

**SHARIAT APPELLATE BENCH OF THE HIGH COURT OF AZAD
JAMMU AND KASHMIR**

- (1) Criminal Appeal No.52/2010,19/2017.
Date of Institution 07.12.2010/01.11.2017.
Date of Decision: 10.02.2023.

Mohsin Gohar S/O Gohar Mumtaz R/O Kacheeli, Tehsil & District Muzaffarabad.

Convict-Appellant

VERSUS

1. The State through Advocate General AJ&K having his office in Supreme Court Building Muzaffarabad.
2. Raja Farid Khan S/O Raja Sarbuland Khan, Caste Khakha, R/O Kacheeli, Tehsil & District Muzaffarabad.

Respondents

**APPEAL AGAINST THE JUDGMENT OF ADDITIONAL DISTRICT COURT
OF CRIMINAL JURISDICTION MUZAFFARABAD, DATED 29.11.2010**

- (2) Criminal Appeal No.51/2010,18/2017.
Date of Institution 02.12.2010/01.11.2017.

Raja Khabar Khan S/O Raja Sabir, Caste Khakha, R/O Kacheeli, Tehsil & District Muzaffarabad.

Convict-Appellant

VERSUS

1. The State through Advocate General AJ&K;
2. Raja Farid Khan S/O Raja Sarbuland Khan, Caste Khakha, R/O Kacheeli, Tehsil & District Muzaffarabad.

Respondents

**APPEAL AGAINST THE JUDGMENT OF ADDITIONAL DISTRICT COURT
OF CRIMINAL JURISDICTION MUZAFFARABAD, DATED 29.11.2010**

- (3) Criminal Appeal No.05/2011,20/2017.
Date of Institution 02.12.2010/01.11.2017.

1. Raja Muhammad Farid Khan (late) S/O Raja Sarbuland Khan, R/O village Kacheeli, Tehsil & District Muzaffarabad.

Complainant-Appellant.

1. Raja Muhammad Arif Khan &
2. Raja Taimoor Khan sons of Raja Muhammad Farid Khan.
3. Mst. Shahida Begum,
4. Mst. Zahida Begum &
5. Mst. Saima Farid Daughters of Raja Muhammad Farid Khan, R/O village Kacheeli, Tehsil & District Muzaffarabad.
6. Minahil Abid,
7. Raja Kaif Abid,
8. Mahreen Abid,
9. Raja Sanan Abid &
10. Raja Ayan Abid through Mst. Shahida Begum (Guardian) w/o Raja Abdul Qayyum, R/O village Kacheeli, Tehsil & District Muzaffarabad.

(Legal Heirs of Abid Deceased)

VERSUS

1. Raja Khabar Khan alias Koda S/O Raja Sabir Khan, R/O village Kacheeli, Tehsil & District Muzaffarabad.

Convict-Respondent.

2. The State through Advocate General AJ&K.

Proforma-Respondent

APPEAL AGAINST THE JUDGMENT OF ADDITIONAL DISTRICT COURT OF CRIMINAL JURISDICTION MUZAFFARABAD, DATED 29.11.2010.

- (4) Murder Reference No.50/2010,16/2017.
Date of Institution 02.12.2010/01.11.2017.

The State through Raja Muhammad Farid Khan S/O Raja Sarbuland Khan, Caste Khakha, R/O Kacheeli, Tehsil & District Muzaffarabad.

Complainant

VERSUS

Mohsin Gohar S/O Gohar Mumtaz, Caste Khakha, R/O Kacheeli, Tehsil & District Muzaffarabad.

Convict-Respondent.

**REFERENCE SENT BY ADDITIONAL DISTRICT CRIMINAL COURT MUZAFFARABAD
FOR CONFIRMATION OF DEATH SENTENCE OF MOHSIN GOHAR CONVICT**

(5) Criminal Petition No.294/2015,14/2017.
Date of Institution 10.08.2015,01.11.2017.

Mohsin Gohar S/O Gohar Mumtaz R/O Kacheeli, Tehsil & District Muzaffarabad, presently detained in District Jail Kotli Azad Kashmir.

Petitioner

VERSUS

1. The State through Advocate General AJ&K.
2. Superintendent Central Jail Muzaffarabad.
3. Superintendent Central Jail Muzaffarabad.

Respondents

**PETITION FOR SHIFTING OF THE PETITIONER FROM DISTRICT
PRISON KOTLI TO CENTRAL JAIL MUZAFFARABAD**

Before:- **Justice Mian Arif Hussain, J.**
Justice Syed Shahid Bahar, J.

PRESENT:

Tahir Aziz Khan, Advocate, for Convict-Appellant, Mohsin Gohar.
Raja Muhammad Hanif Khan, Advocate, for Complainant/Legal heirs.
A.A.G. for State.

JUDGMENT:-

(Justice Syed Shahid Bahar):- As the supra titled Appeals, Reference and Petition relate to the same parties as well as the impugned judgment passed by the Additional District Court of Criminal Jurisdiction, Muzaffarabad, dated 29.11.2010; therefore, these are being consolidated and disposed of through the instant single judgment.

FACTS IN BREVITY:-

2. The case in hand emanates from an FIR No. 23/2009 lodged by complainant Raja Farid Khan S/O Raja Sarbuland Khan at Police Station Danna on 23rd June, 2009, at 10:30am. Excerpt of the said FIR delineates as infra:-

“He (complainant) is resident of village Kacheeli. Today, on 23.06.2009, almost at 9:30am his son Raja Abid Khan was going to Muzaffarabad in connection with his personal work and when he was at the distance of few steps away from his house, meanwhile, accused-persons, (1) Mohsin Gohar and (2) Hassan Gohar sons of Gohar Mumtaz, (3) Saleh Sultan widow of Muhammad Javaid, (4) Saima w/o Hassan Gohar, (5) Faiza Gohar w/o Khabar Khan, (6) Khabar Khan S/o Muhammad Sabir Khan, (7) Sheraz S/o Muhammad Javaid and (8) Neelum Gohar D/o Gohar Mumtaz, who, having been armed with firearms, hatchets and clubs, had waylaid him and launched an attack upon his son (Raja Abid Khan) with the intention to slay him. Hassan Gohar, accused,

inflicted a hatchet blow upon the head of Abid, whereas other accused-persons Saleh Sultan, Faiza Gohar, Saima, Sheraz and Khabar Khan, who were armed with clubs, attacked upon Abid by hurling abuses and started pounding him, consequently, he fell on the ground then and there. After few minutes, when his son (Abid) got up and tried to come towards the house with the purpose of saving his life, in the meantime, Mohsin Gohar, accused, who was armed with a Pistol, shot at him, which perched on left side of his back, on account of which, he died on the spot. Meanwhile, Neelum Gohar, accused, brought a 7MM rifle from her house and handed it over to her brother Hassan Gohar, accused, with which he fired indiscriminate bullets, in result whereof, his brother Mohsin Gohar, accused, also received injuries and fell down. The accused-persons did not allow for half an hour to take/lift the corpse of his son Abid, rather they managed to flee by taking advantage of the firing. The motive behind the occurrence is that on account of some domestic reasons his son (Abid) had

divorced Mst. Irram D/O Saleh Sultan, accused almost 6 months ago, and because of this animus, accused eagerly wanted to do away with his son and today, finding an opportunity, they mowed down him. The occurrence was witnessed by Muhammad Munsif Khan, Raja Abdul Qayyum Khan and Muhammad Arif Khan. Therefore, it is submitted that legal proceedings may be taken.”

