HIGH COURT OF AZAD JAMMU AND KASHMIR
(Shariat Appellate Bench)

Criminal reference No.12/2019.
Date of institution 30.09.2019
Date of Decision 14.11.2024

The State through Shakeel Ahmed S/o Abdul Aziz Caste Rajput R/o Barooh Samahni at present Bhimber District Bhimber.

…Appellant.

VERSUS.

Bilawal Tahir S/o Tahir Azmat Caste Rajput R/o Qasimabad Tehsil and District Bhimber.

Respondent.

CRIMINAL REFERENCE

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(2). ***Criminal appeal No.13/2019***
Date of institution 02.10.2019

Bilawal Tahir S/o Tahir Azmat Caste Rajput R/o Qasimabad Tehsil and District Bhimber (at present confined in judicial lockup Mirpur).

Appellant.

VERSUS

1. Shakeel Ahmed S/o Abdul Aziz (complainant),
2. Waheed Iqbal S/o Abdul Aziz,
3. Raftaj Begum w/o Waheed Iqbal,
4. Shabeela Begum widow of Nahid Iqbal,
5. Saira D/o Nahid Iqbal,
6. Zaira D/o Nahid Iqbal,
7. Ahmed Aziz S/o Nahid Iqbal,
8. Abdullah S/o Nahid Iqbal,
9. Naveed Iqbal S/o Waheed Iqbal Caste Rajput R/o Barooh Tehsil Samahni District Bhimber (legal heirs of deceased Nahid Iqbal),

10. Azra Bibi W/o Wajid Hussain,
11. Sidra Bibi widow of Shahid Waseem,
12. Wajid Hussain Shah S/o Muhammad Ali Shah Caste Syed R/o Fatehpur Tehsil and District Jhang (legal heirs of deceased Shahid Waseem).
13. The State through Additional Advocate General,
14. Hussain Bin Maroof S/o Muhammad Maroof R/o House No.36 street No.02 Mohallah Baba Fareed Colony Chungi Amarsadho Lahore, (injured).

Respondents.

CRIMINAL APPEAL

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(3) ***Criminal appeal No.20/2019.***
Date of institution 24.12.2019

1. Shabeela Begum widow of Naheed Caste Rajpoot R/o Barooh Tehsil Samahni District Bhimber.
2. Sidra Bibi widow of Shahid Waseem R/o Sheikh Chouher Tehsil and District Jhang.
3. Shakeel Ahmed S/o Abdul Aziz Caste Rajpoot R/o Barooh Tehsil Samahni District Bhimber.

Appellants.

VERSUS.

1. Bilawal Tahir S/o Tahir Azmat Caste Rajpoot R/o Kasimabad Bhimber.
2. Qaisar Mehmood,
3. Muhammad Mahfooz alias Ajaib sons of Muhammad Farooq, caste Rajput R/o Barooh Tehsil Samahni District Bhimber.

Real-Respondents.

4. The State through Advocate General AJK.

Proforma-respondent.

CRIMINAL APPEAL

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(4) ***Criminal appeal No.18/2024.***
Date of institution 30.04.2024

1. Shakeel Ahmed,
2. Waheed Iqbal sons,
3. Raftaj Begum wife of Waheed Iqbal,
4. Shabeela Begum widow,
5. Saira,
6. Zahira daughters,
7. Ahmed Aziz,
8. Abdullah minor sons of late Naheed Iqbal (minors through their mother Mst. Raftaj Begum),
9. Naveed Iqbal son of Waheed Iqbal brother of deceased late Naheed Iqbal caste Rajput R/o village Barough Tehsil Samahni District Bhimber.

Appellants.

VERSUS.

1. Muhammad Mahoof S/o Raja Muhammad Farooq caste Rajput R/o village Barough Tehsil Samahni District Bhimber at present confined in the central jail Mirpur AJ&K.

Real-Respondent.

2. The State through Advocate General circuit Mirpur.
3. Azra Bibi wife of Wajid Hussain Shah, mother of deceased Shahid Waseem,
4. Wajid Hussain Shah S/o Muhammad Ali Shah, father,
5. Sidra Bibi widow of deceased Shahid Waseem caste Syed r/o Sheikhpura Tehsil and District Jhang, Pakistan.

Proforma-respondents.

CRIMINAL APPEAL

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(5) ***Criminal appeal No.23/2024.***

Date of institution 21.05.2024

Muhammad Maroof S/o Raja Muhammad Farooq Caste Rajput R/o Barooh Tehsil Samahni District Bhimber at present confined in judicial lockup Mirpur.

Appellant.

