



house. She and her younger son Saddam Hussain were busy in serving them, Imran and Faheem were conversing with Asghar Ali at some distance of the room when all of a sudden Muhammad Rafique etc. had come in front of their house on two white colour cars and a Honda motorcycle. Rafique (appellant) made two successive fire shots with his Kalashnikov, which landed at the left armpit, Muhammad Yahya made a fire shot which landed at the left side of waist, Javed made a fire shot which landed at the left buttock and Riaz made a fire shot which hit at the left thigh of Saddam Hussain (deceased). Imtiaz made a fire shot which hit at the left thigh near the private organ, Yahya made fire shot which landed at the right arm, Rafique made a fire shot which landed at the head under right ear, Riaz made a fire shot, which hit at the front of chest and Imtiaz made a fire shot which hit at left shoulder of Sher Muhammad alias Sheri. Abid Latif had made a fire shot at the front side of his chest, Ghazanfar made a fire shot at the left wrist, Haroon made a fire shot which landed at the head and Khalid Hanif made a fire shot which hit at the right thigh of Zaheer. Muhammad Ahmad alongwith two unknown accused persons had been kept on guard while making aerial firing. Saddam Hussain, Zaheer Ahmad and Sher Muhammad alias Sheri had succumbed to the injuries at the spot. All the accused persons while entered into her house, had committed the barbaric murder of three innocent persons and had spread terror in the area. The complainant alongwith Asghar Ali and Faheem Ahmad had witnessed the occurrence and saved their lives while running here and there. Zaheer Ahmad had been telling the complainant and her sons about their enemies.

3. Muhammad Masood, Inspector (PW-11) had conducted preliminary investigation, inspected the spot and prepared rough site plan (Ex.PT), collected blood stained earth from underneath the dead bodies of each deceased vide memos Ex.PT, Ex.PU and Ex.PV, secured six crime empties of 222-rifle, seven crime empties of rifle 8-MM, twenty crime empties of Kalashnikov and 29-crime empties of 44-bore rifle vide recovery memo Ex.PJ, prepared inquest reports of each deceased and escorted the dead bodies to the mortuary and recorded the statements of witnesses under Section 161 Cr.P.C. Naseer Ahmad, Inspector (PW-7) had formally arrested

the appellant on 26.06.2008 in this case being already in police custody in case FIR No.157/2008, registered at Police Station Raja Jang. Muhammad Iqbal Najam, Inspector (PW-14) had conducted partial investigation from 27.01.2009 onwards, the complainant, Imran and Faheem and one Haji Munir Bhatti had appeared before them to the effect that they had entered into compromise to the extent of co-accused Abid Latif, Ghazanfar Ali, Haroon and Khalid stating that the parents of deceased Zaheer had enmity with the aforesaid accused persons due to which she had nominated them. All the accused persons were sent to judicial lockup and a challan had been submitted to the Court for trial.

4. Dr. Zulfiqar Ahmad (PW-1) had conducted autopsy on the deadbodies of deceased Muhammad Zaheer, Sher Muhammad and Saddam Hussain and had observed firearm wounds, ten firearm wounds and nine firearm wound on the different parts of the bodies of each deceased. All the injuries on the dead bodies of each deceased were ante-mortem caused by firearm weapons. The duration between injuries and death of each deceased was immediate whereas between death and post mortem within 24-hours.

5. After submission of the challan, charge was framed against the appellant alongwith his co-accused Muhammad Ahmad, Imtiaz Ahmad, Abid Latif, Ghazanfar Ali, Muhammad Haroon and Khalid to which they pleaded not guilty and claimed trial. The remaining co-accused Yahya, Javed and Riaz were declared proclaimed offenders and the case to their extent had been separated and consigned under Section 512 Cr.P.C.

6. At the commencement of trial, the prosecution had produced fourteen witnesses besides the reports of Chemical Examiner Ex.PCC, Ex.PDD and Ex.PEE and the report of Serologist Ex.PFF. Upon completion of prosecution evidence, the appellant and his co-accused in their statements recorded under Section 342 Cr.P.C., had denied and controverted all the allegations leveled against them, they neither opted to make statements under Section 340(2) Cr.P.C. nor had they produced evidence in their defence.

7. Learned trial Court, after hearing learned counsel for the parties while acquitted co-accused, had convicted and sentenced the appellant supra vide

judgment impugned herein. Hence, this criminal appeal as well as the connected Murder Reference.