ENSUING PROCEEDINGS:-

3. As per the aforesaid report, a case in offences under Sections 302, 324, 147, 148, 149 & 506 of Azad Penal Code, 1860 (A.P.C) was registered against accused-persons at Police Station Danna on 23.06.2009. The police started investigation and apprehended Khabar Khan, accused, on the same day i.e. 23.06.2009, whereas Mohsin Gohar, accused, who received injury during occurrence, was admitted to hospital so after his discharge from hospital, the police felt his collar on 01.07.2009. During investigation, a stick (soti) was recovered on the pointation of Khabar Khan, accused, whereas a 30-bore revolver was recovered on the pointation of Mohsin Gohar, accused. The statements of P.Ws, except Muhammad Munsif Khan P.W, were recorded

under Section 161,Cr.P.C. The police during spot inspection took into possession 5 live rounds of 7MM rifle like Kalashnikov style and 10 used empties of the said weapon. A blood stain was found on the western corner of the wall of the house of accused Sheraz, which according to the eye-witnesses' account, is the blood of Mohsin Gohar, accused, so it was scratched from the wall and taken into possession. The corpse of Abid Khan, deceased, was taken into custody and by preparing an injury form, was sent to CMH Muzaffarabad for postmortem. The medico legal surgeon, during postmortem, handed over bloodstained clothing of the deceased to the police, which were taken into possession in presence of P.Ws and parcel No.3 was prepared. During postmortem, a revolver bullet was also extracted from the chest of deceased and parcel was prepared and handed over to police. The site plan was also prepared. It was found during investigation that on the day of occurrence, co-accused Hassan Gohar fired indiscriminate bullets with 7MM rifle, due to which Mohsin Gohar, principal accused, received injuries; therefore, his medical examination report was procured from medico legal Surgeon Muzaffarabad and according to said report, both injuries were caused by the firearm and in opinion

of Doctor, blood group A+ was matched; hence, an offence under Section 337-F(iii) was added. During investigation, it was found that accused-persons, namely, Hassan Gohar, Sheraz, Saleh Sultan, Siama, Faiza Gohar and Neelum Gohar took to their heels; therefore, a warrant under Section 204,Cr.P.C was issued from the concerned Court and thereafter proclamations under Section 87,Cr.P.C were issued but the said accused did not turn up to Court.

4. After completion of investigation, a challan in offences under Sections 302, 324, 337-F(iii), 506, 297, 447, 147, 148, 149,A.P.C and 13/20/65,AO, was submitted before District Criminal Court Muzaffarabad, which was entrusted to Additional District Criminal Court, Muzaffarabad, whereby absconded-accused, shown in column No.2 of the challan, were proceeded under Section 512,Cr.P.C on 25.09.2009. The statements of convict-respondents were recorded under section 242,Cr.P.C on 05.10.2009, wherein they pleaded innocence thereby claiming trial. Thereafter, the prosecution was ordered to produce evidence. The prosecution produced as many as 18 witnesses out of 22 witnesses in support of its case.

TRIAL COURT'S FINDINGS:-

5. The Additional District Court of Criminal Jurisdiction, Muzaffarabad, after conclusion of the trial, heard arguments of the learned Advocates for the parties by arriving at the conclusion that the prosecution has proved the guilt of accused-respondents to the hilt, the accused-respondents namely, Mohsin Gohar and Raja Khabar Khan. **Mohsin Gohar**, accused, was awarded death sentence as 'Qisas' under Section 302(a),APC, vide the impugned judgment dated 29.11.2010. He shall have to pay compensation under section 544,Cr.P.C to the legal heirs of deceased and in default of payment whereof, he shall have to undergo six (6) months simple imprisonment. He was further sentenced to two years rigorous imprisonment under Section 13/20/65,AO alongwith fine of Rs.1000/- and in default of payment of fine, he shall have to put up with 15 days simple imprisonment. He was also awarded one year simple imprisonment under Section 147,APC and two years simple imprisonment under Section 148,APC. All the above sentences, after confirmation of the sentence of 'Qisas' and payment of compensation, shall run concurrently and the amount of fine shall be deposited in the Government's treasury. The accused is

acquitted of the charge to the extent of other offences mentioned in the challan. The other accused, **Raja Khabar Khan**, was sentenced to one year simple imprisonment under Section 147,APC alongwith fine of Rs.1000/- and in default of payment whereof, he shall have to undergo 15 days simple imprisonment, whereas he was acquitted of the charges to the extent of other offences mentioned in the challan. The benefit of section 382(B),Cr.P.C was extended in favour of both the convicts and the case to the extent of absconder accused-persons was kept in abeyance till their availability, vide the impugned judgment dated 29.11.2010. Feeling aggrieved and dissatisfied from the aforesaid judgment dated 29.11.2010, **Mohsin Gohar** and **Raja Khabar Khan**, convicts-appellants, filed Appeals for setting aside the convictions and sentences, whereas **Raja Muhammad Farid Khan**, complainant, filed Appeal for enhancement of sentences awarded to Raja Khabar Khan, convict-appellant and Reference under **Section 31 of the AJ&K Islami (Taazirati) Qawaneen Nafaaz Act, 1974**, has been sent by trial Court for confirmation of death sentence as 'Qisas' awarded to Mohsin Gohar convict, whereas the Revision Petition has been moved for shifting of the convict-appellant, Mohsin Gohar, from District Prison Kotli to District Prison

Muzaffarabad. The aforesaid three Appeals, Reference and Revision Petition are subject matter of the instant judgment.

ASSERTIONS OF CONVICT-APPELLANT:-

6. Mr. Tahir Aziz Khan, an erudite advocate for convict-appellant, Mohsin Gohar, submitted at bar verbal arguments on 07.11.2022. He contended that a false and fabricated case was registered against his client on 23.06.2009 in offences under Sections 302, 324, 506, 147, 148 & 149,APC at Police Station Danna and investigation of the case was partial and biased. Thereafter, a challan in offences under Sections 302, 324, 337-F(iii), 506, 447, 297, 147, 148, 149,APC and 13/20/65,AO was submitted before the concerned District Criminal Court Muzaffarabad, whereby after completion of trial, the learned Additional District Criminal Court Muzaffarabad delivered the impugned judgment dated 29.11.2010 by awarding death sentence as 'Qisas' as well as some minor sentences to his client Mohsin Gohar. He further asserted that the trial Court misread the facts, law and evidence in the instant case and passed a capricious, arbitrary and fanciful impugned judgment while overlooking and overlooking the facts and relevant law which amounts to miscarriage of justice. The learned Counsel agitated

that it was established from the record that prosecution could not prove its case but despite the same, the trial Court passed the impugned judgment against appellant. According to the learned Counsel, it was established from the prosecution's evidence that the prosecution suppressed and concealed true facts of the case with malafide intention, hence, whole case of the prosecution is a blend of blatant and flagrant lies besides major contradictions, therefore, the same fails to have the ring of truth. He submitted that prosecution witnesses made false improvements to implicate the appellant in the instant case and there are major contradictions in between the medical and oral evidence and even the reports of chemical examiner and Forensic Science Laboratory were not properly exhibited in evidence as per relevant law and procedure. He submitted that alleged recoveries in the instant case were false and fabricated. The learned Counsel further argued that impugned judgment was based on surmises, conjectures and suppositions while using the policy of pick and choose, rather, despite appearing glaring doubts in the prosecution's story, the impugned judgment was based on self-assumed presumptions and assumptions. He submitted that prosecution witnesses, Raja Abdul Qayyum Khan,

Raja Rizwan Zaffar and Raja Arif Khan are close relative of deceased and they are interested witnesses; therefore, their evidence is not reliable. The learned Counsel tenaciously stressed on the point that medical report and postmortem report do not support the prosecution's version as well as the statements of eyewitnesses; therefore, the prosecution has terribly failed to prove its case, eliciting acquittal of convict-appellant. He contended that motive for the commission of offence was stated to be splitting up with the wife of deceased, which could not be proved. He maintained that the manner of occurrence is disputed one. The learned Counsel pointed out that one of the nominated witness was not produced and one of the legal heirs has pardoned the convict-appellant, hence, the sentence of 'Qisas' has become ineffective and inoperative. He maintained that one of the witnesses has resiled from his statement. The learned Counsel submitted that there were a lot of contradictions and discrepancies in the prosecution's case, which makes its case doubtful, but the same were passed over by the trial Court when it awarded capital punishment to Mohsin Gohar, convict-appellant against the facts and circumstances of the instant case. The learned Counsel finally craved that by

accepting the appeal of his client and setting aside the impugned judgment dated 29.11.2010, he may very graciously be acquitted of the charges of alleged offences.

