HIGH COURT OF AZAD JAMMU AND KASHMIR

(Shariat Appellate Bench)

Criminal appeal No.53/20 (old), 10/23 (new)
Date of institution 20.10.2020 (old) 18.04.2023(new)
Date of Decision 05.05.2025

1. Sobidar Manzoor Hussain,
2. Nazakat Hussain S/o Matloob Hussain,
3. Matloob Hussain sons of Pehalwan Khan caste Gujjar R/o Hud Potha Tehsil Sehnsa District Kotli.

Appellants.

VERSUS.

1. The State through Khurshid S/o Muhammad Iqbal Caste Jogi R/o Hud Potha Tehsil Sehnsa District Kotli.
2. Additional Advocate General.

Respondents.

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CRIMINAL APPEAL

(2). Criminal Appeal No.17/2020
Date of institution 10.12.2020

Khurshid S/o Muhammad Iqbal Caste Jogi R/o Hud Potha Tehsil Sehnsa District Kotli.

Appellant.

VERSUS.

1. Makhni Begum w/o Matloob,
2. Zaib-un-Nisa w/o Manzoor Hussain,
3. Kousar w/o Latif,
4. Zareena W/o Khadim Hussain,

5. Habib-ur-Rehman S/o Muhammad Hassan,
6. Sajid Hussain S/o Manzoor Hussain,
7. Qasim Khan S/o Dil Pazeer Caste Gujjar R/o Hud Potha Ranjot Tehsil Sehnsa District Kotli.

Respondents.

8. Additional Advocate General Kotli.

Proforma-respondent.

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CRIMINAL APPEAL

(3). Criminal reference No.52/20 (old) 11/23 (new)
Date of institution 20.10.2020 (old) 18.04.2023 (new)

The State through Khurshid S/o Muhammad Iqbal Caste Jogi R/o Hud Potha Tehsil Sehnsa District Kotli.

Complainant.

VERSUS

1. Sobidar Manzoor Hussain,
2. Matloob Hussain sons of Pahelwan Khan
3. Nazakat S/o Matloob caste Gujjar R/o Hud Potha Tehsil Sehnsa District Kotli.

Respondents.

REFERENCE MADE BY THE LEARNED ADDITIONAL DISTRICT COURT OF CRIMINAL JURISDICTION SEHNSA

Before:- Justice Sadaqat Hussain Raja, C.J
Justice Sardar Liaqat Hussain, J

PRESENT:
M/s Raja Muhammad Shafat Khan and Ch. Manzoor Ahmed Khan, Advocates for appellants, Manzoor Hussain & 02 others.
Abdul Qayyum Sabri, AAG, for State.
Mirza Abdul Aziz Ratalvi, Advocate for appellant/ complainant, Khurshid.

***JUDGMENT*:**

(Sadaqat Hussain Raja, C.J), The captioned appeal has been directed against the judgment recorded by the learned Additional District Court of Criminal Jurisdiction Sehnsa dated 16.10.2020, which convicted the appellants, Sobidar Manzoor Hussain, Matloob Hussain and Nazakat and sentenced them to death as "Qisas" under section 302(A), APC. A reference has also been made by the learned trial Court for confirmation of death sentence.

Precise facts forming background of the instant appeals and reference are as follows; the complainant; Khurshid s/o Muhammad Iqbal lodged a report at Police Station Sehnsa on 28.05.2012. According to contents of FIR, it has been alleged that on 28.05.2012 at 11:30, accused-persons 1. Sobidar Manzoor S/o Pahelwan Khan, 2. Matloob S/o Pahelwan, 3. Rafaqat, 4. Nazakat sons of Matloob, 5. Raheem, 6. Saeed sons of Khadim, 7. Sajid

S/o Manzoor, 8. Khadim Hussain S/o Ferooz, 9. Zaiban w/o Manzoor, 10. Zareena w/o Khadim Hussain, 11. Kousar Begum W/o Latif, 12. Rukhsana w/o Mazhar, 13. Habib S/o Muhammad Hussain, 14. Asghar S/o Sadiq, 15. Abbas s/o Sadiq caste Gujjar R/o Potha, 16. Qasim S/o Dil Pazeer having common intention and object armed with weapons, sticks and hatchets in order to kill attacked upon the complainant party. Specific allegations of firing has been leveled against the convict-appellants, Sobidar Manzoor Hussain, Nazakat Matloob, Sajid, Habib, Raheem, while other co-accused also inflicted injuries at different parts of the body of complainant party with sticks and hatchets. During the incident injured persons Muhammad Khurshid, Muhammad Idrees, Muhammad Shabbir and Amir Afsar succumbed to the injuries, whereas Safreen, Khurshid, Nasreen Muhammad Latif, Robina, Nadeem, Javed, Nasreen also received multiple injuries. The motive behind the occurrence has been stated to be previous enmity over land dispute. The occurrence has been stated to be witnessed by complainant, Khurshid, Nadeem, Javed, Muhammad Latif, Mst. Robina and other injured persons.

On this report a case in offences under sections 302, 341, 147, 148, 149, 324, 337/A-1, F-3, F-4, 109, APC and 13/ 20/65, A.O was registered at Police Station Sehnsa. During investigation, accused-persons 1. Habib-ur-Rehman, 2. Ghulam Asghar, 3. Ghulam Abbas, 4. Qasim, 5. Sajid Hussain, were discharged by the police under section 169, Cr.P.C, however, the trial learned Court did not concurred with the police report and they remained in the case. Due to absconsion, proceedings under section 512, Cr.P.C were initiated against the accused-persons 1. Khadim, 2. Raheem, 3. Saeed, 4. Rafaqat, 5. Zareen, 6. Rukhsana, 7. Kousar Begum, however, later on accused, Khadim Hussain and Zareen appeared in the Court, therefore, to their extent proceedings under section 512, Cr.P.C were cancelled.