***VERSUS*.**

1. Shakeel Ahmed S/o Abdul Aziz (complainant),
2. Waheed Iqbal S/o Abdul Aziz,
3. Raftaj Begum w/o Waheed Iqbal,
4. Shabeela Begum widow of Nahid Iqbal,
5. Saira D/o Nahid Iqbal,
6. Zahida D/o Nahid Iqbal,
7. Ahmed Aziz S/o Nahid Iqbal,
8. Abdullah S/o Nahid Iqbal,
9. Naveed Iqbal S/o Waheed Iqbal Caste Rajput R/o Barooh Tehsil Samahni District Bhimber (legal heirs of deceased Nahid Iqbal),
10. Hussain Bin Maroof S/o Maroof R/o House No.36 street No.02 Mohallah Baba Fareed Colony Chungi Amarsadho Lahore (injured).
11. The State through Additional Advocate General AJ&K.

Real-respondents.

12. Azharan Bibi W/o Wajid Hussain,
13. Sidra Bibi widow of Shahid Waseem,
14. Wajid Hussain Shah S/o Muhammad Ali Shah R/o Fatehpur Tehsil and District Jhang (Legal heirs of deceased Shahid Waseem (already compromised with convict).

Respondents.

CRIMINAL APPEAL

Before:- ***Justice Sadaqat Hussain Raja, C.J***
Justice Sardar Muhammad Ejaz Khan, J

PRESENT:

Raja Inamullah Khan, Advocate for the appellant/ respondent, Bilawal Tahir.
Raja Mazhar Iqbal, Advocate for appellants, Shabeela etc.
Abdul Razzaq Chaudhary, Advocate for appellants/ respondents, Shakeel Ahmed & others.
Zulfiqar Ahmed Raja, Advocate for appellant, Muhammad Maroof.
AAG, for State.

***JUDGMENT*:**

(Justice Sadaqat Hussain Raja, C.J), As common questions of fact and law have been involved in all the captioned appeals and reference, therefore, these are heard together and disposed of through this single judgment.

Precise facts forming background of the instant appeals and reference are that complainant, Shakeel Ahmed S/o Abdul Aziz R/o Barooh Samahni District Bhimber lodged a written report at Police Station Bhimber on 05.08.2017 stating therein that he is resident of Barooh. On the fateful day, when he accompanied by others visited District Jail Bhimber to see their nephew who was confined in a murder case, at about 06:00,pm, one Nasir Hussain contacted Naheed Hussain and asked him to meet in the house of Shahbaz at Gorah Deen. The complainant alongwith Naheed Hussain with Mumtaz and Nazakat were also with complainant following the car of Naheed Hussain alongwith

their maternal uncle and a friend when they reached near valley rest house, the accused-persons named Khanzada, Pirzada and Mirzada S/o Raja Asghar R/o Bhroh who were waylay armed with Kalashnikov accompanied with Bilawal, Bilal sons of Tahir, Rauf, Maroof, Ajaib, Mehmood and Nasir sons of Farooq alongwith two unknown persons, all armed with Kalashnikov opened fire at Naheed Hussain. First fire was shot by Nasir followed by others. As a result of the firing of Bilawal & Nasir, Naheed Hussain sustained bullet injuries on his face and neck whereas, due to the firing of other accused person Naheed Hussain got injuries on the chest and other body parts and Shahid Waseem sustained injuries on head who succumbed to the injuries and died on the spot. Husnain was injured due to broken glass of vehicle; wherein, complainant in order to save his life reversed his vehicle and witnessed the incident. After commission of the offence, the convict-appellants and accused-respondents fled away from the scene. It is submitted that the aforesaid accused-persons have committed the occurrence with the help and abetment of Zameer, Jahanghir sons of Bashir, Younas, Zulfiqar sons of Fateh Muhammad, Khizar S/o Yaqoob, Azrar s/o Muhammad Taj, Shahbaz, Faisal Farooq

S/o Muhammad Farooq. The motive behind the occurrence was stated to be previous enmity.

On this report a case in the offences under Sections 302, 324, 147, 148, 149, 337/F-1, 341, 109, APC and 15 (2-A),AA was registered against the convict-appellants and accused-respondents vide FIR No.73/2017. After completion of investigation, a report under section 173, Cr.P.C was filed before the trial Court against accused, Bilawal Tahir, Khanzada, Maroof, Muhammad Mehfooz and Qaisar Mehmood; however, due to absconsion of accused Khanzada and Muhammad Maroof, proceedings under section 512, Cr.P.C were initiated against them. On 11.11.2017, accused-persons were examined under section 242, Cr.P.C wherein they pleaded not guilty and claimed trial.

