

CJDA-38
JUDGMENT SHEET
IN THE LAHORE HIGH COURT, MULTAN
BENCH, MULTAN.

JUDICIAL DEPARTMENT

Criminal Appeal No.542-J of 2012
(Rafaqat Hussain vs. The State)

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Criminal Appeal No.453 of 2012
(Shafqat Hussain etc. vs. The State etc.)

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Criminal Appeal No.637 of 2012
(Muhammad Ilyas vs. Shafqat Hussain etc.)

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Murder Reference No.61 of 2012
(The State vs. Rafaqat Hussain)

J U D G M E N T

Date of hearing:	12.04.2017
Appellants by:	M/s Syed Badar Raza Gillani and Mudassar Altaf Qureshi, Advocates with Shafqat Hussain and Muhammad Imran appellants on bail
State by:	Mr.Muhammad Ali Shahab, Deputy Prosecutor General
Complainant by:	M/s Malik Muhammad Saleem, Syed Jaffar Tayyar and Mudassar Sagheer Chaudhary, Advocates

Abdul Sami Khan J:- Through **Criminal Appeal No.542-J of 2012** and **Criminal Appeal No.453 of 2012**, Rafaqat Hussain, Shafqat Hussain and Muhammad Imran appellants have assailed the *vires* of judgment dated 15.06.2012 handed down by learned Additional Sessions Judge, Burewala, District Vehari, in case FIR No.741/10 dated 23.12.2010 for the offences under sections 302, 324, 337F(iv), 148, 149 PPC, registered at Police Station Gaggo, Tehsil Burewala,

District Vehari whereby they have been convicted and sentenced as under:-

RAFAQAT HUSSAIN APPELLANT:-

- *Under section 302(b) PPC to death with compensation under section 544-A Cr.P.C. to the tune of Rs.50,000/- to be paid to the legal heirs of Nasir Hussain deceased and in default thereof to further undergo imprisonment for two months.*

**SHAFQAT HUSSAIN AND MUHRAMMAD
IMRAN APPELLANTS:-**

- *Under section 324 PPC to undergo five years R.I. each with fine of Rs.20,000/- each and in default thereof to further undergo two months S.I.*
- *Under section 337F(iv) PPC to undergo five years R.I. each with direction to pay Rs.10,000/- each as Daman.*
- *Benefit of section 382-B Cr.P.C. was also extended in their favour.*

On the other hand, Muhammad Ilyas complainant/appellant has filed **Criminal Appeal No.637 of 2012** against the acquittal of Shafqat Hussain and Muhammad Imran convicts/respondents from the murder charge of Nasir Hussain deceased, whereas learned trial court has submitted Reference under section 374 Cr.P.C. for confirmation or otherwise of the death penalty awarded to Razaqat Hussain appellant, which is numbered as **Murder Reference No.61 of 2012**. We propose to decide all these matters through this single judgment.

2. Brief facts of the case as disclosed in FIR (Ex.PA), recorded on the statement (Ex.PA) of Muhammad Ilyas complainant (PW-1), are that he was cultivator and was resident of Chak

No.227/E.B. On 23.12.2010 at 11:00 a.m. he alongwith Muhammad Nawaz, Abbas, Nasir, Asif and Yasir were heading towards their land in Chak No.227/E.B. When they reached near square No.10, Kila No.3, suddenly accused persons Rafaqat Hussain armed with rifle, Shafqat Hussain armed with rifle, Imran armed with rifle, Usman armed with pistol .30 bore and Asif armed with gun came in front of them. They were also accompanied by three unknown persons who could be identified if came across. The accused persons started straight firing with the intention to kill the complainant party. Rafaqat Hussain accused made fire shot which hit Nasir Hussain on his back; Shafqat Hussain accused made fire shot which hit Asif Hussain on leg; Usman accused made fire shot which hit Yasir on his left leg and the fire shot made by Imran accused hit Yasir on his right leg and both the injured fell on the ground. Asif accused made straight fire shot at Muhammad Ilyas complainant, but luckily he escaped. Unknown accused persons also made straight firing and the complainant along with his brothers Muhammad Nawaz and Abbas saved their lives by laying themselves on the ground. On hearing the noise of firing, many persons gathered at the spot.

Motive behind the incident was that one day prior to the incident, Rafaqat Hussain and others had taken away six kanals cotton crop of complainant side for which they were reprimanded; they kept grudge and committed the occurrence in furtherance of their common object.

3. Initially the FIR was registered for the offences under sections 324, 337F(iv), 148, 149 PPC; later on Nasir Hussain succumbed to the injuries and section 302 PPC was added to the FIR. Investigation of the case was conducted by Abdul Sattar Inspector and Muhammad Arif S.I. and after completion of investigation, challan was submitted against the appellants. After observing legal formalities and supplying copies of documents to the appellants as required under section 265-C of the Code of Criminal Procedure, formal charge was