After completion of the investigation, convict-appellants and accused-respondents were charged before the learned Additional District Court of Criminal Jurisdiction Sehnsa in offences under sections 302, 341, 147, 148, 149, 324, 337/A-1, F-3, F-4, 109, APC and 13/ 20/65, A.O. The Convict-appellants, Sobidar Manzoor Hussain, Nazakat, Matloob and accused-accused-

respondents were examined under section 265-D, Cr.P.C, wherein they pleaded not guilty and opted for the trial of the case. Prosecution examined 26, P.Ws. On completion of prosecution evidence, an opportunity was provided to the convict-appellants and accused-respondents under section 342, Cr.P.C wherein they again pleaded that false evidence has been produced against them and have been falsely involved in the case. The convict-appellants and accused-respondents also produced six (06) D.Ws. Muhammad Yasin, Muhammad Yaqoob, Shoukat Ali, Sobidar Zaffar Sattar, Syed Mazhar-ul-Islam Bukhari, and Muhammad Farkh Naeem, while accused-persons Habib-ur-Rehman, Sajid Hussain, Nazakat Hussain and Muhammad Qasim also got recorded their statements on Oath under section 340(2), Cr.P.C.

The learned trial Court on completion of the trial and after hearing the learned counsel for the parties convicted the appellants in the following manner;-

(1)<u>Sobidar Manzoor Hussain</u>

(i) Under section 302(A), APC for death sentence as "Qisas"

(ii) Under section 544-A, Cr.P.C, compensation of Rs.10,00,000/- which

shall be paid to legal heirs of deceased. In default of payment of compensation, the same shall be recovered from Land Revenue Act.

(iii) *Under section 13/20/65, A.O for three (03) years S.I alongwith fine of Rs.10,000/-, in default of payment of the same, he shall undergo further one month S.I.*

(iv) *Under section 341, APC for one year S.I.*

(2) <u>Matloob Hussain,</u>

(i) *Under section 302(A), APC for death sentence as "Qisas"*

(ii) *Under section 544-A, Cr.P.C, compensation of Rs.10,00,000/- which shall be paid to legal heirs of deceased. In default of payment of compensation, the same shall be recovered from Land Revenue Act.*

(iii) *Under section 13/20/65, A.O for three (03) years S.I alongwith fine of Rs.10,000/-, in default of payment of the same, he shall undergo further one month S.I.*

(iv) *Under section 341, APC for one year S.I.*

(3) <u>Nazakat,</u>

(i) *Under section 302(A), APC for death sentence as "Qisas"*

(ii) *Under section 544-A, Cr.P.C, compensation of Rs.10,00,000/- which shall be paid to legal heirs of deceased. In default of payment of compensation, the same shall be recovered from Land Revenue Act.*

(iii) Under section 13/20/65, A.O for three (03) years S.I alongwith fine of Rs.10,000/-, in default of payment of the same, he shall undergo further one month S.I.

(iv) Under section 341, APC for one year S.I.

They were also given the benefit of section 382-B, Cr.P.C, whereas, the accused-respondents Mst. Makhni Begum, Zaib-un-Nisa, Kousar Begum, Zareena Begum, Habib-ur-Rehman, Sajid Hussain and Qasim were acquitted of the charges by giving them the benefit of doubt, hence the instant appeals and reference.

Vide order dated 30.01.2025, the learned counsel for the parties were directed to submit written arguments. Written arguments have been submitted.

M/s Raja Muhammad Shafat Khan and Ch. Manzoor Ahmed Khan, Advocates, the learned counsel for convict-appellants averred in the written arguments that it is the duty of the prosecution to prove the case behind any shadow of reasonable doubt. It is further averred that Shahzad, Inspector SHO/I.O admitted during his Court's statement that Manzoor, Nazakat, Zaib-un-Nisa and Makhni Begum were also injured in the occurrence, but astonishingly prosecution witnesses denied while

suppressing the injuries sustained by the 04 persons of accused-party and this fact exposed the malafide of the complainant party in narrating the incident and also lacks the qualification of purgation. It is established during the trial, that complainant party has suppressed the injuries on the persons of the accused-party intentionally, this alone is sufficient to grant the benefit of doubt to the accused and lead to acquittal. It is submitted that accused-party had no grudge or ill will against the complainant party, rather the complainant party had very strong grudge against the accused-party. The entire family members of accused-party were falsely been implicated, resultantly some of them were discharged under section 169, Cr.P.C.

In the written arguments, the learned counsel also referred the statements of P.Ws. and pointed out some contradictions. It is further contended that medical evidence is only corroborative piece of evidence, the seat of injuries cannot be determine the name of accused, which has no evidentiary value without substantive and confidence inspiring evidence of eye-witnesses. The recoveries attributed to the accused party has been

manipulated as the empties and the weapon of offence were sent together and admittedly on the day of occurrence no empty was taken into possession by the police from the spot which was planted on the following day after the funeral prayer of deceased. Although recovery is a corroborative piece of evidence, but without substantive, confidence inspiring deposition of the alleged eye witnesses, it has no evidentiary value. The prosecution has badly failed to establish the motive. It is submitted that the prosecution failed to establish the case against the convict-appellants through direct evidence; therefore, the sentence awarded by the learned trial Court is not sustainable. It is prayed that by accepting the appeal, appellants may be acquitted of the charge and it is further prayed that the appeal filed by the complainant against the acquitted accused-respondents may be dismissed. The learned counsel while relying on the following case law prayed for acquittal of convict appellant;-

In case law reported as "2019 SCMR 1417, it was held as under;-

> *"Complainant party had implicated in the present case two brothers, son of*

one of the brothers, and two other persons belonging from the same clan. Entire household had been implicated giving the impression that it was a case of casting a wider net. Admittedly deceased and complainant were carrying weapons during the occurrence giving credence to the argument that complainant party was also the aggressor. Suppression of injuries sustained by the accused side was another intriguing circumstance. ."

