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**Judgment Sheet
IN THE LAHORE HIGH COURT AT LAHORE
JUDICIAL DEPARTMENT**

**Murder Reference No.510 of 2010
(The State vs. Muhammad Iqbal alias Bali)**

**Crl. Appeal No. 1986 of 2010
(Jaffer Hussain vs. The State etc)**

**Crl. Appeal No. 2211 of 2010
(Faiz Muhammad etc vs. The State etc)**

**Crl. Appeal No. 2183 of 2010
(Muhammad Shafique vs. Manzar Abbas alias Mazhari etc)**

**Crl. Appeal No. 2175 of 2010
(Muhammad Iqbal vs. The State etc)**

**Crl. Appeal No. 412 of 2011
(Muhammad Riaz vs. The State etc)**

**Crl. Revision No. 1137 of 2010
(Muhammad Shafique vs. Jaffer Hussain etc)**

JUDGMENT

Date of hearing: 04-05-2015.

**Appellants by: Syed Abid Hussain Bukhari, Advocate.
(in Crl.Appeal No.1986-2010)
Mr.Javed Iqbal Ramday, Advocate.
(in Crl.Appeal No.2175-2010 on State expense)
Mian Shah Abbas Iqbal, Advocate.
(in Crl.Appeal No.2211-2010)
Mr.Sheraz Mehmood, Advocate.
(in Crl.Appeal No.412-2011)
Ch. Asghar Ali, Defence counsel.
(in Crl.Appeal No.1986-2010)**

The State by: Mr.Humayoun Aslam, Deputy Prosecutor General.

**Complainant by: Mr.Bashir Abbas Khan, Advocate.
(in Crl.Appeal No.2183-2010 & Crl.Revision
No.1137-2010)**

AALIA NEELUM, J:- Muhammad Iqbal alias Bali son of Haq Nawaz, Caste Kathia, resident of Haveli Moranga Tehsil Kabirwala, District, Khanewal (appellant in Crl. Appeal No.2175-2010), Jaffer Hussain son of Abid Hussain, Caste Syed, resident of Mohallah Sadaat Shorkot, City & District, Jhang (appellant in Crl. Appeal No.1986-2010), Faiz Muhammad and Jamshaid sons of Muhammad Ilyas, Caste Tagga Rajput, resident of Kakki Nau, Tehsil

Shorkot District, Jhang (appellants in Crl. Appeal No.2211-2010), Muhammad Riaz son of Muhammad Nawaz, Caste Kawan, resident of Kakki Nau, Tehsil Shorkot, District, Jhang (appellant in Crl. Appeal No.412-2011) and Manzar Abbas alias Mazhari (since acquitted) were involved in case F.I.R. No.246-2008, dated 24.11.2008, offence under Sections 302, 324, 396, 412 P.P.C., registered at Police Station, Shorkot Cantt, District, Jhang and were tried by Mr. Nussar Ali Naseem Awan, learned Additional Sessions Judge, Shorkot. The learned trial court seized with the matter in terms of judgment dated 12.07.2010 while convicting the accused-Muhammad Iqbal alias Bali under Section 302 (b) P.P.C. and sentenced him to **death** with the direction to pay Rs.3,00,000/-as compensation to the legal heirs of the deceased, failing which, further undergo six months S.I. The accused-Muhammad Iqbal alias Bali was further convicted under Section 396 P.P.C. and sentenced to **death** along with imposition of compensation amount to the tune of Rs.2,00,000/-and in default thereof, shall undergo three months S.I. The compensation amount shall be recovered from the property of the accused. The accused-Jaffar Hussain, Fiaz, Jamshaid and Muhammad Riaz were convicted under Section 302 (b) P.P.C. and each sentenced to **life imprisonment** and they were also liable to pay Rs.3,00,000/- each as compensation to the legal heirs of the deceased and in case of default, they shall have to further undergo six months S.I. The accused-Jaffar Hussain, Fiaz, Jamshaid and Muhammad Riaz were also convicted under Section 396 P.P.C. and each sentenced to **life imprisonment** having burden of Rs.2,00,000/- each as compensation to the legal heirs of deceased, failing which, each will have to go three months S.I. The accused persons-Fiaz, Muhammad Riaz and Jaffar Hussain were also convicted under Section 412 P.P.C. and each of them was sentenced to ten years R.I. with fine of Rs.50,000/-each and in default of payment of fine, each will further undergo two months S.I. The accused-Muhammad Iqbal alias Bali, Fiaz, Jaffer Hussain, Muhammad Riaz and Jamshaid were convicted under Section 149 P.P.C. and each of them was sentenced to undergo S.I. of one year. All the sentences shall run concurrently. The benefit of Section 382-B of Cr.P.C. was extended in favour of accused-Jaffar Hussain, who at that time, was in judicial lockup.

2. Being aggrieved by the judgment of the learned trial court, Muhammad Iqbal alias Bali-appellant impugned the same through filing Crl. Appeal No.2175 of 2010, Jaffer Hussain-appellant by way of Crl. Appeal No.1986-2010, Faiz Muhammad and Jamshaid-appellants preferred Crl. Appeal No.2211-2010 and Muhammad Riaz-appellant through Crl. Appeal No.412-2011, whereas the learned trial court has forwarded Murder Reference No.510 of 2010 for confirmation of death sentence. The complainant being dis-satisfied with the judgment dated 12.07.2010, filed a Criminal Appeal No.2183-2010 against acquittal of respondent/accused Manzar Abbas alias Mazhari as well as prayed for enhancement of sentence of respondents/accused, Jaffar Hussain, Faiz Muhammad, Jamshaid and Muhammad Riaz, through Crl. Revision No.1137 of 2010. As all the matters are arising out of one and the same judgment of the learned trial court, therefore, they are being disposed of through a single judgment.