AVERMENTS OF COMPLAINANT:-

7. Conversely, Raja Muhammad Hanif Khan, an erudite advocate for complainant submitted his written arguments on 14.11.2022, wherein he submitted that the judgment of the trial Court dated 29.11.2010 may be upheld and sentence of death as 'Qisas' awarded to Mohsin Gohar may be confirmed. He further contended that during investigation, revolver, the weapon of offence, was recovered at the instance of accused, Mohsin Gohar, and the weapon of offence relating to Raja Khabar Khan, accused, was also recovered, which fully connect both the accused with the commission of offence. He agitated that prosecution produced P.Ws. Raja Muhammad Farid Khan, Raja Abdul Qayyum Khan, Raja Rizwan Zaffar, Raja Arif Khan, Raja Farooq Khan, Raja Fahad Khan, Raja Adeel Khan and police official witnesses Raja Sohail Khan, Raja Muhammad Siaz, Muhammad Yaseen Baig in support of its case; therefore, their evidence may kindly be taken into consideration. The learned Counsel pointed out that accused were examined under Section

342,Cr.P.C on 08.07.2010 and accused, Mohsin Gohar pleaded a specific case to the extent that he was injured due to the firing of one Taimoor and he also took a specific stance that deceased, Abid Khan, was done away with by the firing of one Taimoor Khan, but he did not prove the aforesaid plea by producing any defense evidence, while accused Khabar Khan did not adopt any plea and barely denied the occurrence, moreover, principal accused Mohsin Gohar adopted a stance that he will make a statement on oath under Section 340(2),Cr.P.C and his statement was recorded however, during cross examination he admitted the fact that he was granted an opportunity to produce defense witness but he could not produce the same. According to the learned Counsel, principal accused also admitted that he did not submit any report to the police station to the effect that occurrence was committed at some other place and that the principal accused with regard to the murder of Abid Khan, deceased, was Taimoor S/O Fareed Khan. The learned Counsel asserted that principal accused Mohsin Gohar levelled allegation against Raja Sohail Khan, the investigation officer, that he was in office, but the fact remains that during cross examination, he admitted that on the day of occurrence, Raja Sohail Khan was

not posted at the Police Station Danna and admitted that no proof of any nature has been produced to the fact that Mohsin Gohar has submitted any application levelling allegation against Raja Sohail Khan and Taimoor Khan and with regard to the aforesaid allegation against Raja Sohail Khan and Taimoor Khan, principal accused Mohsin Gohar stated at page 17 of his statement and admitted that he had no knowledge about the submission of an application at police Station, denial of SHO from preparing injury form and inserting report, rather those were told to him by Waleed Shahid, who was not produced as defense witness. The learned Counsel submitted that the trial Court considered the prosecution evidence as well as the defense version and arrived at the conclusion that Mohsin Gohar has committed murder of Abid Khan and convicted with the punishment of 'Qisas' under Section 302(a)APC, thus, the finding of the trial Court is perfect and in accordance with law. He contended that on behalf of the accused; in the cross examination, major portion of the prosecution witnesses were not cross examined and the trend of the cross examination on the part of the defense counsel was that the defense counsel accepts the crime committed by the accused and it is settled

principle that by not cross examining prosecution witnesses on material points is tantamount to accept the case of prosecution. According to the learned Counsel, the defense version that since the prosecution witnesses are relatives and thus inimical towards the accused; therefore, the evidence of the witnesses is not trustworthy, is not considerable because this Hon'ble Court and the Apex Court of India and Pakistan have laid down a comprehensive rule of law that mere relationship or the fact that a witness is interested, is not sufficient to discard the evidence for the reason that the defense cross examined the witnesses but no dent in the statement of the witness was found. According to the learned Counsel, the contention of the defense Counsel to the fact that the recoveries were not made properly and that the recovery witnesses were relatives, is not correct, because all the recoveries were made by the Police Officials, who are deemed to be impartial, hence, evidence of recovery witnesses who are relative cannot be discarded. The learned Counsel averred that the occurrence is supported by the report of Forensic Science Laboratory and other official evidence and said reports cannot be refuted. The learned Counsel maintained that the statements of eye-witnesses are affirmed by the

postmortem report and by the statement of Doctor who conducted the postmortem. The learned Counsel pointed out that on account of the trend of cross examination on the part of defense counsel, the prosecution's case was proved, because defense counsel did not confront the prosecution witnesses with their previous statements. The learned Counsel submitted that though the prosecution has proved motive yet when the occurrence is supported by the evidence of four prosecution witnesses and they were cross examined to a great length, likewise, the investigation officer, Raja Sohail Khan, was also cross examined to a great length, in view of the matter, the fact of proving motive has become immaterial. According to the learned Counsel, it is an essential principle of law in criminal justice that when the prosecution produced required number of witnesses for awarding punishment of 'Qisas' under Section 302(a),APC and that when the evidence of the prosecution witnesses were supported by the circumstantial evidence, likewise, the case of prosecution is supported by the Investigating Team, who was impartial, in this perspective of the matter, it is essential that the capital punishment of 'Qisas' should be awarded. The learned Counsel for complainant-appellant argued that arguments of the

learned Counsel for the defense before this Court were beyond the facts as well as the statements of the prosecution witnesses. He contended that evidence against Khabar Khan is sufficient to the extent that at the time of occurrence he was present on the spot and facilitated the principal accused Mohsin Gohar. The learned Counsel further contended that if Khabar Khan, accused, had not encouraged Mohsin Gohar at the time of occurrence, he could not commit the murder of Raja Abid. The learned Counsel submitted that the trial Court did not take into consideration the relevant portion of the eye-witnesses and the Court below had omitted to consider the portion of the evidence of eye-witnesses against Raja Khabar Khan, and, Raja Khabar Khan, who is equally responsible for committing murder of Raja Abid Khan; ought to be punished under Section 34,APC. The learned Counsel agitated that appeal against Raja Khabar Khan may be accepted and he may also be convicted for capital punishment. The learned Counsel pointed out that the sentence of 'Qisas' was inflicted upon Mohsin Gohar, accused, on 29.11.2010 and at that time, complainant as well as legal heir of Raja Abid Khan, deceased, namely Raja Muhammad Farid Khan was alive, who filed appeal for enhancement of sentence against Khabar Khan, accused, on

25.01.2011 and during pendency of an appeal, Raja Muhammad Farid Khan died on 17.01.2016, however, an application for impleading legal heirs of Raja Abid Khan, deceased, was submitted on 02.03.2020; therefore, aforementioned legal heirs may kindly be impleaded in the line of Appellants in the matter of appeal against Khabar Khan. The learned Counsel also pointed out that the punishment of 'Qisas' was inflicted on 29.11.2010 and appellant instituted the appeal before this Hon'ble Court in year 2010; however, at the time of punishment as well as at the time of institution of appeal, sons and daughters of Raja Abid Khan, deceased, were minor; however, an application for impleading them into the line of appellants was submitted through Mst. Shahida Begum, who was appointed Guardian of the person and property vide the order of District and Sessions Judge Muzaffarabad dated 30.08.2017, the same is part of the record of Application dated 02.03.2020 as Annexure-'RAA' and 'RAA/2'. The learned Counsel agitated that accused misled one of the daughters of Raja Abid Khan, deceased, namely, Minahil Abid and got her statement recorded to the effect that Minahil Abid entered into a compromise, but this statement of Minahil Abid was recorded in absence of any legal heir of Minahil Abid

and she was produced at the instance of accused and his counsel. The learned Counsel further agitated that the aforesaid statement of Minahil Abid cannot be considered in absence of her Guardian, Mst. Shahida Begum and be that as it may, the defense did not place any reliance upon the statement of Mst. Minahil Abid. The learned Counsel finally submitted that while rejecting the Appeals of convict-appellants, Mohsin Gohar and Raja Khabar Khan, the Reference submitted by the Additional District Criminal Court Muzaffarabad may be accepted, the sentence of 'Qisas' awarded under Section 302(a),APC may be confirmed, the appeal filed by Raja Muhammad Farid Khan through his legal heirs against Raja Khabar Khan may very benevolently be accepted and Raja Khabar Khan may be punished with capital punishment. The learned Counsel in support of his arguments placed reliance upon the following case law:-

- I. PLJ 1982 SC AJK 212.
- II. 1991 SCMR 2300.
- III. 1998 SCMR 1823.
- IV. 1999 SCMR 2438.
- V. PLD 1981 SC 635.
- VI. 2001 SCMR 1919.
- VII. PLD 1984 SC AJK 23.
- VIII. PLD 1984 SC AJK 35.
- IX. PLD 1989 SC AJK 63.
- X. 2001 P.Cr.L.J (SC AJK) 524.