In case law reported as "1997 SCMR 590, it was held as under;-

"Accused had no motive at all to commit the cold-blooded murder of the deceased.
Ocular evidence which was interested did not inspire confidence and stood belied by medical evidence."

In case law reported as "PLD 2019 SC 64, it was held as under;-

"defence failing to cross-examine prosecution witnesses qua certain aspects of the case. Principle that part of statement which remained un-rebutted amounted to admission was not applicable to criminal cases. In criminal cases, the burden of prove the guilt of the accused rested heavily upon the prosecution, which had to prove its case beyond any shadow of doubt.

Cases where there was enmity between the accused and the

complainant or prosecution witnesses usually a strict standard of proof was applied for determining the innocence or guilt of the accused."

In case law reported as "2015 SCMR 840, it was held as under;-

"Whenever witnesses were found to have falsely deposed with regard to the involvement of one co-accused then, ordinarily, they could not be relied upon qua the other co-accused unless their testimony was sufficiently corroborated through strong corroboratory evidence, coming from an unimpeachable source, is a deeply entrenched and cardinal principle of justice."

In case law reported as "2022 SCMR 986, it was held as under;-

"single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefits, not as a matter of grace and concession , but as a matter of right. Conviction must be based on unimpeachable, trustworthy and reliable evidence. any doubt arising in prosecution's case is to be resolved in favour of the accused."

Conversely, Abdul Aziz Ratalvi, Advocate, the learned counsel for the complainant/legal heirs of deceased also filed written arguments wherein it is

averred that the time, place and manner of occurrence were successfully proved by the prosecution. All eye-witnesses unanimously supported the case of the prosecution and defense failed to extract anything in its favour. The presence of convict-appellant and witnesses at the place of occurrence is also admitted. It is further averred that the contradictions pointed out by the learned counsel for the convict-appellant are minor in nature and do not destroy the overall prosecution case, when it was proved through reliable evidence. All the P.Ws. are unanimous in their testimonies. The medical evidence and recovery memos also corroborate the prosecution's version. It is contended that the learned trial Court appropriately appreciated the evidence and concluded that case against the convict-appellants is proven. It is submitted that the learned trial Court illegally and wrongly acquitted the accused-respondents, without considering the fact and circumstances of the case, that they were present at the place of occurrence and were actively involved in the incident, therefore, they are also liable to be sentenced under law. The

learned counsel defended the impugned judgment to the extent of convict-appellants on all counts.

The learned AAG, supported the arguments advanced by the learned counsel for the complainant/legal heirs of deceased.

We have heard the learned counsel for the parties and reviewed the available record with utmost care.

A contemplate perusal of the record reveals that in the present case, four persons **1. Ameer Afsar, 2. Muhammad Rasheed, 3.Muhammad Shabbir and 4.Idrees** were murdered by the accused-party. Specific allegations of murder have been leveled against convict-appellants Manzoor Hussain, Matloob Hussain, Nazakat and Rafaqat. Apart from these accused persons, prosecution has also nominated seven co-accused persons, who also caused injuries at different parts of body of complainant party. It has been alleged that 1. Raheem was injured by Mst. Safreen Begum with 12-bore rifle, 2. Khadim Hussain was injured by Nasreen Begum with stick blow, 3. Zaib-un-Nisa was injured by Robina Begum with stick, 4. Saeed was injured by Khurshid Ahmed with the butt of hatchet, 5. Zareen

Begum was injured by Nadeem with stick, 6. Kousar Begum was injured by Javed with stick, 7. Rukhsana Begum was injured by Nasreen Begum with stick and Qasim was injured Latif with stick blow.

According to contents of FIR, it has been alleged that on 28.05.2012 at 11:30, accused-persons 1. Sobidar Manzoor S/o Pahelwan Khan, 2. Matloob S/o Pahelwan, 3. Rafaqat, 4. Nazakat sons of Matloob, 5. Raheem, 6. Saeed sons of Khadim, 7. Sajid S/o Manzoor, 8. Khadim Hussain S/o Ferooz, 9. Zaiban w/o Manzoor, 10. Zareena w/o Khadim Hussain, 11. Kousar Begum W/o Latif, 12. Rukhsana w/o Mazhar, 13. Habib S/o Muhammad Hussain, 14. Asghar S/o Sadiq, 15. Abbas s/o Sadiq caste Gujjar R/o Potha, 16. Qasim S/o Dil Pazeer having common intention and object armed with weapons, sticks and hatchets arrived at the place of occurrence intending to kill and attacked upon the complainant party. Motive has also been stated by the prosecution that due to land dispute, the aforesaid accused-persons have committed the occurrence.

In support of its case, prosecution examined 26 P.Ws in all. Seven (07) eye-witnesses, Khurshid

(complainant), Muhammad Latif (injured), Muhammad Javed (witness of recovery memo Ex.PC), Nasreen (injured), Robina (injured), Muhammad Nadeem (injured) and Khadim Hussain (witness of recovery memo Ex.PD) were mentioned by the prosecution, who appeared before the Court and recorded their statements, wherein they supported the prosecution version.