3. Prosecution story as alleged in the F.I.R (Exh.P.N/1) lodged on the statement (Exh.P.N) of Muhammad Shafique (PW-6)/complainant is that complainant (PW-6) and his brother Muhammad Naveed Akhter (since died) have a shop and used to purchase crops and on 24.11.2008, complainant (PW-6) brought an amount worth Rs.9,00,000/- from Shorkot Cantt for making payment to the customers and put the same to the safe. On the same day, at about 7:00 p.m. complainant along with his brothers namely Muhammad Rafique and Muhammad Naveed Akhter (since died) along with one cousin-Abdul Rauf (PW-1) were present in their shop when suddenly three unknown accused persons, armed with deadly weapons, while riding on a motorcycle, without any number, entered into their shop and started to search the safe (*Galla*) of shop whereupon brother of the complainant (PW-6) namely Muhammad Naveed Akhter (since died) had tried to resist them but one of the accused namely Muhammad Iqbal alias Bali made a fire which hit on the forehead of Muhammad Naveed Akhter (since died), who fell down whereas the other accused person also made fire on the foot of Abdul Rauf. On their hue and cry, inhabitants of the locality came there and apprehended the accused-Muhammad Iqbal alias Bali along with rifle and bag of bullets whereas the two accused fled away by taking away looted amount of Rs.9,00,000/-. They shifted Muhammad

Naveed Akhter to the Tehsil Headquarter Hospital, Shorkot and on seeing the condition of injured, the doctor referred him to Allied Hospital, Faisalabad but the injured expired in the way to hospital. The occurrence was witnessed by the complainant-Muhammad Shafique (PW-6), Muhammad Rafique (PW-5), Abdul Hameed (PW-4) and injured-PW Abdul Rauf (PW-3).

4. On receipt of information regarding the occurrence, Tariq Mehmood, S.I. (PW-12) proceeded to Tehsil Headquarter Hospital, Shorkot and reduced into writing the statement (Ex.PN) of the complainant (PW-6) and the complainant (PW-6) signed as a token of its correctness and after completion of police *karawi*, Tariq Mehmood, S.I. (PW-12) sent the same to the police station through Muhammad Abdullah 1450/C (PW-1) whereupon formal F.I.R. (Ex.PN/1) was chalked out by Ahmad Nawaz 1074/HC (PW-9). Thereafter, the Investigating Officer (PW-12) prepared the injury statement Exh.PD/2 of deceased-Muhammad Naveed Akhter, injury statement of injured-PW, Abdul Rauf (PW-1) as Exh.PP/2 and inquest report of deceased-Muhammad Naveed Akhter Exh.Q/3. Thereafter, the Investigating Officer (PW-12) deputed Mulazim Hussain (PW-2) for the postmortem examination of the deceased-Muhammad Naveed Akhter and proceeded towards the place of occurrence where PWs- Muhammad Shafi and Abdul Hameed produced the accused-Muhammad Iqbal alias Bali before the Investigating Officer along with rifle 44-bore (P-8) and a bag of bullets, 105 in number and same were taken into possession by the Investigating Officer vide recovery memo Exh.PF. The bloodstained cotton was also taken into sealed parcel vide Exh.PG. The Investigating Officer had also taken into possession one empty (P-10) from the place of occurrence, prepared recovery memo Exh.PH. The motorcycle (P-11) used in the alleged occurrence was taken into possession vide recovery memo Exh.PJ. Thereafter, Jan Muhammad-Draftsman (PW-13) prepared the scaled site plan of place of occurrence Exh.PS. On 25.11.2008, Mulazim Hussain 1535/C (PW-2) produced the last worn clothes of deceased before the Investigating Officer (PW-12) i.e. Qameez (P-1), Shalwar (P-2), Bunyan (P-3) which were taken into possession vide recovery memo Exh.PA. On 14.12.2008, on the pointation of accused-Jaffer Hussain, pistol 30-bore was recovered through recovery memo Exh.PD and prepared rough site plan of place of recovery Exh.PD/1. On 18.12.2008, the

accused-Jaffer Hussain led to the recovery of Rs.1,00,000/- qua which recovery memo Exh.PK and rough site plan thereof Exh.PK/1 were prepared. On 12.12.2008, accused-Faiz Muhammad, Jamshaid and Muhammad Riaz were arrested and on the pointing of accused-Muhammad Riaz on 14.12.2008, rifle 44-bore along with 15 bullets were taken into possession vide recovery memo Exh.PC and site plan of place of recovery Exh.PC/1 there of were prepared. On 19.12.2008, accused-Muhammad Riaz, the Investigating Officer recovered Rs.50,000/- and prepared recovery memo Exh.PM and site plan of place of recovery as Exh.PM/1. On 23.12.2008, the accused-Faiz Muhammad got recovered Rs.50,000/- qua which recovery memo and site plan of recovery place were prepared as Exh.PL and Exh.PL/1, on 24.12.2008, the accused-Faiz Muhammad also led to the recovery pistol 30-bore which was taken into possession vide recovery memo Exh.PE and site plan of place of recovery Exh.PE/1.

5. Having found the accused persons guilty, the Investigating Officer prepared report under Section 173, Cr.P.C. and sent the same to the court of competent jurisdiction. On 27.07.2009 & 06.04.2010, the learned trial court formally charge sheeted the appellants to which, they pleaded not guilty and claimed trial. The prosecution in support of its version produced as many as fifteen (13) prosecution witnesses.

6. Ocular account of first part of occurrence in this case has come out from the statements of Muhammad Shafique (PW-6)/complainant, the injured PW-Abdul Rauf (PW-1) and Muhammad Rafique alias Atique (PW-3) whereas, Dr. Mazhar Abbas Bhangoo (PW-8) had observed the body of the deceased-Muhammad Naveed Akhter in an injured condition and also conducted postmortem examination of the dead body of the deceased on 25.11.2008 and found the following injuries on his person:-

- 1-A *A fire arm entrance wound on right side of forehead 3 cm from right eyebrow measuring 1 cm x 1 cm into through and through. No blackening around the wound.*
- 1-B *A fire arm exit wound 2.5 cm x 1.5 cm into brain matter coming out on left*

side of head 4 cm above left ear pinna. Left eyelid swollen.