8. Learned counsel for the appellant has contended that the prosecution had miserably failed to prove its case against the appellant beyond reasonable doubt and, thus, they are entitled to be acquitted by this Court; that the appellant alongwith his co-accused had been implicated to widen the net; that twelve accused had been booked in this incident with their specific roles out of which five accused had already been acquitted of the charge having identical role of causing firearm injuries with their respective weapons to all the three deceased persons; that the appellant also deserves the same treatment to that of his co-accused already acquitted by the learned trial Court; that the role assigned to the appellant for causing firearm injuries to deceased Saddam Hussain and Sher Muhammad alias Sheri is belied with the medical evidence; that the way in which the prosecution story had been narrated, seems to be highly improbable and was not humanly possible to count and explain each and every injury with their specification as to locale of injury at some particular part of bodies of the deceased persons; that during investigation no weapon of offence had been recovered at the instance of the appellant; that no specific motive had been attributed to the appellant rather previous blood-feud enmity had been alleged to co-accused Muhammad Yahya etc. (since P.O.); that the prosecution had failed to prove the charge against the appellant, therefore, he is entitled to be acquitted.

9. Learned Deputy Prosecutor General appearing for the State assisted by learned counsel for the complainant has argued the matter with full force maintaining that it was a day light occurrence, which had taken place in the house of the complainant where son of the complainant alongwith his two friends had been murdered by the appellant and his co-accused in furtherance of their common object, which clearly shows the callous and brutal mind of the appellant and his co-accused; that prior to the murders in issue, the appellant and his co-accused had murdered husband of the complainant in the court premises of District Court Kasur; that the ocular account is in line with the medical evidence; that the role of firing assigned to acquitted co-accused was though fatal to the deceased persons yet they

had been found not involved in the occurrence during investigation, therefore, the case to their extent was distinguishable; that the appellant, who had committed brutal and callous murder of three innocent young persons, does not deserve any leniency and a prayer for dismissal of his appeal has been made.

10. We have heard learned counsel for the appellant, learned Deputy Prosecutor General appearing for the State assisted by learned counsel for the complainant and have perused the record.

11. This unfortunate incident had taken place in the house of the complainant on 19.05.2008 at 6:00 p.m. and the complainant had drafted application for the registration of a criminal case against the appellant alongwith eight nominated and two unknown co-accused with full narration of the names with their respective roles. Admittedly, this incident had taken place inside the complainant's house. It had been alleged that the appellant alongwith his 11-co-accused had trespassed into the house of the complainant in furtherance of their common object and committed the murder of her son Saddam Hussain and Muhammad Zaheer and Sher Muhammad alias Sheri, the friends of her son Imran with their respective firearm weapons. In the crime report, the complainant had narrated the details of each and every injury attributed to the appellant and his co-accused at the specific parts of the bodies of each deceased. She had saddled the responsibility of causing firearm injuries on the persons of all three deceased to the appellant and his co-accused in order to coincide the same with the number of injuries sustained by each deceased. The appellant had been attributed two fire shots at the armpit of deceased Saddam Hussain and at the right ear of deceased Sher Muhammad alias Sheri. Co-accused Yahya, Javed and Riaz (since P.Os.) had been attributed the role of causing firearm injuries at the waist, left buttock and left thigh of deceased Saddam Hussain. Likewise, Imtiaz (since acquitted) had been saddled with the responsibility of causing firearm injury to deceased Sher Muhammad alias Sheri whereas co-accused Abid Latif, Ghazanfar, Haroon and Khalid Latif (since acquitted) had caused firearm injuries to deceased Zaheer. Muhammad Asghar (PW-6) had supplemented the complainant as to the mode and manner of the

occurrence and the locale of injuries to each deceased as well. The mode and manner narrated by the complainant is highly improbable because she had firstly alleged one fire to each of five accused on the person of deceased Saddam Hussain, then to deceased Sher Muhammad and after completion of their task, they had made fire shots on the person of deceased Zaheer Ahmad, which was impossible for a human being to count such number of fire shots of each assailant with the specification qua locale of injuries attributed to the appellant and his co-accused. We have noticed that each and every injury sustained by each deceased had been mentioned by the complainant in the form of entry wounds including the exit wounds, which had also been counted and attributed to the accused persons. Muhammad Asghar (PW-6) had also attributed each injury including the exit wounds on the person of each deceased to the appellant and his co-accused in his deposition before the learned trial Court. Surprisingly, it was a case of indiscriminate firing and almost five dozen of empties had been secured by the investigator at the time of his first visit of the place of occurrence but none of the eye witnesses appeared before the learned trial Court had received even a single scratch on their bodies during the occurrence. Though the presence of the complainant at her own house could not be doubted yet the mode and manner of the occurrence narrated by her is far from acceptance to ordinary prudence. Both the eye witnesses had narrated specific role of the appellant for causing two firearm injuries to deceased Saddam at his left armpit and to deceased Sher Muhammad alias Sheri at his ear but Dr. Zulfiqar Ahmad (PW-1) had observed nine firearm wounds on the dead body of deceased Saddam Hussain including four exit wounds. The medical expert had observed three injuries i.e. Injuries No.1 to 3 at the area of left shoulder and armpit of deceased Saddam, which were attributed to the appellant and as per his opinion it was a result of one fire shot of injury No.1 hitting at front of left shoulder, exited from injury No.2 and then reentered at injury No.3. The specific injuries attributed to the appellant are injuries No.2 & 3, which had not been found independent wounds rather they are result of injury No.1 sustained by him at left shoulder. The presence of the eye witnesses at the venue of occurrence like counting spectators clearly shows