At the very outset, the gist of statements of eye-witnesses is usefully reproduced as under;-

گواہ امر واقعہ/مضروب محمد لطیف۔

"صوبیدار منظور نے فائر کیا جو مظہر کے بھائی امیر افسر کی چھاتی کے بائیں جانب لگا اور موقع پر امیر افسر ہلاک ہوگیا ، پھر مطلوب نے فائر کیا جو رشید کو گولی لگی، پھر نزاکت نے فائر کیا جو بھائی شبیر کے گلے کی بائیں جانب لگا، رحیم نے فائر کیا جو سفرین کی گردن کی پچھلی جانب لگا، پھر سعید نے کلہاڑی کے پنے سے وار کر کے خورشید کے سر پر مارا ۔ اس واقعہ میں موقع پر چار لوگ قتل ہوئے۔ موقع پر قتل ہونے والا مظہر کا بھائی امیر افسر جس کو صوبیدار منظور نے قتل کیا، محمد ادریس کو کلہاڑی کے پنے سے رفاقت نے قتل کیا، محمد شبیر کو نزاکت اور ساجد نے فائر کر کے قتل کیا، محمد رشید کوپہلی گولی مطلوب نے ماری اور دوسری حبیب نے ماری جس سے وہ قتل ہو۔ وقوعہ میں مظہر زخمی ہوا تھا۔"

گواہ امر واقعہ/مضروبہ نسرین بیگم۔

""امیر افسر کو منظور نے گولی ماری، شبیر کو نزاکت اور ساجد نے گولی ماری، رشید کو مطلوب و حبیب نے گولی ماری، ادریس کو رفاقت نے بذریعہ کلہاڑی کے پنہ سے رفاقت نے مارا، شبیر کو نزاکت اور ساجد نے گولی ماری، رشید کو مطلوب اور حبیب نے گولی ماری اوریہ بندے جن کو گولی ماری گئی موقع پر دم توڑ گئے۔ کلہاڑی لگنے سے ادریس بھی موقع پر جان بحق ہو گیا۔ وقوعہ میں مظہرہ کو خادم و رخسانہ نے مضروب کیا۔

گواہ امر واقعہ /مضروبہ مسماۃ روبینہ

صوبیدارمنظور نے امیر افسر کو فائر کرکےمارا ادریس کوکلہاڑی کے پنہ سے رفاقت نے مارا، شبیر کو نزاکت اور ساجد نے گولی ماری، رشید کو مطلوب اور حبیب نے گولی ماری اور یہ بندے جن کو گولی ماری گئی موقع پر دم توڑ گئے۔ ادریس بھی موقع پر فوت ہوگیا۔ مظہرہ کو زیب النسا نے بذریعہ سوٹی مضروب کیا۔

گواہ امر واقعہ / مضروب محمد ندیم۔

منظور نے فائر کرکے امیر افسر کو قتل کر دیا، مطلوب نے رشید کو گولی ماری، حبیب نے بھی رشید کو گولی ماری، ساجد و نزاکت نے شبیر کو گولی ماری، رفاقت نے کلہاڑی کا پنہ ادریس کو مارا، ان چاروں افراد کو گولیوں اور کلہاڑی سے مضروب کیا گیا جو موقع پر ہی جان بحق ہو گئے تھے۔

گواہ امر واقعہ و ضبطی خادم حسین۔

فائرنگ کرنیوالے ملزمان میں منظور ، نزاکت ، رحیم، ساجد ، مطلوب و حبیب شامل تھے۔ منظور نے پہلا فائر امیر افسر پر کیا جسے پیٹ میں گولی لگی ، دوسرا فائر نزاکت نے محمد شبیر پر کیا جو اسے گلے پر بائیں جانب لگا، تیسرا فائر ساجد نے محمد شبیر پر کیا جو شبیر کو دائیں کندھے پر اور چھاتی پر لگا ۔ مطلوب و حبیب بھی فائر کیے جو محمد رشید کو پیٹ ، چھاتی اور جسم کے دیگر حصوں پر لگے۔ رحیم نے فائر کیا جو سفرین کو گردن کی پچھلی جانب لگا ۔ محمد ادریس کو رفاقت نے کلہاڑی کے پنہ سے مارا، چار بندے جن میں امیر افسر ، محمد شبیر ،محمد رشید ، و محمد ادریس شامل ہیں موقع پر دم توڑ گئے۔ مظہر کے سامنے صوبیدار منظور اور نزاکت سے رائفلوں کی برآمدگی 12-06-03 کو ہوئی تھی۔ اور مظہر کے ساتھ دوسرا گواہ ضبطی محمد ریاض تھا۔

گواہ امر واقعہ و مقبوضگی محمد جاوید۔

صوبیدار منظور نے چچا امیر افسر کو گولی ماری، نزاکت نے محمد شبیر کو گولی ماری، ساجد نے بھی محمد شبیر کو گولی ماری، تیسرا فائر مطلوب نے کیا جو چچا شبیر کو لگا، ساجد نے فائر کیا جو بھی شبیر کو لگا، رحیم نے فائر کیا جو سفرین کو لگا اور رفاقت نے کلہاڑی کے پنہ سے ادریس کو مضروب کیا۔ مظہر کو مسماۃ کوثر نے سوٹی سے کان پر ضرب لگائی۔