The prosecution examined sixteen (16) witnesses mentioned in the calendar to establish its version, while statement of only one D.W was also recorded. Convict-appellant and acquitted respondents were examined under section 342, Cr.P.C, wherein they again refuted the allegation and pleaded that false evidence has been produced against them on account of enmity. On

completion of trial, the learned District Criminal Court Bhimber convicted the appellant, Bilawal and sentenced him for death as “Tazir” twice under section 302(B) APC. Under section 147, 148,APC for 02/02 years rigorous imprisonment alongwith fine of Rs.10,000/10,000/-, in default of payment of fine, he shall undergo further 02/02 months simple imprisonment. Under section 337/F-1,APC for ten thousand Daman and one year simple imprisonment. Under section 341,APC for one month simple imprisonment alongwith Rs.500/- fine, in default of payment of fine, he shall undergo further one week S.I. Under section 15(2) AA for five years R.I alongwith fine of Rs.10,000/-, in default of payment of fine, he shall undergo further 02 months S.I. He was also ordered to pay compensation of Rs.10,00,000/-(ten lacs) under section 544-A, Cr.P.C, in default of payment of the compensation, he shall undergo further six months S.I. The compensation shall be paid to legal heirs of deceased and Daman shall be paid to Husnain (injured). He was also given the benefit of section 382-B, Cr.P.C, whereas, accused-respondents Qaisar and Mehfooz were acquitted of the charge by giving them the benefit of doubt vide judgment dated 24.09.2019.

Initially, legal heirs of deceased have filed appeal No.20/2019 titled "*Shabeela Begum etc. Vs. Bilawal Tahir etc.*" for enhancement of sentence awarded to convict, Bilawal and against the acquittal order passed in favour of accused-respondents, Qaisar and Mehfooz. Convict-appellant, Bilawal Tahir also preferred an appeal *No.13/2019 titled "Bilawal Tahir Vs. Shakeel Ahmed etc."* for setting aside the impugned judgment and for acquittal. A reference No.12/2019 titled *The State Vs. Bilawal"* has also been made by the learned trial Court for confirmation of death sentence. During the pendency of appeals and reference, one of the absconded accused namely Muhammad Maroof was arrested and trial was conducted to his extent. The learned trial Court on completion of trial and after hearing the learned counsel for the parties convicted the appellant/respondent, Muhammad Maroof and awarded the following sentences;-

i. Under section 302(c), APC for two times life imprisonment.
ii. Under section 147/148,APC for 1/1 years Rigorous imprisonment alongwith fine of Rs.10/10 thousand, in default of payment of fine, he shall undergo further 2/2 months S.I.
iii. Under section 337/F-1,APC for ten thousand Daman alongwith sentence of one year simple

imprisonment. Daman shall be paid to Husnain (injured).

iv. *Under section 341,APC for one month S.I alongwith fine of Rs.500/-, in default of payment of fine, he shall undergo further one month S.I.*

v. *Under section 15(2),AA for five years rigorous imprisonment alongwith fine of Rs.10,000/-, in default of payment of fine, he shall undergo further two months simple imprisonment.*

vi. *Under section 544, Cr.P.C, he was ordered to pay compensation of Rs.500,000/-(five lacs) to the legal heirs of deceased.*

vii. *Convict-appellant was also given the benefit of section 382-B, Cr.P.C vide judgment dated 31.05.2022.*

Against the said judgment of the trial Court, appellant, Muhammad Maroof, preferred an appeal No.12/2022 dated 05.07.2022 titled "*Muhammad Maroof Vs. Shakeel Ahmed etc.*" . The division bench of this Court vide judgment dated 29.02.2024, accepted the appeal and remanded the case with the following direction;-

> *"The crux of the above discussion is that, we accept the captioned appeal by setting aside the judgment of trial Court dated 31.05.2022 and the case is remanded to District Court of Criminal Jurisdiction Bhimber with the direction that the learned Court below shall decide the case after examining the record and hearing the learned counsel for the parties afresh in accordance with law. The learned counsel for the parties are directed to appear before the District Court of Criminal Jurisdiction Bhimber on 15.03.2024. The trial Court is*

> *further directed to decide the case within one month from the receipt of this order.”*

The learned trial Court after hearing the learned counsel for the parties vide judgment dated 06.04.2024, awarded the following sentences to convict-appellant, Muhammad Maroof;-

i. *Under section 302(c), APC for 14 years rigorous imprisonment.*
ii. *Under section 147/148,APC for 1/1 years simple imprisonment.*
iii. *Under section 341,APC for one month S.I alongwith fine of Rs.500/-, in default of payment of fine, he shall undergo further five days S.I.*
iv. *Under section 15(2),AA for two years rigorous imprisonment alongwith fine of Rs.20,000/-, in default of payment of fine, he shall undergo further six months simple imprisonment.*
v. *Under section 544, Cr.P.C, he was ordered to pay compensation of Rs.10,00,000/-(ten lacs) to the legal heirs of deceased, Naheed Akhtar. Convict-appellant was also given the benefit of section 382-B, Cr.P.C.*

Feeling aggrieved from the judgment of trial Court dated 06.04.2024, the convict-appellant, Muhammad Maroof filed appeal No.23/2024 dated 21.05.2024 for setting aside the same. Legal heirs of deceased also filed a separate appeal No.18/2024 for enhancement of sentence.