- XI. 2002 P.Cr.L.J 196.
- XII. 2005 SCMR 195.
- XIII. 2003 SCMR 799.
- XIV. 2002 P.Cr.L.J 1856.
- XV. 2003 YLR 110.
- XVI. 2009 SCMR 1428.
- XVII. 2020 P.Cr.L.J 245.

8. In rebuttal, Mr. Tahir Aziz Khan, the learned Counsel for convict-appellant submitted legal precedents/law points with short reply against the written arguments of the learned Counsel for complainant. He submitted that detailed oral arguments on behalf of the convict-appellant Mohsin Gohar have been delivered before this Court on 07.11.2022 but the learned Counsel who filed written arguments on behalf of the late complainant did not appear in the arguments, therefore, this Court issued orders to file written arguments, furthermore, it is an admitted fact on record that prosecution has miserably been failed to prove its alleged case. He contended that many years ago, the complainant died during pendency of an appeal, upon which, after lapse of numerous years, the present learned Counsel filed various legally incompetent application for impleadment, however, it is quite surprising and astonishing rather illegal that the learned Counsel filed written arguments on behalf of complainant, who has already died many years before

the final hearing of this case on 07.11.2022. According to the learned Counsel, it is unfortunate that false attribution in the written arguments has been alleged towards the appellant's counsel as well as the appellant to this effect that the major legal heir "Minahil Abid" daughter of the alleged deceased Raja Abid was produced before this Hon'ble Court at the instance of respondents and his counsel despite the fact that admittedly Minahil Abid is a major young lady as per law/Sharia law, who is student of Medical University, and she duly being the competent legal heir of Raja Abid executed a valid compromise and forgave the appellant for the sake of Allah Almighty, even she appeared before this Court with her own free will and got recorded her statement dated 11.05.2022 in due process of law which is available on record. The learned Counsel contended that under gross misconception and misunderstanding of criminal law, the complainant alleged in the written arguments that case of the prosecution has been proved due to trend of cross examination which is not only factually incorrect but it also offends the basic principle of criminal justice/law, rather defense has properly cross examined the prosecution witnesses on all accounts. The learned Counsel agitated that trial Court convicted the appellant

with sentence of death as 'Qisas' under Section 302(a),APC, whereas Minahil Abid, the eldest major daughter of alleged deceased Raja Abid, has duly compromised and absolved the appellant for the sake of Allah Almighty, hence, the conviction and sentence of the appellant is liable to be set-aside under law laid down in **[2004 YLR 279]** and **[1995 MLD 563]**. The learned Counsel submitted that the prosecution/complainant with the help and connivance of SHO/Investigation Officer with due deliberation registered false, fabricated and delayed F.I.R, hence, the case of convict-appellant is duly supported by **2010 SCMR 97, 2004 SCMR 1185, 1977 P.Cr.L.J 1030, 1985 P.Cr.L.J 1951, 2001 YLR 1628, 2002 YLR 768, 1976 P.Cr.L.J 1122 & 1976 P.Cr.L.J 17**. The learned Counsel contended that motive is false and fabricated one which is not proved, even from the contents of the written arguments; it also admittedly stands proved that the alleged deceased did not divorce his wife. In support of the aforesaid argument he relied upon **2010 SCMR 97, 2013 MLD 1117, 2018 SCR 356, PLD 1999 Lah.56, 2010 P.Cr.L.J 926, PLD 1983 Lah.195, 2011 YLR 912-2157 & 2006 SCMR 1886**. According to the learned Counsel for convict-appellant, it is proved/erupted on record that the prosecution was aggressor party who not only

changed the place of occurrence but also changed the manner of occurrence just to fix innocent appellant among other which is duly proved from fact of non-recovery of the blood stained soil and report of serologist was not obtained. He placed reliance upon **2008 PLC SC AJ&K 06, 2010 YLR 2919 & 2008 SCR 1**. The learned Counsel pointed out that alleged deceased inflicted two 7mm bullet injuries to the appellant, hence, the appellant having two bullet injuries was unable to shot bullets to the deceased as duly supported by the prosecution's own evidence including injury report/Medical report of the appellant. He contended that brother of deceased inflicted bullet injury on the person of the deceased, but the prosecution concealed real facts and changed all the real facts through false, fabricated, planted and maneuvered witnesses even the prosecution with the help of SHO succeeded in a way by not registering a cross F.I.R/defense version despite of the registration of reports [duly exhibited] in the police station Danna. He further contended that from the record of the case, the plea of self/private defense is also duly proved as held in **1980 SCMR 273, 1996 P.Cr.L.J 1833, 1994 SCMR 1733 & 2013 P.Cr.L.J 872**. He submitted that in case of two explanations/versions, one favouring the accused shall be

preferred as held in **2015 YLR 1786, 2017 P.Cr.L.J 806 & 1999 P.Cr.L.J 1619**. The learned Counsel placed reliance regarding cross examination and its legal value/utilization, upon **PLD 2019 SC 64** and **2016 SCR 373**. The learned Counsel submitted that evidence of witnesses is contradicted by medical evidence on many aspects and thus is of no worth credence as well as contradictions are glaring between site plan and medical evidence. He further submitted that account given by eye-witnesses regarding distance from where injury was caused was contradicted by medical evidence. In support of the aforesaid argument, he placed reliance upon **PLD 1982 Lah.577, 2001 P.Cr.L.J 845, 1985 P.Cr.L.J 1097, 2008 SCR 1, 2007 SCR 100** and **2015 P.Cr.L.J 585**. The learned Counsel maintained that recoveries are trumped up, even the recovery of alleged pistol was shown to be taken into possession from a place accessible to the public and complainant party as well as from the open place, and; witnesses are close relatives who belong to far flung area, and furthermore one of the prosecution witnesses "FAIQ" of alleged recovery i.e. pistol resiled from his already introduced fake statement by filing written application and affidavit before this Court. In support of the aforesaid argument, he relied upon

2011 SCMR 1127, PLJ 1994 SC 130, 2005 MLD 512 and 2006 YLR 3147. He submitted that recovery of empty and live bullet was not shown in the inquest report and he placed reliance upon **2001 P.Cr.L.J 51.** The learned Counsel contended that no effort was made by prosecution witnesses qua claim of the indiscriminate firing that too when none of the alleged witness injured. He placed reliance upon **PLJ 2006 Cr.Lah.1194** and **2010 SCMR 385.** The learned Counsel, regarding concocted false story and concealing facts, placed reliance upon **1999 SCMR 1220, 2010 SCMR 1706, 2011 YLR 885, 2010 YLR 706, 2010 SCMR 97** and **2011 P.Cr.L.J 904.** The learned Counsel submitted that prosecution story did not corroborate firearms report, the accused sustained injury, on the very first day a counter version was pleaded by the accused and investigation officer was legally obliged to consider the probe, but with the help of his relative/complainant side, he falsely fixed the innocent appellant. In support of aforesaid argument, he placed reliance upon **PLD 2008 SC AJ&K 6.** He contended that defense plea is to be in juxtaposition and prosecution version is not consistent with medical evidence and moreover, recovery was made with delay. He placed reliance upon **1993 SCMR 417, PLJ 1993 SC 91 & 2006**