that when the occurrence was over, after visualizing the number of injuries on the person of each deceased, the crime report had been lodged after due deliberation, consultation and fabrication and even exit wounds had been attributed to the accused persons. The manner in which the occurrence had taken place and witnessed by the eye witnesses was not possible for the human being of ordinary prudence. The medical evidence totally belies the ocular account.

The appellant had been alleged another firearm injury at the left ear of deceased Sher Muhammad alias Sheri but as per deposition of medical expert it was actually an exit wound of injury No.1 and no entry wound was found available at left temporal region of deceased Sher Muhammad alias Sheri. Both the eye witnesses had narrated specific injuries to the co-accused, who had been charged and tried alongwith the appellant but they had been acquitted by the learned trial Court while disbelieving the deposition of the eye witnesses to the extent of said co-accused having identical role to that of the appellant. Co-accused Imtiaz Ahmad, Abid Latif, Ghazanfar, Haroon and Khalid had been attributed firearm injuries at the left shoulder, chest, left wrist, head and right thigh respectively of deceased Zaheer Ahmed but they had been acquitted by the learned trial Court by giving the benefit of doubt to them as the ocular account was not truthful to their extent. Learned counsel for the appellant has questioned the conviction of the appellant on the score that the appellant deserves the same treatment as of his acquitted co-accused. This argument carries much weight as the appellant had been attributed identical role to that of his acquitted co-accused and, thus, he deserves to be treated in the same manner especially when the complainant had not challenged the acquittal of aforesaid co-accused and her satisfaction upon their acquittal shows that the eye witnesses were capable of falsehood. We seek guidance in this respect from case titled "SHAHBAZ versus The STATE" (2016 SCMR 1763) wherein it has been held as under:-

*“Muhammad Abbas co-accused had been acquitted by the trial court and the role attributed to him by the eye-witnesses produced by the prosecution was identical to that attributed to Shahbaz appellant. As a matter of fact the motive set up by the prosecution was more relevant to*

*Muhammad Abbas co-accused than to the present appellant. The acquittal of Muhammad Abbas co-accused had not been challenged by the complainant party or the State before the High Court. The acquittal of Muhammad Abbas, co-accused and acceptance of such acquittal on the part of the complainant party shows that the eye-witnesses produced by the prosecution were capable of falsehood----*

12. Having scanned the entire prosecution evidence, we could not find any iota of evidence against the appellant. The manner in which the occurrence had taken place was highly improbable and impossible for human being to count each and every firearm injury on the person of each deceased. Though the occurrence had taken place in the complainant's house yet her narration with regard to the locale of injuries specifically attributed by her to the appellant and his co-accused at the venue of occurrence, could not be easily believed. The acquittal of co-accused having the responsibility of fatal fire shots to each deceased and satisfaction of the complainant upon their acquittal by not filing appeal clearly speaks volumes of reliability of the eye witnesses to the extent of present appellant. The medical evidence was not in line with the ocular account and both the injuries attributed to the appellant did not exist. We are not convinced with the observations made by the learned trial Court passing guilty verdict against the appellant without appreciating the evidence available on record in its true perspective. The motive part of the occurrence had been attributed to co-accused Muhammad Yahya (since P.O.) and the appellant has no link in any manner whatsoever with the motive. No weapon of offence had been recovered at the instance of the appellant during investigation. In such circumstances we could not find any iota of evidence, which could connect the appellant with the murders in issue. Even a single doubt as to the ocular account has always been considered to be sufficient to tilt the scale of justice in favour of an accused but the case in hand is replete with doubts, which straightaway entitles the appellant for acquittal. The prosecution has miserably failed to bring home guilt of the appellant beyond reasonable shadow of doubt.

13. The nutshell of above discussion is that Criminal Appeal No.1716 of 2012 filed by appellant Muhammad Rafique is allowed, his conviction and sentence awarded by the learned trial Court are set aside and he is acquitted

of the charge by extending the benefit of doubt to him. He shall be released forthwith from jail if not required to be detained in connection with any other case.

**Murder Reference No.465 of 2012** is answered in **NEGATIVE** and the Death Sentence awarded to appellant Muhammad Rafique is **not confirmed**.

**(Qazi Muhammad Amin Ahmed)**  
**Judge**

**(Asjad Javaid Ghural)**  
**Judge**

*Asif\**

Approved for reporting.

JUDGE