Apart from these eye-witnesses, prosecution also examined P.Ws. Muhammad Hanif, who made recovery

of articles of deceased, Shabbir as Ex.PAL, deceased Ameer Afsar as Ex.PAM, deceased Rasheed as Ex.PAG and also witness of recovery of crime weapon i.e Rifle 12-bore, allegedly recovered on the pointation of convict-appellant, Matloob Hussain. P.Ws. Muhammad Younas, Muhammad Qasid, Aurangzeb, Muhammad Shafique, Muhammad Siddique, Muhammad Riaz, Muhammad Jameel, constable, Muhammad Asif, IHC, Saif-ul-Islam are also recovery witnesses of different recovery memos i.e Ex.PAG, Ex.PAJ, Ex.PAK, Ex.PAO, Ex.AAP, Ex. PAB, Ex.PAR, Ex.PAS, Ex.PAT, Ex.PAP, Ex.PAO, Ex.PAQ, Ex.PAU, Ex.PAV, Ex.PAW, Ex.PAX, Ex.PAJ, Ex.PAAA, Ex.PBBB, Ex.PAY, Ex.PAZ. Recovery of crime weapon Ex.PD Rifle, allegedly recovered on the pointation of convict-appellant Manzoor. Recovery memo Ex.PE has also been made in presence of witnesses of crime weapon Rifle recovered on the pointation of convict-appellant, Nazakat Hussain and Rifle 12-bore, allegedly recovered on the pointation of convict-appellant, Matloob Hussain and recovery memo Ex.PAJ was prepared in presence of witnesses, Shafique and Hanif.

It is relevant to mention here that the convict-appellant and co-accused also produced witnesses in defense namely Muhammad Yasin, Muhammad Yaqoob, Shoukat Ali, Sobidar Zaffar Sattar, Syed Mazhar-ul-Islam Bukhari and Muhammad Farkh Naeem, whereas accused respondents, Habib-ur-Rehman, Sajid Hussain, Muhammad Qasim and convict-appellant, Nazakat Hussain also recorded their statements on Oath under section 340(2), Cr.P.C. Therefore, in this view of the matter, when the prosecution case mainly depends upon the ocular evidence and in rebuttal the defense/convict has also taken a specific version and thus to reach just conclusion of the case both the version should be taken at juxtaposition. Our this view finds support from a case reported as "*Abdul Wahid vs. the State* "(2003 SCMR 668), wherein it was held that initial burden to prove the guilt against the accused lies upon the prosecution, but when a specific plea has been raised by the accused in defense then both are to be considered in juxtaposition and the one which is nearer to the truth is to be given weight.

It was further held in a case titled *"Noor Khan vs. The State" reported as [1996 P.Cr.L.J 790],* wherein it was held as under;-

> "*It is by now well established that in incident like the one in hand, both the versions have to be kept in juxtaposition and the one favourable to the defense is to be preferred to, if it gets some support from the admitted facts and circumstances of the case and appeals to common sense. The incident took place at the door of house of appellant and his father, therefore, the version that it was the complainant party which had aggressed and attacked the appellant and his father by coming to their house and appellant had simply retaliated in the exercise of the right of private defense as he was under the state of panic having received serious injuries on the vital part, seems to be somewhat correct.*"

The learned counsel for the convict-appellants in the written arguments stressed upon the points that prosecution has failed prove case against the convict-appellants. The FIR has been lodged after consultation. Eye-witnesses are related to the complainant and deceased. Independent witnesses were not produced. Recoveries are also doubtful. The learned counsel in the written arguments also referred some portion of statements of P.Ws. and pointed out some

contradictions. The prosecution failed to prove the motive or premeditation of the convict-appellants for commission of offence, therefore, while considering these facts and other mitigating circumstances, a leniency may be given to the convict-appellants.

In this regard, a minute scrutiny of the evidence of prosecution witnesses indicates that the eye-witnesses have fully supported through their evidence that the convict-appellants, Manzoor, Nazakat and Matloob have committed the crime as alleged by the prosecution. The recovery of the weapon of offence also supports the prosecution version. The postmortem reports Ex.PQQ, Ex.PVV, Ex.PMM, Ex.PKK and the report of Chemical Examiner further strengthen the case of prosecution. The site plan prepared by Patwari and the statements of investigating officers also corroborate the prosecution story. The manner of occurrence, time of occurrence and place of occurrence are established by the prosecution against the convict-appellants beyond the shadow of any reasonable doubt. All the eye-witnesses unanimously supported the case of the prosecution and defense failed to extract anything in his favour. There is no material

contradiction in this regard. Thus, case against the convict is proved.

It is settled principle of criminal law that the medical evidence is decisive and most reliable source to prove the nature of injuries, time of occurrence, death and kind of weapon. Whenever, prosecution through direct evidence claims nature of injury or injuries, time of occurrence, death and the kind of weapon to be used in a particular manner then ocular evidence be examined with reference to the medical evidence, because it is medical evidence alone which could corroborate ocular evidence. In this case, medical evidence as well as statement of the doctor fully corroborated the prosecution's version.

So far as the contention of the learned counsel for the convict-appellants about interested witnesses is concerned, in this regard, it is relevant to mention here that it is basic principle of criminal jurisprudence that the credibility of a witness does not depend upon relationship, but the same should flow from his deposition. The nature and quality of the statement of a witness should evoke confidence and trust and if after

careful perusal of the evidence, the Court reaches the conclusion that the evidence of an eye-witness is reliable and without any bias towards either party, it is by itself sufficient to pass an order of conviction and sentence without any corroboration. It is held in a *case law reported as* ***"2015 SCR 1487" it was held as under;-***

> *"Mere relationship cannot be made a ground to discard the testimony of the witness until some ill-will or animosity of the witness against the accused comes on the record."*

(Underlining is ours)

In the instant case beside ocular version, sufficient and strong corroboratory evidence has been produced by the prosecution. Before discussing the corroborative evidence in detail, it will be pertinent to note that conviction can be recorded on the deposition of eye witnesses only provided it is worthy of credence, but, the Courts look for the corroboration as a rule of caution to exclude the involvement of an innocent person. In such state of affairs the corroboratory evidence can be produced by any circumstance which satisfies the

conscience of the Court that the witness is reliable and truthful person.