Raja Inamullah Khan, Advocate, the learned counsel for the convict-appellant argued that the learned trial Court

committed grave illegality while recording the impugned judgment. He further argued that there is no eye-witness of the occurrence and the witnesses mentioned in the calendar of the challan as eye-witnesses were planted after the occurrence. The statement of witnesses under section 161, Cr.P.C was recorded after a considerable delay, which caused serious doubt upon the prosecution case. Identification parade was not conducted. He further argued that complainant in his statement deposed that he was informed by one Husnain about the occurrence and according to estimation of learned counsel, complainant was not present at the place of occurrence. The learned counsel submitted that fake and fictitious recovery of crime weapon (i.e Kalashnikov) has been made against the convict-appellant, Bilawal. No evidence whatsoever has been brought on record by the prosecution that vehicle/car was rented by the convict-appellant, Bilawal. The learned counsel maintained that there is no eye-witness of the occurrence, rather they are chance witnesses and that too not resident of locality and prosecution has brought them from different vicinity. The learned counsel contented that so called eye-witness Husnain Maroof in his statement

recorded under section 161, Cr.P.C has not disclosed anything about the other eye-witness. All the P.Ws are related to the deceased and injured person, as such no reliance can be placed upon them. The prosecution also failed to prove the motive. The learned counsel agitated that false story has been concocted by the prosecution just to implicate the innocent person. Signs of bullet are also found on the vehicle of accused-respondents. He submitted that the prosecution failed to establish the case against the convict-appellant through direct evidence; as such the sentence awarded by the learned trial Court is not sustainable. The case of prosecution is full of contradictions. The learned counsel while relying following case law prayed for acquittal of convict appellant;-

> ***In case law reported as " PLJ 2010 SC (AJ&K) 37" it was held as under;-***
>
> *"Where a witness is a chance witness and is highly interested in the deceased person, his evidence cannot be considered to be worthy of credit. While relying upon the testimony of a chance witness, the Court would be more cautious and while appreciating his evidence, the Court would also consider the other factors and merely on the statement of a chance witness conviction would not be awarded to a person."*

"Normally the Courts are hesitate to award capital punishment or life imprisonment on the basis of statement of a criminal person.

"Where the prosecution case is based on sole eye-witness and his evidence is full of infirmities then, of course, the capital punishment could not be awarded on the basis of such eye-witness. Conviction of a murderer on the evidence of solitary eye-witness is highly unsafe."

In case law reported as "2008 SCR 345" it was held as under;-

"Statements recorded under section 161, Cr.P.C were recorded after ten days of occurrence. None of the witnesses narrated the story before the Police which was narrated by the witnesses in the Court. After about six/seven months they narrated a different story before the Court. Their evidence does not inspire confidence. They have made improvements in their statements. It is a well settled principle of law that where a witness made improvements in his statement in order to favour prosecution his evidence could not be relied upon and he could not be considered as an independent witness by any stretch of imagination. "

In case law reported as "2014 SCR 1585" it was held as under;-

> *"The disclosure made by the accused while in the police custody is admissible if in consequence thereof something relating to the commission of the crime is recovered while applying the conditions laid down by Article 40 of Qanoon-e Shahadat Order, 1984."*

In case law reported as "2023 SCR 384" it was held as under;-

> *"Admittedly, the case is of ocular evidence but it is evident from the statement of witnesses, that the eye-witnesses, who have allegedly seen the occurrence, are close relatives of the complainant and the deceased. Moreover, they were involved in previous criminal and civil litigation with the convict-appellant, therefore, the statements of these eye witness are required to be corroborated by the other pieces of evidence and the case has to be carefully appraised.*
>
> *It is better that ten guilty persons be acquitted rather than one innocent person be convicted."*

In case law reported as "2022 SCR 1489" it was held as under;-

> *"Improvements made by eye witnesses in Court statements, not safe to be relied upon or to maintain conviction. Eye-witnesses in their statements under section 161, Cr.P.C deposed Kalashnikov as a crime weapon to support what*

was alleged in FIR. In Court statements, eye witnesses made improvements and supported post-mortem report, wherein bullet of 30-bore pistol was stated as recovered from skull of deceased. Once the Court comes to the conclusion that the eye witnesses had made improvements in their statements then it is not safe to place reliance on their statements and in that, eventuality conviction is not sustainable."