After conducting the postmortem examination, the doctor rendered the following opinion:-

Opinion.

“The death in this case was caused due to hemorrhage shock and injury to vital organs i.e. brain. This injury No.1 was ante-mortem caused by fire arm weapon and sufficient to cause death in ordinary course of nature. The probable time elapsed between injury and death was within two to four hours and between death and postmortem was within three to five hours.

Exh.PQ is carbon copy of report of postmortem examination whereas Exh.PQ/1 and Exh.PQ/2 are the sketches of injuries, inquest report Exh.PQ/3 and injury statement Exh.PQ/2.”

After conducting the postmortem examination, the doctor has opined that:-

“Injuries No.1 & 2 were described Jurrah Ghair Jaifah Damiah 337-F(i). Injury No.1 was caused by fire arm while injury No.2 by blunt weapon. These injuries were caused within six hours.

Sketch of injuries Exh.PP/1 and injury statement is Exh.PP/2.”

Similarly on the same day at 12:30 a.m. (night), Dr. Mazhar Abbas Bhangoo had medically examined the injured-Abdul Rauf and found following injuries on his person:-

1. A fire arm grazing wound 3.5 cm x 4 cm skin deep on upper side of big toe.
2. An abrasion 7 cm x 2 cm on front of right thigh.

The statements of remaining prosecution witnesses are formal in nature.

7. On 27.04.2010, learned Assistant District Public Prosecutor gave up Muhammad Akhter, Muhammad Shafi, Abdul Hameed son of Muhammad Siddique being un-necessary whereas Muhammad Hanif 1141/C was given up

on 19.05.2010 being un-necessary and closed the prosecution evidence on 11.06.2010 after tendering report of Chemical Examiner, Punjab, Lahore as Exh.PT, report of Serologist Exh.PU and report of Forensic Science Laboratory, Punjab, Lahore Exh.PV.

8. The appellants were also examined in terms of Section 342 Cr.P.C., wherein they opted not to appear as their own witnesses in disproof of the allegations levelled against them in the prosecution version. In response to a particular question why this case against him and why the PWs deposed against him, Muhammad Iqbal alias Bali-appellant, made the following deposition:-

“My sister is married in Mauza Mahala Basti Gujranwali. Soon after the occurrence, I was returning back after seeing my sister on bicycle to my home. The place of occurrence is situated in the way connecting Mauza Mahla and Mauza Iarrala. When I was crossing near the place of occurrence, the PWs apprehended me empty handed on the basis of suspicion. I have not committed this occurrence at all. All the PWs are related inter-se who have deposed falsely against me.”

Likewise, Jaffer Hussain-appellant replied the particular question while deposing as under:

“Prior to the occurrence, I had been working at the workshop situated at Tehsil Chowk Shorkot City. Muhammad Shafique complainant came at that workshop for report of his tube-well and their dispute arose between me and Muhammad Shafique complainant in connection with wages of repairing and resultantly a quarrel took place between me and the complainant. On that grudge complainant has falsely involved me in this criminal case in supplementary statement. Whereas I was not nominated in initial statement of complainant regarding registration of case Exh.PN. All the PWs related inter-se who deposed against me under ulterior motive.”

Similarly, Muhammad Riaz-appellant answered the specific question as under:

“ All the PWs related inter-se and deposed against me under ulterior motive. Moreover, during the general election 2008, I supported Mian Qamar Hayat Kathia and complainant party supported Ch. Khalid Ghani and due to this political rivalry the complainant party falsely involved me in this case with consultation of Ch. Khalid Ghani.”

The appellants-Faiz Muhammad and Jamshaid while replying to particular question made following deposition:-

“All the PWs related inter-se who deposed against me under ulterior motive. Moreover, Muhammad Shafique complainant of this case used to pass in front of our house while playing tape recorder of his tractor in loud voice. We forbade the complainant from playing tape recorder while crossing our house, upon which, altercation took place and the complainant has grudge against us. Furthermore, in the general election 2008 we supported Mian Qamar Hayat Kathia and the complainant party supported Ch. Khalid Gani and due to this political rivalry also complainant falsely involved me and my brother in this occurrence.”

The appellant-Manzar Abbas alias Mazhari replied the specific question as under:

“Initially I was not nominated in the statement of Muhammad Shafique PW for registration of this case Exh.PN. Later on some one Manzar alias Mazhari resident of Ranjeet Kot was nominated by the complainant during investigation before the I.O. I am not resident of Ranjeet Kot and am resident of Katcha Kabeera. I was found innocent during investigation. Tariq Mehmood, PW-12 who is I.O of this case has stated before the honourable court that instead of me some Qalab alias Qallo alias Mazhari is accused and required in this case. Moreover all the PWs related inter-se who have deposed against me due to some misunderstanding.”

9. The learned trial court after evaluating the evidence available on record in light of arguments advanced from both sides, found the prosecution version proved beyond shadow of reasonable doubt resulting into conviction of the above stated appellants in the afore said terms.

10. Arguments advanced from both sides have been heard. We have also gone through the record available on file with the able assistance of learned counsel for the appellants and learned counsel for the complainant as well as Deputy Prosecutor General.