It is also relevant to mention here that in the present case, the enmity between the parties is established from the record. So, it can safely been said that there was a motive in mind of the accused-persons involved in the present case against the complainant/deceased party to take revenge of the previous cases. Thus, the prosecution has successfully proved its motive behind any shadow of doubt and the trial Court has arrived at right conclusion. Even otherwise, if the prosecution fails to prove its motive even then an accused is not entitled to be discharged from the case, if his guilt is proved through direct evidence. Reference can be made from a case titled "*Shabbir Ahmad V. The State & another and Mst Raheem Jan V. Shabbir Ahmad) [1997 SCR 206].*

> *"We may observe that it was not laid down if a motive set up by a prosecution is not proved death sentence should not be awarded. In fact, as already noted, it was clearly laid down that motive was not a sine qua non for proving the offence of murder. On the question of motive there is a direct authority from Supreme Court of*

Pakistan. In Ahmad Nisar Vs. The State. Muhammad Yoqoob Ali, J (as he then was) speaking for the Court made the following observations about motive:-

> *"Speaking generally, motive, more or less, is a guess on the part of the prosecution witnesses. What truly motivates an accused person to commit a crime is best known to him and not others. Absence of motive or failure on the part of the prosecution to prove it does not, therefore, adversely affect the testimony of the eye-witnesses if they be otherwise reliable."*

It is relevant to mention here that while appreciating the evidence, the Court must not attach undue importance to minor discrepancies and such minor discrepancies which do not shake the salient features of the prosecution case should be ignored. The accused cannot claim premium of such minor discrepancies. If importance be given to such insignificant inconsistencies then there would hardly be any conviction. Our this view finds support from a ***case law reported as "2022 SCMR 2024" it was held as under;-***

> *"Minor discrepancies in the prosecution case, such discrepancies do not frustrate the prosecution case unless and until there is something which directly shatters the salient features of the prosecution case."*

So for as the case of the convict-appellant, Matloob Hussain with regard to plea of Alibi is concerned, in this regard, the learned counsel for the convict-appellant contended on the point that convict-appellant was not present at the place of occurrence and he is of the opinion that at the time of occurrence, convict-appellant was present at the house of one Zaffar Sattar. In support of his version, the convict-appellant also produced D.Ws. but failed to record their statements on Oath. In this regard, it is relevant to mention here that convict appellant raise the alibi defense after his examination under section 342, Cr.P.C, and the same was not taken at initial stage, therefore, no question was posed to the P.Ws. during their statements about his from the place of occurrence or his presence at another to claim. This plea was not taken by the convict-appellant at the stage of his examination under section 242, Cr.P.C and not even at the time of his examination under section 342, Cr.P.C. This fact suggests that it is an afterthought plea taken at such belated stage sufficient to show that it is a fabricated plea. It is to be noted here that it is the duty of the prosecution to prove its case, but when a specific

plea is raised by the accused in his defence the burden of prove lies on him. We have also gone through the statements of D.Ws. and found that they failed to bring on record that the convict-appellant was not present at the place of occurrence their statements suffers from material contradictions and infirmities making their evidence unconvincing and few of them were unaware about the occurrence and some were giving hearsay evidence, thus, the convict-appellant failed to prove his plea of Alibi and it was rightly concluded by the learned Court below.

So far as the case of acquitted accused respondents, Makhni Begum, Zaib-un-Nisa, Kousar, Zareena, Habib-ur-Rehman, Sajid, Qasim is concerned, the learned counsel for the legal heirs of deceased submitted that these accused-respondents played an active role in the occurrence and specific allegation of causing injuries have been leveled against these accused-respondents, therefore, they should be sentenced under law. According to record, it has been alleged that complainant, Khurshid has been injured by accused Saeed with the butt of Axe and injury form Ex.PAG was

prepared, however, accused Saeed was absconded and proceeded 512, Cr.P.C. Muhammad Javed was injured by accused Kosar Begum by hitting stick blows, and injury form Ex.PAH was prepared, however no recovery has been made from her. Latif has been injured by accused Qasim and in this regard injury form Ex.PAD was prepared, however, crime weapon has also not been recovered from accused. Nadeem was injured by Zareena Begum with stick and injury form Ex.PAB was prepared, but no recovery was made. Robina Begum received injuries from accused Zaib-un-Nisa, however, according to injury form Ex.PZZ, the concerned Doctor opined that no specific injury is found. Nasreen Begum (injury form Ex.PXX) injured due to the act of two accused persons Khadim and Rukhsana. Accused Khadim died during the trial while accused Rukhsana absconded and proceeded under section 512, Cr.P.C, Safreen Begum was injured by the act of accused Raheem, who also absconded during trial and proceeded under section 512, Cr.P.C.