In case law reported as "2022 SCR 615" it was held as under;-

"It is prerogative of prosecution to produce the witness of its own choice but non-production of an injured witness, would give rise to adverse presumption that had such witness been produced it would have been fatal for the prosecution."

In case law reported as "2020 SCMR 1049" it was held as under;-

"It is established principle of law that delayed recording of statement of the PW under section 161, Cr.P.C reduces is value to nil."

M/s Raja Mazhar Iqbal and Abdul Razzaq Chaudhary, Advocates, the learned counsel for the complainant, Shakeel Ahmed and legal heirs of deceased argued that the time, place and manner of occurrence was successfully proved by the prosecution. Three eye-witnesses unanimously supported the case of the prosecution and defense failed to extract anything in their favour. The presence of convict-

appellant and witnesses at the place of occurrence is also admitted. The learned counsel further contended that the contradictions pointed out by the learned counsel for the convict-appellant are minor in nature and it does not destroy the whole prosecution case, when it was proved through reliable evidence. All the P.Ws. are unanimous in their deposition. The medical evidence and recovery memos also corroborate the prosecution version. The learned counsel submitted that the learned trial Court appreciated the evidence and also held that case against the convict-appellant is proved, however, failed to award capital punishment i.e Qisas. The learned counsel contended that although during the trial of the case, legal heirs of deceased compromised with Shahid Waseem, but the trial Court can award punishment of Diyyat under section 309,APC and under section 311,APC, Court can also award 14 years imprisonment. Finally, the learned counsel prayed that by accepting the appeal, the sentence awarded to the convict-respondent, Muhammad Maroof may be enhanced. In support of his contentions, the learned counsel referred the following case law;-

In case law reported as "2001 SCR 240" it was held as under;-

> ***"****If the punishment of 'Qisas' is not awarded for one reasons or the other, the punishment of death instead of 'Qisas' could be awarded under section 3 read with section 24 of the Islamic Penal Laws Act."*

In case law reported as "2011 SCMR 872" it was held as under;-

> ***"****Eye-witnesses while corroborating each other even in minor details had described the occurrence in a straightforward manner, disclosing the style in which the accused had killed the deceased. Medical evidence had fully supported the ocular testimony."*

Zulfiqar Ahmed Raja, Advocate the learned counsel for the appellant, Muhammad Maroof, argued that the learned trial Court committed grave illegality while recording the impugned judgment. He further argued that there are lots of contradictions in the statements of P.Ws to the extent of convict-appellant, Maroof, but the learned trial Court illegally and wrongly convicted him. He contended that 08 accused-persons who were nominated in the case were exonerated under section 169, Cr.P.C, while one of the accused, namely Tahir Azmat was acquitted of the charge by accepting application under section 265-K, Cr.P.C. The allegation leveled against the convict-appellant is that he

was only armed with Kalashnikov; however, no role of causing injury to any of the injured/deceased has been leveled against him. The statements of P.Ws under section 161, Cr.P.C were recorded after a considerable delay. P.Ws. are related to the deceased, as such no reliance can be placed upon them. Finally, the learned counsel prayed that by accepting the appeal, the impugned judgment dated 04.04.2024 may be set aside and convict-appellant Maroof may be acquitted of the charge. In support of his contentions, the learned counsel referred the following precedents;-

> ***In case law reported as "2016 YLR 572" it was held as under;-***
>
> > *"For giving benefit of doubt to accused it is not necessary that there should be many circumstances creating doubts. If a single circumstance creates reasonable doubt in a prudent mind about guilt of accused he is entitled to such benefit not as matter of grace and concession but as matter of right."*
>
> ***In case law reported as "2016 P.Cr.L.J 101" it was held as under;-***
>
> *"Prosecution had failed to establish its case against accused beyond any shadow of doubt, when on the same evidence co-accused had already been acquitted of the charge. Even a single reasonable doubt, was sufficient to extend benefit of doubt to*

accused, whereas present case was replete with circumstances, which had create serious doubts about the prosecution story."

In case law reported as "2022 SCMR-393" it was held as under;-

> *"So there is nothing on record to distinguish the role of the present appellants from the role of those accused who have been acquitted by the trial Court and their acquittal has been maintained by the High Court and further their acquittal was never challenged before this Court due to above circumstances, the conviction and sentence of appellants is not sustainable on the same set of evidence, which was found doubtful to the extent of three acquitted co-accused."*

The learned Addl.A.G supported the arguments raised by the learned counsel for the complainant/legal heirs of deceased.