SCR 58. He cited **2001 SCMR 424** and contended that site plan is fabricated one because it was not prepared on the pointation of witnesses. He referred to **1968 P.Cr.L.J 321** and submitted that witnesses falsely implicated accused and experts' reports were not exhibited. He cited **2009 SCR 184** on the point of expectation of life. The learned Counsel, on the points of inimical witnesses, related witnesses and improvements, cited **1994 P.Cr.L.J 999, PLD 1963 Kar 805, 1976 P.Cr.L.J 243, 1985 P.Cr.L.J 1097, 2008 SCR 345** and **2008 SCMR 6.** He submitted that portions/statement of accused not challenged during cross examination, should be considered to be admitted and placed reliance upon **2008 SCR 46, 2004 YLR SC AJ&K 1664, 2002 SCR 288, PLD 1991 SC 520 and PLD 2020 SC 201.** He contended that if incriminating evidence, statement, report of any other incriminating material of prosecution evidence is not put to the accused under Section 342,Cr.P.C then the same shall not be treated or considered for the purpose of conviction and cited case law **2016 SCR 373, 2016 SCMR 267 and 2016 P.Cr.L.J 820** in support of the aforesaid contention. The learned Counsel contended that the prosecution with the help of SHO/IO played fraud and withheld most important witness who was entered in

an F.I.R and in support of the aforesaid argument, he placed reliance upon **2006 SCMR 1846, 2003 SCR 269 and 2010 SCMR 385**. The learned Counsel while relying upon **2009 SCR 390** and **1971 SCMR 357** submitted that where two versions/ possibilities are found in the evidence, the one more favourable to the accused must be accepted. He cited **2010 SCMR 1592** and **2010 SCMR 1706** with the submission that burden of proof beyond a reasonable doubt is always on the prosecution. The learned Counsel lastly on the point of benefit of doubt and Onus Probandi placed reliance upon **2010 SCMR 1592, 2010 SCMR 1706, 2009 SCMR 230, 2008 YLR 1595, 2011 YLR 2157** and **2019 SCR 149**.

9. The learned Advocate General appearing on behalf of the State has fully owned and supported arguments of the learned Counsel for complainant-appellants and submitted for awarding punishments to the convict-appellants under relevant law in light of the facts and circumstances of the instant case.

10. We have attended to each and every argument advanced, (both verbal and written) have perused the entire documentary material produced and have also gone through all

the precedent cases cited before this Court besides brooding over the diverse aspects of this case from all possible angles.

11. Da capo, it is pertinent to observe here that after the death of Raja Abid Khan, deceased, two separate applications were moved by his legal heirs for arraying them as party, however, they could not be impleaded in the line of complainant-appellant side; therefore, legal heirs of Raja Abid Khan, deceased, listed in Appeal No.05/2011,20/2017, are hereby impleaded in the line of complainant-appellants.

12. The facts of the prosecution's case have been listed in earlier part of the instant judgment, therefore, for the sake of brevity, the same need not to be reiterated. Suffice it to observe here that on the complaint of Raja Farid Khan S/O Raja Sarbuland Khan a case under F.I.R No.23/2009 in offences under Sections 302, 324, 147, 148, 149 & 506, A.P.C was registered at Police Station Danna on 23.06.2009 against (1) Mohsin Gohar, (2) Hassan Gohar, (3) Saleh Sultan, (4) Siama, (5) Faiza Gohar, (6) Khabar Khan, (7) Sheraz and (8) Neelum Gohar, with the allegation that they having been armed with firearms, hatchets and clubs, had waylaid him and launched a murderous attack upon his son Raja Abid Khan. The complainant further leveled

allegation that **Hassan Gohar**, convict-appellant, inflicted a hatchet blow upon the head of Abid, whereas other accused-persons Saleh Sultan, Faiza Gohar, Siama, Sheraz and **Raja Khabar Khan**, who were armed with clubs, attacked upon Abid by hurling abuses and started beating him, consequently, he fell on the ground then and there and after a few minutes, when his son Abid got up and tried to come towards the house with the purpose of saving his life, in the meantime, **Mohsin Gohar**, convict-appellant, who was armed with a Pistol, shot at him, which perched on left side of his back, due to which, he died on the spot. Meanwhile, Neelum Gohar, accused, brought a 7MM rifle from her house and handed it over to her brother Hassan Gohar, accused, with which he fired indiscriminate bullets, in result whereof, his brother **Mohsin Gohar**, convict-appellant, also received injuries and fell down. After completion of investigation, a challan in offences under Sections 302, 324, 337-F(iii), 506, 297, 447, 147, 148, 149,A.P.C and 13/20/65,AO, was submitted against **Mohsin Gohar** and **Raja Khabar Khan** before District Criminal Court Muzaffarabad, which was entrusted to Additional District Criminal Court, Muzaffarabad, whereas proceedings under Section 512,Cr.P.C against other accused-

persons were commenced, by the trial Court vide order dated on 25.09.2009. The Additional District Criminal Court Muzaffarabad, after conclusion of trial and hearing arguments of the learned Advocates for the parties, awarded death sentence as 'Qisas' under Section 302(a),APC, to **Mohsin Gohar**, convict-appellant, vide the impugned judgment dated 29.11.2010. He shall have to pay compensation under section 544,Cr.P.C to the legal heirs of deceased and in default of payment whereof he shall have to undergo six (6) months simple imprisonment. He was further sentenced to two years rigorous imprisonment under Section 13/20/65,AO alongwith fine of Rs.1000/- and in default of payment of fine, he shall have to undergo 15 days simple imprisonment. He was also awarded one year simple imprisonment under section 147,APC and two years simple imprisonment under Section 148,APC. While other convict-appellant, **Raja Khabar Khan**, was sentenced to one year simple imprisonment under Section 147,APC alongwith fine of Rs.1000/- and in default of payment whereof, he shall have to undergo 15 days simple imprisonment, whereas he was acquitted of the charges to the extent of other offences mentioned in the challan. The benefit of section 382(B),Cr.P.C was extended in favour of

both the convicts and the case to the extent of absconder accused-persons was kept in abeyance till their availability, vide the impugned judgment dated 29.11.2010, which has been called in question by both the parties through the titled appeals. Thus, we shall have to decide the instant case to the extent of convict-appellants, **Mohsin Gohar** and **Raja Khabar Khan** only.

13. According to the learned Counsel for convict-appellant, it is unfortunate that a false attribution in the written arguments has been alleged towards the appellant's counsel as well as the appellant to this effect that the major legal heir "Minahil Abid" daughter of the alleged deceased Raja Abid was produced before this Court at the instance of respondents and his counsel despite the fact that admittedly Minahil Abid is a major young lady as per law/Sharia law, who is the student of Medical University, and she duly being the competent legal heir of Raja Abid executed a valid compromise and forgave the convict-appellant for the sake of Allah Almighty, even she appeared before this Court with her own free will and recorded her statement dated 11.05.2022 in due process of law which is available on record. A minute perusal of record reveals that Minahil Abid D/O Raja Abid Khan, deceased, appeared before

this Court on 11.05.2022 and recorded her statement stating therein that she has forgiven Mohsin Gohar, convict-appellant, in the name of Almighty Allah. It is imperative to observe here that the instant case was subjudice before the Division Bench constituted by the Hon'ble Chief Justice, but the aforesaid statement of Minahil Abid was recorded by Single Bench of this Court, which is defective in the light of dogma laid down by the Hon'ble Apex Court of AJ&K in case titled **Sub. Major Fazal Ellahi v. The State** (NLR 1981 SCJ 207), wherein in it was observed as under:-

“In the present case, it is not disputed that the Division Bench comprising two Judges was hearing the acquittal appeal before which the surety bond for appearance of the accused had been executed by the appellant. The Court in this case, therefore, would mean the Division Bench and not the learned Single Judge. For that reason, we find that the order passed by the learned Single Judge is without jurisdiction and not supportable in law. The appeal is, therefore, accepted, the order under appeal is set-aside and the case remanded for its rehearing by the Court and passing proper order in accordance with law. The appellant will appear before the High Court on 18.4.78.”