11. The occurrence in the present case allegedly had taken place on 24.11.2008 at 7:00 p.m. and the case had been registered on the statement (Exh.PN) of Muhammad Shafique (PW-6), brother of Muhammad Naveed Akhter, deceased. According to Muhammad Shafique (PW-6), his statement (Exh.PN) was recorded at the THQ Hospital by the police and same was read over to him and he signed the same in token of its correctness. The statement (Exh.PN) of Muhammad Shafique (PW-6) was recorded at 10:30 p.m. The formal F.I.R (Exh.PN/1) was chalked out by Ahmed Nawaz, H.C. (PW-9) at 11:30 p.m. Muhammad Shafique (PW-6) had stated that he along his brother Muhammad Naveed Akhtar have made a shop and they also used to purchase crops. On 24-11-2008 he brought Rs.9,00,000/- in evening from Shorkot Cantt for making payment to the customers. Whereas the complainant (PW-6) along with his brothers Muhammad Rafique (PW-5) and Muhammad Naveed Akhtar (deceased) and his cousin Abdul Rauf (PW-3) were present in the shop. When three (3) persons armed with fire arm weapons came there on motorcycle Yamaha without number and entered into the shop and asked them to raise hands and they demanded whatever they have be hand over to them and one accused started to search the safe (Galla). Whereupon Muhammad Naveed Akhtar resisted upon which one accused, later his name known as Muhammad Iqbal alias Bali, made straight fire which hit on forehead of Muhammad Naveed Akhtar who fell down. Other accused also made fire which hit on the right foot of Abdul Rauf (PW-3). Although upon hearing the alarm raised by them other inhabitants of the locality reached the place of occurrence and caught-hold of accused Iqbal alias Bali along with bag of bullets. Whereas two (2) accused fled away on motorcycle along with looted money worth Rs.9,00,000/-. Muhammad Naveed Akhtar was brought to THQ Hospital, Shorkot, immediately and due to serious condition of the injured doctor referred him to the Allied hospital, Faisalabad. On the way to the Allied hospital, Faisalabad near Haveli Bahadar Shab he (Muhammad Naveed Akhtar) breathed his last. Thereafter the

complainant (PW-6) brought back dead body of the deceased to THQ Hospital, Shorkot. Where on receiving information about the occurrence Tariq Mehmood, S.I. (PW-12) reached the hospital and met with complainant who got recorded his statement (Exh.PN). Had the complainant-Muhammad Shafique (PW-6) identified the accused, who were known to him, he would have in the normal course disclosed the names. Instead of that he could identify the assailant if he saw them. This fact should be viewed in the context of defence version that the FIR was recorded with consultation and deliberation as well as same was not recorded at the time and date it was purportedly recorded. The complainant-Muhammad Shafique (PW-6) also made a very categorical statement in the complaint (Exh.PN) that later he came to know about the name of the accused as Iqbal alias Bali, whereas during cross-examination the complainant-Muhammad Shafique (PW-6) deposed that, **“All of the accused were known to me prior to the occurrence.”** The complainant, PW-6 had not given the description of the other accused to the police whereas he stated that he can identify them, if produced before him. Whereas Abdul Rauf (PW-3) deposed during cross-examination that, **“Shafique complainant is my nephew. I know all of the accused prior to this occurrence since a long time. PW volunteered that I had been ploughing the fields of the accused.”** The deposition of this witness gives an altogether different picture which creates serious doubt on the testimony of the both prosecution witnesses. The complainant-Muhammad Shafique (PW-6) deposed that, **“On the same day after some time in the Hospital I again got recorded my supplementary statement.”** The supplementary statement of the complainant (PW-6) is Exh.DF. It is strange that all accused were previously known to the prosecution witnesses and they (accused persons) did not cover their faces and let others (prosecution witnesses) to identify them. On the other hand, going through the testimony of Abdul Rauf-injured witness (PW-3) it reveals that during examination-in-chief he deposed, **“After that Muhammad Shafique complainant took Muhammad Naveed Akhtar to Hospital. I went to Hospital with Muhammad Shafi PW.”** Contrary to his statement, he deposed during cross-examination that, **“I was brought to DSP Shorkot from the place of occurrence. Police prepared my injury statement at THQ Hospital, Shorkot. Muhammad Sahfi narrated the**

occurrence to DSP and DSP wrote case.I stayed there about one hour and then proceeded to THQ Hospital.” He (PW-3) further deposed that, “When we caught hold of Iqbal alias Bali accused police came there after 30 minutes. We made call to the police but I do not remember that who made the call and then police arrested Iqbal accused and took him to police Station. Iqbal accused was handed over to police in my presence and in the presence of Muhammad Razaq, Muhammad Sharif, Ch. Sarwar etc. Iqbal was handed over to police by Ch. Sarwer at the time of handing over of Iqbal.” Whereas while contradicting to the deposition of Abdul Rauf-injured witness (PW-3), Abdul Hameed (PW-4) stated during examination-in-chief that, “At about 12:30 night police came at the place of occurrence. We handed over rifle and bag of bullets which were 105 in number to the police which were taken into possession by the I.O vide recovery memo Exh.PF.” During cross examination he (PW-3) deposed that, “I grappled accused Iqbal alias Bali from his back side in veranda of shop. Soon after that many people also caught hold of Iqbal accused. Muhammad Shafi and Akhtar PW also caught hold of Muhammad Iqbal.----- Some one had made phone call to police about the occurrence, so police reached there. When police first time reached at the place of occurrence Rauf, Shafique, Shaffi PWs and Naveed deceased were not present there.” Another important aspect of the case which cannot go un-noticed is that the complainant-Muhammad Shafique (PW-6) during cross-examination deposed that, “After 10/15 minutes of our arrival Abdul Rauf also reached in the Hospital. ----- . When we left THQ Hospital, Shorkot due to referring of Naveed Akhtar injured, uptill then police had not come in THQ Hospital, Shorkot. When I returned to THQ Hospital Shorkot with dead body of Naveed Akhtar police had already reached there. I had informed the police about the occurrence. After death of Naveed Akhtar I informed the police about the occurrence near Haveli Bahhadar Shah.” From the testimonies of the prosecution witnesses adverse inference will be drawn that yet, the prosecution failed to adduce proof that the complaint (Exh.PN) was lodged without consultation and deliberation. Tariq Mehmood, S.I. PW-12. (Investigating Officer) while replying to specific questions deposed that, “It is correct that after the completion of Exh-PN and before handing over the dead

body to constable so many people arrived in Hospital. It is correct that in between above said period those persons met the complainant. It is correct that above said people made conversation with the complainant.-----