We have heard the learned counsel for the parties and gone through the record of the case with utmost care.

A contemplate perusal of the record reveals that in the present case, appellants Bilawal Tahir, Muhammad Maroof and accused-respondents, Qaisar Mehmood and Muhammad Mahfooz were tried in respect of murder of two innocent persons namely Naheed Hussain and Shahid Waseem. Apart from the aforesaid accused-persons prosecution has also nominated fifteen (15) accused-

persons namely Nasir Farooq, Muhammad Ruaf, Khanzada, Pirzada, Amirzada, Bilal etc. (proceeded under section 512, Cr.P.C) and alleged that they have also participated in the event. The learned trial Court after completion of the trial, convicted the appellant, Bilawal Tahir and awarded him death sentence as “Tazir” under section 302(B),APC, while convict-appellant Muhammad Maroof was sentenced to 14 years rigorous imprisonment. Accused-respondents, Qaisar Mehmood and Muhammad Mehfooz were acquitted of the charge, whereas, rest of the accused-persons are still absconder. The convict-appellants, Bilawal Tahir and Muhammad Maroof preferred separate appeals for setting aside the impugned judgments, whereas complainant, Shakeel Ahmed and legal heirs of deceased, Naheed Iqbal also filed appeals for enhancement of sentences and for awarding sentence to acquitted accused-respondents.

So far as the case of convict-appellant, Bilawal Tahir is concerned, according to prosecution story it has been alleged that on the fateful day, he was armed with Kalashnikov and due to his firing, Naheed Hussain and Shahid Waseem received multiple injuries at Chest, head neck and different parts of body, resultantly both the injured

succumbed to the injuries. In support of its case, prosecution examined sixteen (17),P.Ws including three eye-witnesses namely Shakeel Ahmed (complainant), Husnain Maroof and Mumtaz. All the three eye-witnesses appeared before the Court, got recorded their statements and completely supported the prosecution version. The learned trial Court has reproduced their statements in the impugned judgment, therefore, for the sake of brevity, the same needs not be reiterated here. From perusal of their statements, it reveals that they have unanimously supported the prosecution version and were put to lengthy cross-examination by the defense counsel, however, nothing has been extracted from it, which might suggestive of the fact that eye-witnesses have totally recorded a false statement on account of enmity. Their deposition seems to be natural. P.W. Husnain Maroof, is an important witness in the present case, because, he was present in the vehicle alongwith the deceased. The contention raised by the learned counsel for the convict-appellant that this witness (Husnain Maroof) was not present at the place of occurrence and he was planted by the prosecution. He further argued that it was impossible that a person who was seated in the vehicle can

survive when so many bullets were fired. In this regard, it is relevant to mention here that, it appears from the record that he also got injured during the occurrence, however, luckily survived. Record also shows that he received multiples injuries on the body. His medical report Ex.PT is also appended with the record. Thus, he is a natural witness; as such the contention raised by the learned counsel for the appellant is hereby repelled.

Furthermore, recovery of Kalashnikov was allegedly made on the pointation of convict-appellant, Bilawal and recovery memo Ex.PD was prepared in presence of witnesses namely, Babar Aziz and Husnain Maroof which is corroborative piece of evidence and further strengthened the prosecution case. While in presence of P.Ws. Raja Mushtaq S/o Muhammad Akram, Abdul Ghafoor, Head-constable, Aqeel Aslam Constable, recoveries of incriminating materials were made and recovery memos Ex.PC, Ex.PG, Ex.PF, Ex.PE, Ex.PH, ExPJ, Ex.PK, Ex.PM and Ex.PN were prepared.

Doctor Faheem-ur-Rehman Civil Medical Officer, who conducted the postmortem of the deceased and prepared postmortem, reports Ex.PP and Ex.PM also appeared before

the Court and got recorded his statement. According to postmortem report of Naheed Iqbal (deceased), Ex.PM, the concerned Doctor found 12 entry and 08 exit wounds. He has given the following remarks;-

> ***"Cause of death, fire arm injury.***
> ***Many vital organs brain etc, are damaged."***

While according to postmortem report of Shahid Waseem (deceased), Ex.PP, he observed the cause of death as damage of brain due to firearm injury.

The articles of the deceased, Shahid Waseem and Naheed Iqbal i.e pair of shoes, Qameez, Shalwar, Banyan/Vest, Backside of Car seat cover were also sent to Punjab Forensic Science Agency Lahore, for chemical examination and the report Ex.PZZ has also been received and made part of the file. It will be useful to observe that medical evidence is also type of supportive evidence.