Moreover, Minahil Abid, the said legal heir of deceased, moved another application before this Court on 03.10.2022 stating therein that Mohsin Gohar, convict-appellant, and other fugitive

accused-persons while extending life threats got recorded her previous statement for compromise forcibly, which ought to be rejected and her new/fresh statement be recorded. In this manner, she has retracted from her earlier/previous statement dated 11.05.2022. In view of above scenario, the instant case is being decided on merits instead of considering the aforesaid earlier statement of Minahil Abid.

14. Be that as it may; in Criminal Justice System, each and every case is to be decided on its own facts and particular circumstances. Let us have a look upon the term "Crime". Crime consists in a violation of human laws; vice is a violation of moral law, sin is a violation of the divine law, sin therefore, comprehends both crime and vice but there are many sins which are neither crimes nor vices. Crimes are tried before human Courts and punished agreeably to the sentence of the Judge. The formers are punished in this world while the latter are punished in the world to come, by the sentence of the Almighty Allah.

15. So far the offence of murder is concerned, it is always to be kept in mind that to deprive a soul from his/her life is most sinful, perhaps most reprehensible act, as the death of one human being is death of the whole humanity. In this regard,

reliance is placed on Sura Al-Maidah; Sura number-5, Verse number-32 of the Holy Quran i.e. final revelation of Allah to mankind, wherein the strongest condemnation of killing a man has been made by Allah himself after telling the story of Cain (Habeel) and Abel (Qabeel):-

”مَنْ أَجْلٍ ذَاكَ كَتَبْنَا عَلَىٰ بَنِي إِسْرَائِيلَ أَنَّهُ وَمَنْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أُورِثَ فِي الْأَرْضِ فَكَانَ قَتَلَ
النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَانَ مِثْلَ مَا أَحْيَاهَا النَّاسَ جَمِيعًا وَلَقَدْ جَاءَتْهُمْ رُسُلُنَا بِالْبَيِّنَاتِ ثُمَّ ان كَثِيرًا مِنْهُمْ بَعْدَ
ذَلِكَ فِي الْأَرْضِ لَمُسْرِفُونَ“ (٢٣)

Translation:

That is why we ordained for the children of Israel that whoever takes a life—unless as a punishment for murder or mischief in the land—it will be as if they killed all of humanity; and whoever saves a life, it will be as if they saved all of humanity. Although our Messengers already came to them with clear proofs, many of them still transgressed afterwards through the land.¹
(underlining for emphasis)

16. In the words of scholar Muhammad Asad, the expression “we decreed to the Children of Israel” does not detract from the universal validity of this moral: it refers merely to its earliest enunciation. The Quran tells us that human life is sacred and cannot be taken in a manner that is unjust and

¹. <http://quran.com> > al-maidah

unlawful. The Islamic faith holds the life of one person to be equal to that of the entire humankind. The sanctity of human life is an essential corollary to the dignity that Allah has bestowed upon humankind. Allah has created homo sapiens with a definite preference over His other creations. In Sura Al-Isra; sura number 17, verse number 70, the Holy Quran; which is a completion and confirmation of previous scriptures; states:-

”ولقد كرمنا بنى ادم وحملناهم فى البر والبحر ورزقناهم من الطيبات وفضلناهم على كثير ممن خلقنا تفضيل“ (٤٠)

Translation:

(17:70) Indeed, We honoured the progeny of Adam, and bore them across land and sea and provided them with good things for their sustenance, and exalted them above many of Our creatures.² (underlining for emphasis)

Islam accords a very high status to humankind as Allah has created humanbeings as His successive authority or vicegerent on earth. Verse 30 of Sura Al Baqrah says:-

”واذ قال ربك للملكة انى جاعل فى الارض خليفة قالواتجعلى فيها من يفسد فيها ويسفك الدماء و نحن نسبح بحمدك وتقديس لك قال انى اعلم لا لاتعلمون“ (٣٠)

Translation:

² . Islamicstudies.info > Tafheem.net

Just think when your Lord said to the angels: “Lo! I am about to place a vicegerent on earth,” they said “Will you place on it one who will spread mischief and shed blood while we celebrate yours glory and extol your holiness?” He said: “Surely I know what you do not know.”³ (underlining for emphasis)

17. According to the teachings of the holy Book, a person’s life can be taken only as a death sentence for murder after the completion of due process of law or in a just, defensive war called jihad. For no other reason does the Islamic faith allow a Muslim to kill any person – be it a believer or a non-believer, a ‘good’ Muslim or a ‘bad’ Muslim.

18. The sayings and practice of our beloved Prophet Muhammad (blessings be upon Him and His Family) reinforce the sanctity of human life. In His sermon at Haj, the Prophet (PBUH) announced that the lives, property and honour of all people are sacred in the same way as Makkah and Islam’s religious symbols are sacrosanct.

Life of human being is a precious gift of Almighty Allah, the Creator of Universe, and no one can be allowed to snatch it away through his/her vicious act, but simultaneously, mere accusation

³. Tafheem-ul-Quran – Abul Ala Maududi

or attribution of offence per-se is not sufficient to punish someone. For commission of an offence, thereby awarding punishment, prosecution has to prove the case in this regard without any shadow of doubt, by producing cogent and concrete evidence without any slightest dent. Islamic law recognizes three categories of crime (i) 'Hudood', (ii) 'Tazir' and (ii) 'Qisas', which are briefly defined below:-

- i. '**Hudood**'; ---'Hudood' is plural form of word 'Hadd' and 'Hadd' means the punishment which is fixed and imposed as the right of Allah Almighty preserved by Quran, Sunnah and Ijma.
- ii. '**Tazir**'; ---'Tazir' is the punishment of crime for which Shariah has not proved the fixed sentence.
- iii. '**Qisas**'; ---The word 'Qisas' or retribution has been defined to mean punishment by causing similar hurt to the part of the body of the convict as has been caused to the victim or by causing death.

The cardinal principle of 'Qisas' is equality or similarity. It aims to cause similar hurt to the same part of the body of the convict.

Qisas is an Islamic term interpreted to mean to retaliation in kind, eye for an eye or retributive justice. In classical Islamic law (Sharia), the doctrine of qisas provides for punishment analogous to the crime. The guiding verse for implementation of Qisas in Islam is Al-Baqarah; verse number 178, i.e.:-

”يا ايها الذين ءامنو كتب عليكم القصاص فى القتل الحى والعبد بالعبد والانثى بالانثى. فمن عفى له من اخيه شىء فاتباع بالمعروف واداء اليه باحسن.. ذالك تخفيف من ربكم ورحمة.. فمن اعتدى بعد ذالك فله عذاب اليم“ (١٤٨)

Translation:

O believers; The law of retaliation is set for you in cases of murder – a free man for a free man, a slave for a slave, and a female for a female. But if the offender is pardoned by the victim’s guardian, then blood-money should be decided fairly and payment should be made courteously. This is a concession and a mercy from your lord. But whoever transgresses after that will suffer a painful punishment.⁴

The following are the cases where 'Qisas' can be imposed:-

⁴ . Quran.com

- (1) Premeditated Murder (Intentional Murder).
- (2) Quasi Premeditated Murder (i.e. Quasi Intentional Murder).
- (3) Wounds.

Premeditated Murder (Intentional Murder); In Arabic it is called 'Qatl-e-Amd'. It means the murder in which one intentionally kills a human being while being aware that his blood is inviolable by attacking him with something fatal. According to Blackstone, English common law identifies murder as a public wrong. According to common law, murder is considered to be malum in se, that is, an act which is evil within itself.