Muhammad Shafique complainant informed me on telephone about the occurrence when I was present at Machar Chowk.” It is significant to note that

the Crime No./FIR No. is not to be found in the inquest report (Exh.PQ/3) and injury statement (Exh.PD/2). We noted that injury statement (Exh.PD/2) which is a requisition sent to the hospital for medical treatment of Muhammad Naveed Akhtar-injured, prepared by Tariq Mehmood S.I. (PW-12), through Mulazim Hussain, Constable (PW-2). Even though the inquest report is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. All this would support the defence version that FIR (Exh.PN/1) was recorded with due deliberation and consultation and the names of accused probably came into existence much later, and that creates doubt about the case.

12. The next part of the evidence of Muhammad Shafique (PW-6), Abdul Rauf-injured witness (PW-3) and Abdul Hameed (PW-4) shows that Muhammad Shafique (PW-6) shifted Muhammad Naveed Akhtar in injured condition to the THQ Hospital, Shorkot. Whereas MLC No.833/2008 (Exh-PO) prepared by Dr. Mazhar Abbas Bhanqoo (PW-8), belied prosecution case on this aspect that Muhammad Naveed Akhtar was shifted to the Hospital in injured condition by Muhammad Shafique (PW-6). According to MLC No.833/2008 (Exh-PO) Mulazim Hussain Constable/1535 (PW-2) on 24.11.2008 at 8:10 p.m shifted the deceased to the hospital in injured condition. This fact also gets support from the injury statement (Exh.PD/2).

13. We have carefully examined the testimonies of witnesses, namely, Abdul Rauf (PW-3), Abdul Hameed (PW-4), Muhammad Rafique (PW-5) and Muhammad Shafique (PW-6). Muhammad Naveed Akhtar-deceased and the complainant was nephew of Abdul Rauf (PW-3), Abdul Hameed (PW-4) is real paternal Uncle of the deceased, Muhammad Rafique (PW-5) and Muhammad Shafique (PW-6) are real brothers of the deceased are interested, inimical and chance witnesses. Such witnesses, although were chance witnesses yet their

explanation for their presence at the place of occurrence at the relevant time was not quite plausible. Abdul Rauf (PW-3) deposed that the shop where occurrence took place was owned by Naveed Akhtar and he also deposed that Muhammad Shafi, Hameed, Akhtar PWs are not eye witnesses of firing. He (PW-3) further deposed that they came together after two minutes of the occurrence. Abdul Hameed (PW-4) also stated that shop/place of occurrence was owned by Muhammad Naveed Akhtar-deceased. Abdul Hameed (PW-4) also stated that he is rikshaw driver. On the day of occurrence he went to the house of Muhammad Shafi. He (PW-4) was sitting in the drawing room of Muhammad Shaffi PW along with Akhtar when after 1 ½ hour they heard hue and cry. When they reached the place of occurrence they saw Manzar, Jaffar and Iqbal standing inside the shop with their respective arms. Before their sight Iqbal made fire which hit Muhammad Naveed Akhtar-deceased. Contrary to the deposition of PW3 and PW-4, Muhammad Rafique (PW-5) deposed that shop/place of occurrence is owned by him and he denied the suggestion that shop solely owned by Naveed Akhtar. Muhammad Shafique (PW-6) admitted that Muhammad Naveed Akhtar-deceased was shop keeper at the shop. He volunteered that he and Muhammad Radfique alias Atiq also used to sit at that shop. As per prosecution case mentioned in F.I.R. (Exh.PN/1) hue and cry was made when allegedly Iqbal made fire at Naveed Akhtar and Iqbal alias Bali was apprehended by the inhabitants of the locality. Their presence at the time of occurrence is highly doubtful. All above facts create doubt in the prosecution case about the genuineness of the version given by Abdul Rauf-injured witness (PW-3), Abdul Hameed (PW-4), Muhammad Rafique @ Atique (PW-5) and the complainant-Muhammad Shafique (PW-6).

14. Now we straightway come to the material improvements/discrepancies/contradictions/omissions in the prosecution evidence brought on the record by the defence. We noted that source of light was not mentioned in FIR (EXh.PN/1) but subsequently prosecution witnesses deposed that they saw the occurrence in the light of electric bulb. Muhammad Shafique (PW-6) asserted that he brought money for distribution among the customers at 6:45 p.m.; that Jamshed accused (appellant) had taken Rs.25,000/- from him and thereafter came out of the shop in suspicion condition and also

made telephone call to someone; that Riaz accused (appellant) came on foot at the place of occurrence; one of the accused was armed with pistol; that Iqbal accused raised lalkara; that Abdul Rauf also made resistance; and that two accused kept standing in the veranda of the shop, when all this deposition was confronted with complaint (Exh.PN), Supplementary statement (Exh.DF) and previous statement recorded as PW-2 (Exh.DG) were not found so recorded.