So far as the objection raised by the learned counsel for the appellant that witnesses produced by the prosecution are related to the deceased, therefore, no reliance can be placed upon them. In this regard, it is by now settled proposition of law that a witness cannot be described as an interested witness and his evidence cannot

be discarded on account of relationship with the party. An interested witness is one who has a motive for falsely implicating an accused-person. In the instant case although the prosecution witnesses are interested and closely related with the deceased but they do not nurse any grudge or rancor against the accused-party, therefore, their evidence cannot be discarded on this score only.

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."*

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.

The learned counsel for the convict-appellant could not point out any plausible reason as to why the complainant has falsely involved the appellant in the present case. During the course of arguments, the learned counsel for the appellant contended that there are material discrepancies and contradictions in the statements of the eye-witnesses but on our specific query he could not point out any major contradiction, which could shatter the case of the prosecution.

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."*

The next argument of the learned counsel for the convict-appellant that all the eye witnesses are chance witnesses and it is not safe to award death sentence while relying upon their statements. In this regard, it is relevant to mention here that witnesses produced by the prosecution are natural. They were present at the place of occurrence at the relevant time, especially, Husnain Maroof. Even otherwise, merely on the ground that the eye witnesses are the chance witnesses the case of the prosecution cannot be smashed out particularly, when the prosecution has succeeded to prove the presence of the witnesses,

satisfactorily. However, if the prosecution failed to establish their presence for making the evidence then the corroboration was necessary for making the evidence admissible. It may be observed here that it is a settled principle of law that the testimony of the chance witnesses should be carefully examined. Keeping in mind the yardstick to judge the testimony of the chance witnesses, we have examined the statements of eye-witnesses and after taking into account the statements of eye witnesses, we are convinced that they remained consistent on the matter points and made their statements in line with each other. All the eye-witnesses proved their presence at the relevant time, satisfactorily. No material discrepancies have been brought into our notice.

Purgation of the eye-witnesses has also been conducted and they are found Adil. The learned counsel for the convict-appellant, Bilawal Tahir failed to point out any mitigation. Thus, in the light of above detailed discussion, we are of the unanimous view that the learned trial Court has rightly appreciated the evidence brought on record and has not committed any illegality or infirmity while passing the impugned judgment.

The learned counsel for the appellant, Bilawal Tahir also much stressed on the point that according to prosecution version, alongwith convict-appellant, the role of firing was also attributed to other accused-persons and according to his estimation, the fire shot by co-accused Nasir Farooq (absconder) hit the deceased and not that of convict-appellant, however, the learned counsel failed to establish and support this arguments through record as well as evidence, therefore, the same is hereby repelled.

So far as the contention raised by the learned counsel for the convict-appellant, Bilawal Tahir that the statements of P.Ws. under section 161, Cr.P.C were recorded after a considerable delay and no plausible explanation has been given and P.Ws have also made improvements in their Court's statements, as such the statements recorded under section 161, Cr.P.C have no evidentiary value. In this regard, it is relevant to mention here that record shows that although statement under section 161, Cr.P.C were recorded after sometime, however, it is pertinent to note here that such type of statement were recorded having served a subordinate purpose, are not treated as substantive evidence against the accused and no finding of

guilty can be based on them. It is worthwhile to mention here that a person can be examined under this section only in respect of question relating to the case i.e with regard to the offence investigated. Moreover, it is worth mentioning that delay in recording the statement under section 161, Cr.P.C is not by itself sufficient to discard its value. Our this view finds support from a case tilted *"Qaiser Hussain alias Kashi alias Kashif Vs. The State" [2022 P.Cr.L.J 1126]-,* wherein it was held as under;-

> *"It is further to be clarified here that recording of statement of statement of the P.W. with delay is not itself sufficient to discard its value, the circumstances make it so. If the statement is delayed due to certain ulterior motives like filling up certain lacunas in the prosecution version then it has become valueless and if circumstances justified then every statement recorded with delay is not to be discarded."*

Even otherwise, we have examined the statement recorded by the P.Ws. under section 161,Cr.P.C alongwith their Court's statement and found that they have not changed their version. So, the contention of the learned counsel for the appellant is hereby repelled.