Quasi Premeditated Murder (Quasi Intentional Murder); According to Fuqaha, Quasi Premeditated murder occurs when someone kills another with the intention of causing him harm or injury which in the ordinary course of nature won't cause death. Such a cause is regarded a Quasi premeditated murder where the murderer's purpose is aggression, as the offender exceeds the limits in doing so until result of death. It is called Quasi Premeditated Murder as the perpetrator just intends harm or injury, but he unintentionally kills the victim.

'Qisas' for Wounds; The 'Qisas' is to be carried out for following types of wounds, (A) Itlaf-i-Udw, (B) Itlaf-i-Salahiyyat-i-Udw and (C) Shajjah-i-Mudihah.

19. Crime control and administration of Justice are handled by the Criminal Justice System. The Criminal Justice System is composed of three primary and discernible components: Police, Courts and corrections. These components are sometime referred as Subsystems.

20. The main contention of the learned Counsel for convict-appellant is that the trial Court misread the facts, law and evidence and recorded a capricious, arbitrary and fanciful impugned judgment by overlooking and overlooking the facts and relevant law ensuing to the miscarriage of justice. A perusal of the impugned judgment reveals that the trial Court discussed the evidence in detail; however, in the interest of justice, we would like to have a glance upon evidence. Raja Muhammad Farid Khan, complainant-P.W, deposed before the trial Court in his statement dated 11.11.2009 that on 23.06.2009, at about 9:30am, his son Raja Abid Khan was going to Muzaffarabad in connection with his personal work and when he was at the

distance of few steps away from his house, accused-persons, Hassan Gohar, **Mohsin Gohar**, Saleh Sultan, Faiza, Siama, **Khabar**, Sheraz and Neelum Gohar, who, having been armed with firearms, hatchets and clubs, had waylaid him thereby, launched an attack upon his son (Raja Abid Khan). Hassan Gohar, accused, inflicted a hatchet blow upon the head of Abid, whereas other accused-persons Saleh Sultan, Faiza Gohar, Siama, Sheraz and Khabar Khan, who were armed with clubs, attacked upon Abid with the intention of slaying, in consequence of which, he fell on the ground. After few minutes, when his son (Abid) got up and tried to come towards the house with the purpose of saving his life, accused-persons Hassan Gohar, Saleh Sultan, Khabar and Sheraz again started beating him, in the meantime, **Mohsin Gohar**, accused, who was armed with a Pistol, shot at Abid, which perched on his back, and he died on the spot. Meanwhile, Neelum Gohar, accused, brought a 7MM rifle from her house and handed it over to her brother Hassan Gohar, accused, with which he fired indiscriminate bullets, in result whereof, his brother Mohsin Gohar, accused, also received injuries and fell down. He further deposed that accused-persons continued to torture the corpse and also danced to desecrate

the same. He stated that by taking the advantage of firing, accused-persons managed to take to their heels. The witness also deposed that Raja Abid, deceased, was serving as Subject Specialist in Education Department, who had divorced his wife Mst. Irram D/O Saleh Sultan in the month of April and because of this grudge, accused were behind the life of his son and finding an opportunity, they bumped off his son today. He further deposed that besides him, the occurrence was witnessed by Muhammad Munsif Khan, Rizwan Zaffar, Raja Abdul Qayyum Khan and Muhammad Arif Khan, and, in addition to that, many other people were also present at the spot. The witness stated that he had already rancor with accused-persons because they had removed trees from his land. He further deposed that accused-persons had launched a murderous assault upon Abid, deceased, who was performing his official duty in High School Kacheeli in year 1998, thereupon, an F.I.R was registered at Police Station Danna. He stated that accused were professional criminals, against whom more than a dozen F.I.Rs. had been registered at Police Station Danna. He deposed that after occurrence he went to Police Station and got registered an F.I.R.

21. Raja Abdul Qayyum Khan, Raja Rizwan Zaffar and Raja Arif Khan have also been cited as eye-witnesses in the instant case; therefore, it would be apropos to ascertain whether they have corroborated the prosecution's story as stated by Raja Farid Khan, complainant? Raja Abdul Qayyum Khan, P.W. deposed in his statement dated 02.01.2010 that now-a-days he is posted in Higher Secondary School Barsala and on 23.06.2009 he was present in Kacheeli at the residence of Farid Khan when at about 9:30am Abid, deceased, was going to Muzaffarabad in connection with his personal work and when he was at the distance of few steps away from his house, meanwhile, accused-persons, Hassan Gohar, **Mohsin Gohar**, **Khabar Khan**, Sheraz, Saleh Sultan, Faiza, Siama and Neelum Gohar, who had waylaid deceased and they were armed with firearms and clubs and Hassan accused had hatchet in his hand, they launched an attack upon Abid Khan with the intention to kill him. He deposed that Hassan Gohar, accused, inflicted a hatchet blow upon the head of Abid, who fell down, and when Abid tried to go back home, the accused-persons again attacked upon him with clubs and hatchets, in the meantime, **Mohsin Gohar**, accused, shot Abid with pistol, which perched on left side of his back, who fell down.

Meanwhile, Neelum Gohar, accused, brought a 7MM rifle from her house and handed it over to her brother Hassan Gohar, accused, who fired indiscriminate bullets, in result whereof, his brother Mohsin Gohar, accused, also received injuries and fell down.

22. Raja Rizwan Zaffar, P.W., deposed in his statement recorded before the trial Court on 25.01.2010 that he had gone at the home of Abid on 23.06.2009, the day of occurrence, and in the morning at about 9:30am Abid departed from home to Muzaffarabad and when he was few steps away from his house, he (witness) heard a noise, thereupon, he saw that accused-persons Mohsin Gohar, Raja Khabar, Raja Sheraz, Hassan Gohar, Saleh Sultan, Siama, Faiza and Neelum started beating Abid with clubs, sticks, hatchets and firearms. Accused Hassan Gohar inflicted a hatchet blow upon the head of Abid, who by receiving injury, fell down, and when Abid tried to go back home, the other accused-persons intercepted him, in the meantime, **Mohsin Gohar**, accused, shot Abid with pistol, which perched on left side of his back, who fell down and passed away. Meanwhile, Neelum Gohar, accused, brought a 7MM rifle from her house and handed it over to her brother Hassan Gohar, accused, who

fired indiscriminate bullets, in consequence whereof, his brother Mohsin Gohar, accused, also received injuries and fell down.

23. Raja Muhammad Arif S/O Raja Muhammad Farid Khan, P.W., deposed in his statement recorded on 08.02.2010 that on 23.06.2009 at about 9:30am he was at the home of his father and Abid deceased was going to Muzaffarabad, when he was at the distance of few steps away from his house, accused-persons, Hassan Gohar, **Mohsin Gohar**, **Khabar**, Sheraz, Saleh Sultan, Siama, Faiza and Neelum Gohar, who, having been armed with firearms, hatchets and clubs, had waylaid deceased. Hassan Gohar, accused, inflicted a hatchet blow upon the head of Abid, whereas other accused-persons were beating Abid with sticks and clubs, due to which, he fell down and after a while when Abid tried to go back home, accused-persons Hassan Gohar, Khabar, Sheraz and Saleh Sultan intercepted him, meanwhile, **Mohsin Gohar**, accused, who had a revolver in his hand, shot at Abid, which perched on left side of his back, and he fell down and died on the spot. In the meantime, Neelum Gohar, accused, brought a 7MM rifle from her house and handed it over to her brother Hassan Gohar, accused, with which he fired indiscriminate bullets, in result whereof, Mohsin Gohar, accused,

also received injuries and fell down. He further deposed in his statement that some time ago Abid deceased had divorced his wife Irram, who was real sister of Hassan Gohar and Mohsin Gohar, due to which, they had become his enemy.

24. A minute perusal of the evidence of above eye-witnesses makes it crystal clear that they are unanimous on the point that Mohsin Gohar, convict, fired a pistol shot upon left side of the back of Abid deceased and they have also unanimously deposed that Khabar, accused, battered deceased with club/stick. The aforesaid eye-witnesses were cross examined at length by the defense side but an adverse assertion could not be detected from the lengthy cross examination, rather they fully corroborated the prosecution's story.