15. Muhammad Rafique alias Atique (PW-5) asserted that he was sitting with Muhammad Shafique, Naveed and Abdul Rauf in the shop when confronted with his statement under Section 161 Cr.P.C (Exh.DD) not found recorded his presence there; that Jamshaid accused made a phone call to someone in the veranda of the shop when confronted with his previous statements recorded as PW-3 (Exh.DE) and under Section 161 Cr.P.C (Exh.DD) not found recorded his presence there; that Akhtar PW also witnesses the occurrence when confronted with his statement under Section 161 Cr.P.C (Exh.DD) not found recorded his presence although he has chased the accused; that besides others Akhtar PW also caught hold of the accused Iqbal when confronted with his statement under Section 161 Cr.P.C (Exh.DD) not found recorded; that Shafique took Naveed to Hospital whereas Abdul Rauf was taken to Hospital by Muhammad Shafi when confronted with his statement under Section 161 Cr.P.C (Exh.DD) not found recorded. Muhammad Abdul Rauf (PW-3) asserted that two accused came on foot at the place of occurrence when confronted with his statement under Section 161 Cr.P.C (Exh.DC) found one person came on foot; that he stated in his previous statement recorded on 03-02-2010 as PW-1 that three accused came on motorcycle when confronted with his previous statement recorded as PW-1 (Exh.DB) not found recorded; that four accused came on motorcycle when confronted with his statement under Section 161 Cr.P.C (Exh.DA) found four accused recorded in this connection; that Iqbal alias Bali accused warned us to stand up when confronted with his previous statement recorded as PW-1 (Exh.DB) not found recorded rather all accused have been written; that he also made resistance when confronted with his statement under Section 161 Cr.P.C (Exh.DA) found not recorded; that Jamshaid accused had taken Rs.25,000/- from Muhammad Shafique complainant when confronted with his statement under Section 161 Cr.P.C (Exh.DA) found not

recorded rather Naveed Akhtar was written; that Shafique had brought Rs.9,00,000/- from Shorkot Cantt to distribute among his customers when confronted with his statement under Section 161 Cr.P.C (Exh.DA) found not recorded. We have also perused the FIR and we find that the testimonies of P.W.-3, P.W.-5 and P.W.-6 are not consistent with the FIR. The defence has brought above stated improvements/discrepancies/contradictions/omissions on record in the course of cross- examination of these witnesses. The improvements and discrepancies in the evidence of eye-witnesses, was material in nature, and same is enough ground for disbelieving and discrediting their evidence. In such circumstances, witnesses may not inspire confidence and if their evidence is found to be in conflict and contradiction with other evidence or with the statement already recorded, in such a case it cannot be held that prosecution proved its case beyond reasonable doubt.

16. It is also case of the prosecution that upon hearing the alarm raised by them other inhabitants of the locality reached the place of occurrence and caught hold of accused Iqbal alias Bali along with bag of bullets. Abdul Hameed (PW-4) stated during cross-examination that, **“I grappled accused Iqbal alias Bali from his backside in Veranda of shop. Soon after that many people also caught hold Iqbal accused. Muhammad Shafi and Akhtar PW also caught hold Muhammad Iqbal. At the same time, we handed over rifle and bag of bullets to the I.O. when Iqbal was apprehended by us we also snatched rifle and bag of bullets from him and kept the same at my home in my safe custody. Iqbal was detained in the house of Muhammad Shaffi PW till the arrival of the police. When police came at the spot first of all rifle and bullets were handed over to I.O by me and then I handed over Iqbal accused to the I.O.”**

Contrary to the deposition of Abdul Hameed (PW-4), Muhammad Rafique (PW-5) deposed that Abdul Hameed, Muhammad Shaffi and Akhtar Abbas apprehended Iqbal alias Bali jointly by grappling him (Iqbal alias Bali). The complainant-Muhammad Shafique (PW-6) deposed during cross-examination that Muhammad Shafi, Abdul Hameed and Akhtar caught hold Iqbal accused. It is the prosecution case that all accused were armed with fire arm weapons. The complainant-Muhammad Shafique (PW-6) deposed during cross-examination that when accused Iqbal made fire with his rifle at Muhammad Naveed Akhtar

he was 5/6 feet away from Muhammad Naveed Akhtar and accused-Riaz and accused-Faiz were standing in veranda of the shop armed with gun and pistol respectively outside the shop. Abdul Hameed (PW-4) stated during cross-examination that, **“I grappled accused Iqbal alias Bali from his backside in Veranda of shop.”** Whereas Abdul Rauf-injured (PW-3) deposed during cross-examination that, **“Muhammad Shaffi, Hameed, Akhtar PWs are not eyewitnesses of fire. They came after two minutes of the occurrence.-----.**
Soon after the second fire the accused fled away. Iqbal accused was caught hold of 10 feet away from the shop towards east while he was running.-----.
I, Rafique, Muhammad Shafi, Hameed and Akhtar apprehended Iqbal accused.” The complainant-Muhammad Shafique (PW-6) deposed that when he departed for Hospital, Hameed, Shafi and Akhtar PWs had caught hold of Iqbal accused in the veranda of the shop. At the cost of repetition we reiterated that Abdul Rauf-injured witness (PW-3) during cross-examination deposed that, **“When we caught hold Iqbal alias Bali accused police came there after 30 minutes. We made call to the police but I do not remember that who made the call and then police arrested Iqbal accused and took him to police Station. Iqbal accused was handed over to police in my presence and in the presence of Muhammad Razaq, Muhammad Sharif, Ch. Sarwar etc. Iqbal was handed over to police by Ch. Sarwar at the time of handing over of Iqbal.”** Abdul Hameed (PW-4) stated during examination-in-chief that, **“At about 12:30 night police came at the place of occurrence. We handed over rifle and bag of bullets which were 105 in number to the police which were taken into possession by the I.O vide recovery memo Exh.PF.”** Tariq Mehmood, S.I. PW-12 (Investigating Officer) stated during examination-in-chief that **“PWs Muhammad Shaffi and Abdul Hameed produced before me Muhammad Iqbal alias Bali accused at the place of occurrence along with rifle 44-bore (P-8) along with bag of bullets amounting to 105 bullets”.** Tariq Mehmood, S.I. PW-12. (Investigating Officer) during cross examination deposed that, **“On 25-11-2008 I first time reached at the spot at about 7:30 a.m. -----Rifle 44-Bore alongwith 105 bullets were taken into possession vide Exh-PF on 25-11-2008 at about 8:00 a.m. Muhammad Shafi and Abdul Hameed son of Islam Din PWs produced rifle and bullets before me.”** Tariq Mehmood, S.I. (PW-12) also

admitted that he took into possession motorcycle produced by Muhammad Akhtar and Muhammad Rafique PWs and he believed upon them and prepared recovery memo. He admitted that at that time, so many people were present but he did not record their statements. The Investigating Officer had not made any attempt to join any independent witness. This also creates doubt about the genuineness of the version given by the persecution witnesses about the apprehension of Iqbal alias Bali along with rifle and bag of bullets from the spot and his handing over to the police as well as motorcycle used in crime. The evidence does not have a ring of truth. The omissions amount to contradictions in material particulars which go to the root of the case and materially affect the core of the prosecution's case, render the testimony of the witnesses liable to be discredited.