It is relevant to mention here that proof of specific overt act is not necessary while determining the guilt of accused being member of unlawful assembly and it

would be sufficient, if the prosecution was able to establish that accused being member of unlawful assembly shared the common object of assembly, and same accused in furtherance of that common object of unlawful assembly committed offence. Our this view finds support from case titled "*Ejaz Ahmed & others Vs. State & others" [PLJ 2009 Sh. C (AJ&K) 147],* wherein it was held as under;-

> *"It may be stated here that section 149,APC does not create a new offence but deals with the question of vicarious liability of the members of unlawful assembly for the offence committed in prosecution of common object. Necessary ingredients for constitution of the offences under the said section are prior meeting of mind of the accused to form a pre-arranged plan and evidence showing that the accused were in pre-concert and in pursuance of pre-arranged plan committed the criminal act, thus, it implies that while convicting an accused under the said section it has to been seen that he was a member of the unlawful assembly and the offence was committed in prosecution of common object.*

It is relevant to mention here that when a criminal act is done by several persons in furtherance of the common intention of all, each of such person's is liable for the act in the same manner as if it were done by him

alone. It is also worthwhile to mention here that common intention presupposes a prior concern, prearranged plan, but that does not mean that there must be long interval of time between the formation of the common intention and execution of the act. Thus, when common intention is proved against each of the accused, each of them can be convicted for the crime they participated in provided that it was done in furtherance of the common intention, however, in the present case, although presence of acquitted accused-respondents at the place of occurrence is not doubtful, but they are not ascribed role that caused the death of the deceased.

It would not be out of place to mention here that when several persons can simultaneously attack a person and may have the same intention namely the intention to kill and each can individually inflict a separate fatal blow yet, none would possess the common intention if there is no prior meeting of mind to form a pre-arranged plan. Therefore, mere presence of an accused at the place of incident with a co-accused who commits the offence may not be sufficient to visit the former with

vicarious liability, because strong circumstances must exist manifesting a common intention. Mere presence of a person with principal accused at the place of occurrence would not make him liable for the act of principal accused.

So after going through the aforementioned scenario, we are of the opinion that although presence of acquitted accused-respondents at the place of occurrence is not doubtful, however, the prosecution failed to establish the guilt of each accused, therefore, the learned trial Court has righty acquitted them. It is settled principle of law that after the acquittal, an accused enjoys double presumption of innocence and the acquittal order will not be is not interfered with unless it is found to be perverse and illegal.

It will not be out of place to mention here that it was enjoined upon the prosecution to prove its case against the accused-respondents beyond any shadow of reasonable doubt, but, it failed to do so and it is celebrated principle of law that slightest doubt arising in the prosecution case must benefit the accused. The aforesaid view finds support from a case reported as ***Ali***

Muhammad v. Muhammad Akram and another and ***Ali Muhammad v. Qabir Ahmed and 4 others (2014 SCR 351)***, wherein it has been observed as under:-

> *"It is settled principle of law that a slightest doubt must go to the accused. After going through the record of this case, we are of the view that this is the case of number of doubts and even a single doubt is sufficient to acquit the accused."*

Therefore, the trial Court has correctly appreciated the evidence, and the argument of the learned counsel for the complainant/legal heirs of deceased regarding non-appreciation of evidence is not well reasoned. It is also pertinent to mention here that after the acquittal, an accused enjoys double presumption of innocence and the acquittal order is not interfered with until and unless it is found perverse and illegal. This view is fortified from a case reported as ***Asia Bibi& 5 others Vs. Ghazanfar Ali & 3 others (2005 SCR 1)***, wherein it was observed as under:-

> *"The acquittal carries double presumption of innocence. One is initial that till found guilty accused persons are innocent and second is that Court of*

> *law having jurisdiction records order of acquittal. In such circumstances this Court would interfere only if it is proved from the record that the order of acquittal is perverse and the reasons in support of the same are artificial and ridiculous."*

It was further held in case titled *"Waseem Hussain & 2 others Vs. Muhammad Rafique& another, reported as 2017 SCR 428*, wherein it was observed as under;-

> "*The instant appeal has not been filed against the conviction rather the same has been filed against acquittal order and it is settled principle of law that an accused, when acquitted of the charge, enjoys double presumption of innocence and once an acquittal has been made, the same can only be set aside if the Court comes to the conclusion that the order is capricious, fanciful perverse arbitrary and against the settled norms of justice.*"'

In the light of above detailed discussion, We do not find any misreading/non-reading of the evidence or legal infirmity in the impugned judgment and the conclusion drawn by the trial Court is neither perverse nor shocking. It is based on material available on the record. Thus, the trial Court has rightly acquitted the

accused-respondents of the charge while extending them the benefit of doubt.

In the instant case, after a thorough scrutiny of evidence, we feel convinced that the prosecution has been able to bring home guilt of the murder of four innocent persons against convict-appellants, beyond any shadow of reasonable doubt and he has been rightly convicted on this count. The purgation of the witnesses has also been conducted and they were found Adil. It follows from the juxtaposition reading of sections 302 and 304 of the Penal Code, proviso III of Articles 3 and 17 of the Qanun-e-Shahadat Order, 1984, and section 26 of the Islamic Penal Laws Act 1974, that purgation of the witnesses in all cases of Hadood and Qisas is mandatory. Moreover, the object of 'Tazkiya' of a witness is to know his competency and other virtues in order to place implicit faith in his statement to record conviction in cases of 'Hudood' and 'Qissas', and to arrive to a conclusion as to the quantum of sentence to be passed against the accused. The wisdom behind the enactment of this provision is to safeguard the condemnation of an accused on the basis of the testimony of a witness who

may not be ‘Aadil’. It will not be out of place to mention here that if an eyewitness is not found 'Adil' in purgation even then his evidence can be believed in a case falling outside the ambit of Qisas, particularly, when his presence is admitted at the spot. Our view is fortified from a case reported as *Zahir Hussain Shah v. Shah Nawaz Khan and 3 others* and *The State v. Shah Nawaz Khan and 2 others (2000 SCR 123* wherein it was held as under;-