It is also relevant to mention here that in the present case, the enmity between the parties is established from the

record, because the contents of FIR also disclosed that on the fateful day, accused-persons in this case are the complainant party in earlier case called the complainant party for negotiation, however, deceived them and committed the occurrence. 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."*

As far as the case of convict-appellant, Muhammad Maroof is concerned, in this regard; it is relevant to mention here that during earlier round the learned trial Court convicted the appellant and awarded life imprisonment two times under section 302(c), APC alongwith other sentences vide judgment dated 31.05.2022. The said judgment of the trial Court was set aside by this Court vide judgment dated 29.02.2024 and case was remanded to the trial Court for fresh decision within a period of one month. The learned trial Court through the impugned judgment dated 06.04.2024 convicted the appellant, Muhammad Maroof and awarded fourteen (14) years rigorous imprisonment. Now the convict-appellant has preferred an appeal for setting aside the impugned judgment, whereas, complainant also filed an appeal for enhancement of the sentence. According to record, the allegation leveled against the convict-appellant alongwith other accused was present

at the place occurrence armed with Kalashnikov. Eye-witnesses during their statements also affirmed the presence of the convict-appellant and firing. Crime weapon was recovered by the police on his pointation. Thus, after going through the oral evidence as well as documentary evidence, it can safely be said that convict-appellant is part of unlawful assembly and played an active role in the commission of the offence. 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 doing of the act. Thus, when common intention is proved against the each of the accused, each of them can be convicted for the crime who participated in that crime, in furtherance of the common intention.

There is another aspect of this case. The law specifically states that under the circumstances can a kill in the name or under the pretext of honour be brought within the ambit of section 302(c),APC. A proviso was added after clause (c) of section 302 in the year 2005 to this effect. This proviso was then replaced by another proviso in the year,

2016 which when read with the definition of ***fasad-fil-arz*** reiterated that killing in the name or under the pretext of honour cannot be brought within the ambit of section 302(c)APC. Section 302,APC, both the said provisos and the definition of *fasad-fil-arz are reproduced hereunder;-*

> ***302. Punishment of qatl-i-amd.*** *Whoever, commits qatl-i-amd shall, subject to the provisions of this Chapter be-*
>
> > *(a) punished with death as qisas;*
> >
> > *(b) punished with death or imprisonment for life as ta'zir having regard to the facts and circumstances of the case, if the proof in either of the forms specified in section 304 is not available; or*
> >
> > *(c) punished with imprisonment of either description for term which may extend to twenty-five years, where according to the injunctions of Islam the punishment of qisas is not applicable.*
> >
> > *Proviso added in the year, 2005.*

Provided that nothing in this clause shall apply to the offence of qatl-i-amd if committed in the name or on the pretext of honour and same shall fall within the ambit of clause (a) or clause (b), as the case may be

The above proviso was substituted with the following proviso in the year, 2016.

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.

The definition of fasad-fil-arz was also introduced in the year, 2016 in section 299(ee),APC, as under;-

(ee) fasad-fil-arz includes the past conduct of the offender or whether he has any previous conviction or the brutal or shocking manner in which the offence has been committed which is outrageous to the public conscience or if the offender is considered a potential danger to the

community or if the offence has been committed in the name or on the pretext of honour.

The aforementioned definition of fasad-fil-arz includes offences committed which are outrageous to public conscience or where the offender is deemed a potential danger to the community. This particular incident took place in the year 2017 and during the course of arguments; it was brought to the Court's attention that approximately eight persons including a woman were brutally killed in series of events. Therefore, section 299(ee) alongwith proviso in section 302,APC is fully applicable in the present case.

So far as the case of acquitted accused respondents, Qaisar Mehmood and Muhammad Mehfooz is concerned, the learned counsel for the complainant as well as learned counsel for legal heirs of deceased argued that accused-respondents played an active role of abetting the main accused. They provoked the convict-appellant, who then fired at the deceased, resulted into their death. In this regard, we have gone through the record as well as statements of witnesses and found that the prosecution has miserably failed to establish the case against the accused-

persons, as such the learned trial Court has righty acquitted them. So, it is settled principle of law 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.

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, he failed to do so and it is celebrated principle of law that benefit of a slightest doubt arising in the prosecution case must go to 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 Muhammad Mehfooz and Qaisar Mehmood of the charge while extending them the benefit of doubt.

The case law cited by the learned counsel for the convict-appellants 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, Bilawal Tahir and Maroof. Thus, the appeals No.13/2019, 20/2019, 18/2024 and 23/2024 merits no consideration, these are hereby dismissed. Resultantly, reference made by the learned trial Court for confirmation of death sentence awarded to convict-appellant, Bilawal is answered in affirmative.

Copy of this judgment shall be annexed with connected files.

Muzaffarabad;
14.11.2024.

CHIEF JUSTICE ***JUDGE***

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

CHIEF JUSTICE ***JUDGE***

Approved for Reporting

CHIEF JUSTICE ***JUDGE***