25. The contention of the learned Counsel for convict-appellant that prosecution witnesses, Raja Abdul Qayyum Khan, Raja Rizwan Zaffar and Raja Arif Khan are close relative of deceased, who are interested witnesses; therefore, their evidence is not reliable, has been taken into consideration. Suffice it to say that mere relationship per se is not sufficient to throw out the case of prosecution. Our aforesaid view finds support from the following case law ***titled Liaquat Ali & 2 others***

V. Raja Shahid Nawaz & 2 others (2006 SCR 365), wherein it was

laid down as under:-

“The defense has not come up with any specific case as to how the prosecution witnesses were injured on the day. The only case which was set up in the cross-examination was that the complainant party was inimical towards the accused persons on account of litigation which was going on between the said parties in the Court of law and further that the prosecution witnesses were closely related to deceased Muhammad Alam. Mere relationship per se is not sufficient to throw out the case of the prosecution. In the same way on the basis of strained relations between the complainant and accused party, the prosecution case cannot be held concocted and fabricated. The grain has to be sifted out of chaff.”

In the case of “Masalti v. State of U.P.” reported as **[AIR 1965 SC 202]**, it was held at para 14:-

“But it would, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses... The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.”

In another case titled “Parmeshwar Das alias Bhura v. State of M.P.” (Crl.A.No.360 of 2011, decided on 26th of April, 2022), it was laid down:-

“In criminal cases, it is often the case that the offence is witnessed by a close relative of the victim, whose presence on the scene of the offence would be natural. The evidence of such a witness cannot automatically be discarded by labeling the witness as interested.”

In such state of affairs, the aforesaid contention of the learned Counsel for convict-appellant is deterred.

26. Now we advert to the other pieces of evidence i.e. postmortem report of Muhammad Abid Khan, deceased, dated 23.06.2009 and report of Punjab Forensic Science Laboratory Lahore. During examination, concerned Doctor found the following injuries on the person of Abid deceased.

1. “Penetrating wound (hole) 1cm round on left lateral side of the chest posterior border at 5th inter costal space. No corresponding exit wound present.
2. 2” lacerated wound on posterior part of head.
3. 2½” lacerated wound on frontal area of head.
4. Multiple linear bruises on left shoulder and arm.
5. Multiple linear bruises on left leg.”

Dr. Naseer Ahmad Shaikh, Legal Surgeon/Medical Officer AK CMH Muzaffarabad after conducting postmortem of the corpse stated the cause of death as under:-

“The cause of death is bullet injury left side of the chest causing damage to left lung and rupture of aorta resulting into profuse bleeding and hemorrhagic shock and immediate death. The other blunt linear injuries were antemortem caused by linear blunt weapon like wooden stick. The immediate death resulted from fatal bullet injury in chest.”

According to the opinion of Syed Mazhar Ali Examiner of Firearms FSL Lahore, “The crime empty of 32 bore marked as C was examined & compared with the test empties prepared from the revolver of 32 bore body signed and it was found that the crime empty of 32 bore marked as C HAD BEEN FIRED from the revolver of 32 bore body signed.” Therefore, the aforesaid postmortem report, opinion of doctor as well as opinion of Examiner FSL Lahore fully corroborate the oral account of eye-witnesses and strengthen the prosecution’s case.

27. Motive setup by the complainant is that as the deceased Raja Abid Khan had divorced the real sister of accused Mohsin Gohar and Hassan Gohar that is why animosity was developed in shape of hatred and rivalry culminating in doing away with Abid, which was proved by the prosecution; however, the learned Counsel for convict-appellant agitated that motive

was not proved by the prosecution; therefore, capital punishment cannot be awarded. It is pertinent to observe here that when a case is primarily based on ocular evidence, it is not necessary to prove motive. The aforesaid view is fortified from the case reported as ***Abdul Rashid and 3 others V. Abdul Ghaffar and 5 others (2001 SCR 240)***, wherein it was observed as under:-

“It may also be pointed out that this is a well settled principle of law that if a case is primarily based on ocular evidence, it is not necessary to prove motive. A reference may be made to the following authorities:-

In a case reported as Muhammad Ramzan V. The State [NLR 1992 Cr.L.J. 82], it was held that mere absence of motive was no ground to doubt the truth of prosecution case.

In a case reported as State/Government of Sindh v. Sobharo [NLR 1993 SCJ 385], it was observed that absence or weakness of motive would not come in the way of prosecution if the case is otherwise proved by reliable evidence.

In a case reported as Shabbir Ahmad V. The State [1997 SCR 206], it was held that motive was not a sine quo non for proving the offence of murder.”

Therefore, argument of the learned Counsel for convict-appellant relating to the non-proving of motive stands repelled. Furthermore, it is worthwhile to mention that in order to appreciate or re-appreciate the evidence particularly in murder cases, quality of evidence rather than quantity should be given weightage and, in this connection, evidence of only a single trustworthy and confidence-inspiring witness is suffice for the purpose of awarding capital punishment. In this regard, the ready reference is Muhammad Mansha V. The State [2001 SCMR 199] as well as [PLD 1980 SC 225].

28. The case in hand pertains to daylight occurrence. The place, day, time and manner of occurrence is admitted. The presence of convict-appellant at the place of occurrence is not only admitted on the part of convict-appellant but he also received injuries during occurrence. The convict-appellant also recorded his statement before the trial Court on 04.11.2010 wherein he deposed that during occurrence, Raja Farid Khan by raising 'Lalkara' asked Abid and Taimoor to slay all of them, thereupon, Abid shot at him with 7MM rifle due to which he received injuries on left arm and left side of his belly. He also deposed that during occurrence, Taimoor S/O Raja Farid Khan

shot at Hassan (bother of convict) with 30-bore pistol, which, by chance, hit at the back of Abid. It is significant to observe here that not only eye-witnesses deposed that deceased Abid received firearm injury on his back but convict-appellant also deposed that Abid received injury at his back; however, he narrated different story that deceased received firearm injury at the hands of his brother Taimoor, which is not believable because all eye-witnesses have categorically and unambiguously deposed that Abid deceased received firearm injury at the hands of convict-appellant Mohsin Gohar. Moreover, the role attributed to Mohsan Gohar and Khabar Khan, convicts-appellants during occurrence, is corroborated by the trustworthy, cogent and convincing evidence of prosecution and the trial Court discussed each and every aspect of the matter in light of evidence; therefore, we are inclined to maintain sentences awarded to the aforesaid convicts-appellants by the Additional District Criminal Court, Muzaffarabad, vide impugned judgment dated 29.11.2010.

EPITOME OF THE INSTANT CASE:-

29. By maintaining the impugned judgment of the Additional District Criminal Court, Muzaffarabad, dated

29.11.2010, the appeals filed by convicts-appellants Mohsin Gohar and Khabar Khan, for setting aside their sentences, and counter appeal filed by Raja Farid Khan, complainant, for enhancing the sentences awarded to Khabar Khan, convict, are hereby dismissed. The reference sent by the trial Court under **Section 31 of the AJ&K Islami (Taazirati) Qawaneen Nafaaz Act, 1974**, for confirmation of death sentence of Mohsin Gohar, convict, is answered in affirmative in terms of **Section 31 of the AJ&K Islami (Taazirati) Qawaneen Nafaaz Act, 1974**. The revision petition filed for shifting Mohsin Gohar, convict-appellant, from District Prison Kotli to Central Prison Muzaffarabad stands dismissed. The copies of the instant judgment shall be annexed with other relevant appeal files as well as with Reference file.

Circuit Mirpur,
10.02.2023.

JUDGE

JUDGE

Note:- Judgment is written and duly signed. Deputy Registrar Circuit Mirpur is directed to transmit this file alongwith judgment in the sealed envelope to headquarter Muzaffarabad, forthwith and Deputy Registrar (Judicial) Muzaffarabad is directed to intimate the parties or their counsel after due notices.

JUDGE

JUDGE

Approved for Reporting.