> “*The Shariat Court has not relied upon the testimony of Hassan Shah, the eye-witness, who was not found ‘Adil’ in purgation but we are of the view that his evidence can be believed in a case falling outside the ambit of “Qisas” particularly so when his presence at the place of occurrence is admitted by the prosecution itself. However, a great caution is to be used in appraising his evidence. We have decided to believe those portions of his statement which ring true and to discard those portions which do not inspire any confidence.*”

It may also be added here that during the pendency of appeals, convict-appellant, Sobidar Manzoor Hussain died on 02.11.2022. So, the question which is to

be determined is whether legal heirs of convict-appellant may be ordered to pay the compensation and fine or the appeal to his extent stand abated on the death of convict-appellant, Manzoor Hussain. In this regard, it is relevant to mention here that admittedly, the convict-appellant Manzoor Hussain has died during the pendency of appeals and reference. The estimation of the learned counsel for the complainant/legal heirs of deceased as well as learned AAG, that due to the death of convict-appellant, the appeals abates only to the extent of punishment not to the extent of compensation and fine as envisaged under section 431,APC, however, on the other hand, the learned counsel for convict-appellant, objected this contention and submitted that legal heirs of convict-appellant cannot be ordered to pay compensation as well as fine. In this regard, we have examined the relevant provision of law. Section 431, Cr.P.C speaks as under;-

> ***"431. Abatement of Appeals**. Every appeal under section 411-A, subsection (2) or section 417 shall finally abate on the death of the accused, and every other appeal under*

this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant."

So, in view of above provision of law, it is held that every appeal shall abate on the death of accused; however, an exception has been made to the extent of imposition of fine. Therefore, in order to reach just conclusion of the case, the question whether compensation or fine awarded by the trial Court while convicting an accused under section 302,APC can be termed as punishment. In this regard, it is relevant to mention here that section 302,APC provides the following punishment for the offence of Qatl-i-Amd, which reads as under;-

(a) Punishment of death as Qisas;-

(b) Punishment of death or imprisonment for life as 'Tazir' having regard to the facts and circumstances of the case, if they proof in either of the forms specified in section 304 is not available; or

(c) Punishment of imprisonment of either description for a term which may extend to twenty-five years, where according to the injunctions of Islam the punishment of qisas is not applicable.

Provided that nothing in clause (C) shall apply where the principle of fasad-fil-arz is attracted and in such cases only clause (a) or clause (b) shall apply."

A thorough perusal of section 302,APC; reveals that it does not include "**compensation"** as a punishment for the offence of Qatl-e-Amd. Similarly, **compensation'** is not included in the schedule of punishments provided under section 53,APC. Section 53, APC reads as under;-

*"**53.Punishments.** The punishments to which offenders are liable under the provisions of this code are;-*

Firstly.	*Qisas,*
Secondly	*Diyat.*
Thirdly	*Arsh.*
Fourthly	*Daman,*
Fifthly	*Tazir,*
Sixthly	*Death,*
Seventhly	*Imprisonment for life.*
Eighthly	*Imprisonment which is of two description namely* *(i) Rigorous i.e with hard labour.* *(ii) Simple*
Ninthly	*Forfeiture of property.*
Tenthly	*fine.*

Our this view finds support from a case titled "*Mukaram Khan Vs. The State & another" [2021 MLD 176], wherein it was held as under;-*

> *"The word '**compensation'** also does not find mention in section 431,Cr.P.C, rather word '**fine'** has been specifically used therein. Though on conviction of an offender under section 302, PPC, the Courts normally, in addition to corporal punishment, imposed compensation upon the offender/ convict to be paid to the legal heirs of the deceased in terms of section 544-A, Cr.P.C, recoverable as arrears of land revenue, but in terms of section 544-A,PPC, as per compensation is not a sentence under section 302,PPC."*

This is our considered view that legal heirs of deceased are not responsible for any compensation or fine imposed on the convict-appellant. This is based on key legal principles regarding convictions, financial compensations in such cases directly depends on the validity of the trial Court's sentence. If a convicted individual is acquitted, compensation claim becomes irrelevant, as it is related to the confirmation, enhancement or maintainability of sentence imposed by

the trial Court. Similarly if an appeal is abated, the obligation, the obligation to pay compensation ceases and payment of compensation meets the same merit and thus burdening the legal heirs of convict-appellant with these payments would be unjust and contrary to the established legal principles.

The case law cited by the learned counsel for the convict-appellants to the extent of setting aside the conviction order has no relevancy with the facts and circumstances of the present case, as every criminal case has its own facts and circumstances, therefore, need not to be discussed.

Nutshell of the above detailed discussion is that, We maintain the conviction awarded to the convict-appellants Matloob and Nazakat. Thus, the appeal No.53/20 to their extent merits no consideration; it is hereby dismissed, however, to the extent of convict-appellant, Manzoor Hussain, the appeal stand abated. Resultantly, reference is answered affirmative to the extent of Matloob and Nazakat. The appeal No.17/20

also merits no consideration is hereby dismissed. Copy of this judgment shall be annexed with connected file.

Muzaffarabad;
05.05.2025(KA). ***CHIEF JUSTICE JUDGE***

Note;- *Judgment is written and duly signed. The files alongwith the judgment shall be sent to circuit bench Kotli. The Deputy Registrar Kotli is directed to announce the same after issuing notices to the parties and their counsel.*

CHIEF JUSTICE JUDGE

Approved for reporting

CHIEF JUSTICE