17. There is another aspect of the case which cannot be ignored. There was no evidence to substantiate regarding the money worth Rs.9,00,000/- brought by Muhammad Shafique (PW-6) from Shorkot Canttt. The complainant-Muhammad Shafique (PW-6) deposed during cross-examination that, **“I brought Rs.9,00,000/- from Sarwar Bhola son of Muhammad Shafi proprietor of cotton factory. That amount consisted upon denomination of Rs.5000/- and Rs.1000/- per note. I do not know whether Sarwer Bhola entered above said amount in his ledger or not. Rafique entered the same amount in our ledger. Neither Bhola joined the investigation nor we produced above said ledger during investigation.”** Tariq Mehmood, S.I. PW-12. (Investigating Officer) during cross examination deposed that, **“Complainant had not mentioned the numbers of currency notes or other description in his statement Exh.PN.”** At the cost of repetition it is reiterated that in FIR (Exh.PN/1) it has been mentioned that when three (3) persons armed with fire arm weapons came there on motorcycle Yamaha without number and entered into the shop and asked them to raise hands and they demanded whatever they have be hand over to them and one accused started to search the safe (Galla). Whereupon Muhammad Naveed Akhtar resisted upon which one accused, later his name known as Muhammad Iqbal alias Bali, made straight fire which hit on forehead of Muhammad Naveed Akhtar who fell down. During examination-in-chief prosecution namely Abdul Rauf (PW-3), Abdul Hameed (PW-4), Muhammad Rafique (PW-5) and

Muhammad Shafique (PW-6) stated that when Jaffar Hussain accused took money from the Galla/safe there upon Muhammad Naveed made resistance and thereafter Iqbal alias Bali accused fired at Muhammad Naveed which hit on his forehead. During cross-examination according to the eye-witness account, given by prosecution witnesses make their presence at the scene of occurrence highly doubtful. Abdul Rauf (PW-3) deposed that, “When Jaffar accused put his hand in Galla, Naveed Akhtar was two feet away from there towards southern side of the Galla. Naveed caught hold Jaffar accused from his right hand. At that time Naveed was towards south whereas Jaffar was towards north. Naveed did not grapple accused. When Naveed caught hold Jaffar from his hand both of them were near to each other. Iqbal fired at Naveed while standing in the gate of shop 7/8 feet away from Naveed.” Abdul Hameed (PW-4) deposed that, “When I alongwith other PWs reached at the place of occurrence Manzar, Jaffer and Iqbal accused were standing inside the shop with their respective fire arms. When I reached at the shop after that Iqbal accused fired at Naveed Akhtar whereas Manzar accused fired at Abdul Rauf PW.-----The looted money was already wrapped in a shopper which Jaffar Hussain caught hold of in his hand and ran away.” Muhammad Rafique (PW-5) deposed that, “Money which was kept in Galla was un-wrapped. -----. When Jaffar Hussain picked up the money Naveed Akhtar was towards east at a distance of about one foot. At that time Naveed Akhtar tried to grapple Jaffar accused from his backside but at the same time Iqbal fired at Naveed Akhtar.” Muhammad Shafique (PW-6) deposed that, “When Jaffar had brought out the money frm the Galla after that Naveed Akhtar made resistance. When Jaffar accused brought out money from Galla his face was towards south Naveed Akhtar tried to grapple Jaffar Hussain from his back side but failed to grapple the accused. At that time of fire Iqbal accused was 5/6 feet away from Naveed Akhtar towards eastern side.” These all facts cast heavy doubt on the credence of evidence that accused robbed Rs.9,00,000/-.

18. On the other hand Abdul Rauf (PW-3) deposed that police arrested Mazhari after 1³/₄/ 1¹/₂ years and after five days police told them that Mazhari Gill and he (PW-3) saw him (Mazhari Gill) in police station. Thereafter he (PW-3) identified him (Mazhari Gill) during identification parade. No incriminating

inference can in the circumstances be drawn from that statement against Mazhari as prosecution witness admitted that he already saw him in the police custody. Muhammad Shafique (PW-6) stated that he cannot tell whether Manzar accused participated in the occurrence or someone else participated. He (PW-6) also stated that police told them that Manzar participated in the occurrence. Tariq Mehmood, S.I. PW-12. (Investigating Officer) admitted during cross examination that Manzar alias Mazhari is innocent and discharge report was also prepared in this regard. The prosecution witnesses deposed that payment of Rs.25,000/- to Jamshad was made in connection with cotton crop. He (Jamshad) was also nominated as accused later on due to suspicion and prosecution witnesses admitted that they did not hear what Jamshad was taking on mobile phone. It is a fundamental rule of criminal administration that a case against the accused should be proved beyond all reasonable doubt and if there is any rational doubt, it means that the case fails against the accused. When witnesses' veracity leads to a doubt of the prosecution story it is dangerous to accept the story as true in such a case.

