosecution is not under obligation to establish motive in each and every murder case, but it is also a well settled principle of criminal jurisprudence that if the prosecution sets up a motive and fails to prove it, then it is the prosecution who has to suffer and not the accused. I very respectfully rely on the cases of “Tajamal Hussain Shah v. The State and another” (2022 SCMR 1567), “Ali Asghar

alias Aksar v. The State” (2023 SCMR 596) and “Sarfraz and another v. The State” (2023 SCMR 670).

21. Epitome of the above comprehensive discussion is that the prosecution has failed to prove its case against the appellants beyond the shadow of doubt rather the shadows of doubt are looming in this case. It is a well-established principle of administration of justice in criminal cases that finding of guilt against an accused person cannot be based merely on the high probabilities that may be inferred from evidence in a given case. The findings as regard their guilt should be rested surely and firmly on the evidence produced in the case and the plain inferences of guilt that may irresistibly be drawn from that evidence. Mere conjectures and probabilities cannot take the place of proof. If a case is decided merely on high probabilities regarding the existence or non-existence of a fact to prove the guilt of a person, the golden rule of giving "benefit of doubt" to an accused person, which has been a dominant feature of the administration of criminal justice in this country with the consistent approval of the Constitutional Courts, will be reduced to a naught. The prosecution is under obligation to prove its case against the accused person at the standard of proof required in criminal cases, beyond reasonable doubt standard, and cannot be said to have discharged this obligation by producing evidence that merely meets the preponderance of probability. If the prosecution fails to discharge its said obligation and there remains a reasonable doubt, not an imaginary or artificial doubt, as to the guilt of the accused person, the benefit of that doubt is to be given to the accused person as of right, not as of concession. Reference is made to the cases titled “Sajjad Hussain v. The State and others” (2022 SCMR 1540) and “Tajamal Hussain Shah v. The State and another” (2022 SCMR 1567), “Ahmad Ali and another vs. The State” (2023 SCMR 781) and “Sarfraz and another vs. The State” (2023 SCMR 670).

22. For the foregoing reasons, Criminal Appeal No.245 of 2021 filed by Abdul Ghaffar and Abdul Sattar (appellants) is **accepted**, their conviction and sentences are **set aside** and they are acquitted of the charges leveled against them while extending the benefit of doubt in their favour. They shall be released from jail forthwith if not required to be kept therein in connection with any other case.

(Muhammad Tariq Nadeem)
Judge

APPROVED FOR REPORTING

Judge