19. Moreover, it is noticed that Tariq Mehmood, S.I. PW-12 (Investigating Officer) collected crime empty (P-10) from the place of occurrence when he inspected the place of occurrence and he secured crime empty vide recovery memo Ex-PH on 25-11-2008. We have noted that in the recovery memo Exh.PH, bore of crime empty recovered from the place of occurrence had not been mentioned. The empty recovered from the spot was sent along with the weapon allegedly handed over to Tariq Mehmood, S.I. PW-12 by Muhammad Shafi (given up PW) and Abdul Hameed (PW-4) as per recovery memo Exh.PH. The report of Forensic Science Laboratory Punjab, Lahore, Exh.PV reveals that parcels were received in the office of Forensic Science Laboratory Punjab, Lahore, on 23-12-2008 and crime empty matched with rifle 44.bore. Abdul Hameed (PW-4) deposed during cross-examination that, “At the same time, we handed over rifle and bag of bullets to the I.O. When Iqbal was apprehended by us we also snatched rifle and bag of bullets from him and kept the same at my house in my safe custody.” Abdul Hameed (PW-4) further deposed during cross-examination that, “At about 12:30 night police came at the place of occurrence. We handed over rifle and bag of

bullets which were 105 in number to the police which were taken into possession by the I.O vide recovery memo Exh.PF.” Tariq Mehmood, S.I. PW-12. (Investigating Officer) during cross examination deposed that, “On 25-11-2008 I first time reached at the spot at about 7:30 a.m. -----Rifle 44-Bore alongwith 105 bullets were taken into possession vide Exh-PF on 25-11-2008 at about 8:00 a.m. Muhammad Shafi and Abdul Hameed son of Islam Din PWs produced rifle and bullets before me.” Whereas Muhammad Nasir Khan, M.H.C (PW-10) deposed that Tariq Mehmood, S.I. PW-12. (Investigating Officer) handed over to him one sealed parcel containing empty bullet and one sealed parcel containing rifle 44.bore and his statement under section 161 was recorded on 18-02-2009. Moharrar has not stated that sealed parcel containing 105 bullets was also handed over to him for keeping the same in safe custody. Alleged Crime-empty recovered from the place of occurrence was handed over to the Investigating Officer on 25-11-2008 at 7:30 a.m. after 12 hours of the incident along with alleged rifle recovered from the possession of the accused-Iqbal alias Bali. The alleged recovered articles were not handed over to the police soon after apprehension of accused rather Abdul Hameed (PW-4) kept it in his house. Whereas as per prosecution case mention in F.I.R. (Exh.PN/1) on hue and cry of the complainant, Iqbal alias Bali was apprehended by the inhabitants of locality. So, the weapon handed over to Tariq Mehmood, S.I. PW-12. (Investigating Officer) by the prosecution witness is of no consequence and same cannot use against the accused Iqbal alia Bali. As far as the weapons allegedly recovered from the appellants Muhammad Riaz rifle (P-1) and Jaffar Hussain pistol (P-6), is of no consequence as same was not used in the occurrence nor same was sent to Forensic Science Laboratory Punjab, Lahore.

20. From the above detailed discussion, we are, however, convinced that the prosecution has failed to establish its case. It seems that the truth was seen buried under the debris and a different story was structured perhaps to lug the appellants into trial under the serious offence. It is often said “that Foulter the crime higher the decree of proof” we have gone through the process of keen examination of the entire material and found compelling reasons as stated above to disgrace with the conclusion reached recorded by the learned Addl. Sessions Judge and also found that the prosecution has miserably failed to prove the guilt

of the accused-appellants beyond reasonable doubt. As per dictates of law benefit of every doubt is to be extended in favour of the accused. In the case of “Muhammad Akram v. The State” (2009 SCMR 230), it is held as under:-

“Benefit of doubt....Principles----For giving the benefit of doubt it is not necessary that there should be many circumstances creating doubts----Single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefit, not as a matter of grace and concession, but as a matter of right”.

21. We, therefore, accept in toto Crl. Appeal No.2175-2010 filed by Muhammad Iqbal alias Bali son of Haq Nawaz, Caste Kathia, resident of Haveli Moranga Tehsil Kabirwala, District, Khanewal, Crl. Appeal No.1986-2010 filed by Jaffer Hussain son of Abid Hussain, Caste Syed, resident of Mohallah Sadaat Shorkot, City & District, Jhang, Crl. Appeal No.2211-2010 filed by Faiz Muhammad and Jamshaid sons of Muhammad Ilyas, Caste Tagga Rajput, resident of Kakki Nau, Tehsil Shorkot District and Crl. Appeal No.412-2011 filed by Muhammad Riaz son of Muhammad Nawaz, Caste Kawan, resident of Kakki Nau, Tehsil Shorkot, District, Jhang, as a result whereof conviction and sentence recorded by the learned trial court vide judgment dated 12-07-2010 is set aside and the appellants, namely, Muhammad Iqbal alias Bali, Jaffer Hussain, Faiz Muhammad, Jamshaid and Muhammad Riaz, are ordered to be acquitted of the charge in case F.I.R. No.246-2008, dated 24.11.2008, offence under Sections 302, 324, 396, 412 P.P.C., registered at Police Station, Shorkot Cantt, District, Jhang and Muhammad Iqbal alias Bali son of Haq Nawaz and Jaffer Hussain son of Abid Hussain are directed to be released forthwith if not required in any other case whereas the other appellants, namely, Faiz Muhammad, Jamshaid and Muhammad Riaz, are already on bail and are acquitted from the charge. Their surety bonds are discharged.

22. Murder Reference No.510 of 2010 forwarded by the learned trial court for confirmation of sentence of death inflicted upon the convict fails, which is answered in NEGATIVE.

23. So far as **Criminal Appeal No.2183 of 2010** seeking conviction under section 302 (b) P.P.C. of respondent No.1-Manzar Abbas and **Criminal Revision No.1137 of 2010 seeking enhancement in sentence of respondent No.1 to 4-Jaffer Hussain, Faiz, Muhammad, Jamshaid and Muhammad Riaz** inflicted by the learned trial court are concerned, for the afore-stated reasons, the same have no weight, which are accordingly **dismissed**.

(Syed Shahbaz Ali Rizvi)
Judge

(Aalia Neelum)
Judge

Approved for reporting.

Judge

Judge