framed against them on 13.07.2011 to which they pleaded not guilty and claimed trial. To substantiate its version at the trial, the prosecution produced as many as twelve witnesses before learned trial court. Ocular account has been furnished by Muhammad Ilyas complainant (PW-1), Yasir Riaz injured (PW-2) and Muhammad Asif injured (PW-3), who supported the prosecution version. Abdul Sattar Inspector (PW-11) and Muhammad Arif S.I. (PW-12) are the investigation officers of instant case and they testified about the investigation conducted by them. Medical evidence has been furnished by Dr. Muhammad Iqbal (PW-8) who conducted postmortem examination on the dead body of Nasir Hussain deceased and also medically examined Yasir Riaz injured (PW-2) and Muhammad Asif injured (PW-3). The remaining prosecution witnesses are, more or less, formal in nature. After placing on record the report of Chemical Examiner (Ex.PX), report of Serologist (Ex.PY) and report of Forensic Science Laboratory (Ex.PZ), prosecution closed its evidence. Thereafter, learned trial court recorded statements of appellants under section 342 Cr.P.C. wherein they denied the allegations leveled by the prosecution against them and professed their innocence. The appellants opted not to appear as their own witnesses as provided under section 340(2) Cr.P.C. and they did not produce any witness in their defence. Upon culmination of trial, after thrashing entire evidence and evaluating arguments advanced by learned counsel for the parties in support of their respective versions, learned trial court proceeded to convict and sentence the appellants as mentioned in paragraph No.1 above, while their co-accused namely Asif and Rizwan Bashir, were acquitted by learned trial court while extending benefit of doubt in their favour.

4. Learned counsel for the appellants contended that the FIR was lodged after due deliberation and consultation and also after fabricating a totally false and fictitious story against the appellants; the occurrence did not take place in a mode and manner alleged by the prosecution and in fact the complainant party had attacked upon the

appellants' side in order to illegally dispossess them from the disputed land. It is next contended that the learned trial court has disbelieved the witnesses of ocular account to the extent of acquitted co-accused namely Asif and Rizwan Bashir, which also raises serious suspicion on the truthfulness of prosecution story; the evidence produced by the prosecution suffers from material irregularities; the recovery of weapons of offence was planted upon Rafaqat Hussain and Muhammad Imran appellants in order to strengthen the prosecution case and the same has no supportive value in the eyes of law; the judgment of conviction is full of glaring defects, legal infirmities, and material irregularities and the impugned judgment has not been recorded after careful and proper appreciation of relevant facts and circumstances of the case and also the evidence so produced, therefore, the same is liable to be set aside. At the fag-end, learned counsel for the appellants candidly submitted that if this Court is not intended to consider the case of the appellants for acquittal, then they lay hands with the wish of the Court by praying that it is a case which falls under section 302(c) P.P.C. as the appellants acted in their self-defence.

5. On the contrary, learned Deputy Prosecutor General assisted by learned counsel for the complainant vehemently opposed the contentions raised by learned counsel for the appellants and submitted that the matter was reported to the police without any element of deliberation and consultation; the appellants are named in promptly lodged FIR with specific roles; the occurrence took place in broad daylight, parties were known to each other and there was no chance of mistaken identity of the appellants; the presence of the deceased, injured PWs and the appellants is admitted by the defence; the prosecution has successfully proved its version through the statements of Muhammad Ilyas complainant (PW-1), Yasir Riaz injured (PW-2) and Muhammad Asif injured (PW-3) and apart from confidence inspiring evidence of the eye witnesses, there is strong supportive evidence on the file of this case in the shape of weapons of

offence recovered on the pointing out of Razaqat Hussain and Muhammad Imran appellants, report of Chemical Examiner (Ex.PX), report of Serologist (Ex.PY) and the report of Forensic Science Laboratory (Ex.PZ). It is further submitted that plea of self-defence is an afterthought story, having no nexus with reality, and has been introduced just to avoid the consequences of major penalty; it is proved on the surface of record that the complainant party was not armed with any weapon at the time of occurrence which excludes the possibility of launching attacking on the appellants' side by them; the motive part of the case is also established; the prosecution case stands proved from all corner and the appellants have failed to bring on record anything on the basis of which it can be construed that eyewitnesses have made false statements against them or that they have become false witnesses on account of ulterior motive. Learned counsel for the complainant lastly submitted that the learned trial court has rightly convicted and sentenced Razaqat Hussain appellant, however, has erred while not convicting and sentencing Shafqat Hussain and Muhammad Imran appellants on the murder charge of Nasir Hussain deceased, hence, prayed for maintaining the conviction and sentences awarded to the appellants by learned trial court and for convicting and sentencing Shafqat Hussain and Muhammad Imran appellants on the murder charge of Nasir Hussain deceased.

6. We have considered the arguments advanced by learned counsel for the appellants, learned Deputy Prosecutor General as well as learned counsel for the complainant and have also gone through the record with their valuable assistance.

7. A perusal of FIR (Ex.PA) reveals that the incident in the present case took place on 23.12.2010 at 11:00 a.m. and the matter was reported to the police by Muhammad Ilyas complainant (PW-1) at 11:40 a.m. through "*fard biyan*" (Ex.PA). Consequently, FIR (Ex.PA) was chalked out on the same day at 12:05 p.m. Nasir Hussain deceased while in injured condition alongwith Yasir Riaz injured and

Muhammad Asif injured were medically examined by the doctor at Rural Health Center Gaggo soon after the incident and Muhammad Arif S.I. (PW-12) also recorded "*fard biyan*" (Ex.PA) of Muhammad Ilyas complainant in Rural Health Center Gaggo on the same day at 11:40 a.m. These facts undoubtedly suggest that it is a case of promptly lodged FIR, which excludes any chance of deliberation or consultation on the part of Muhammad Ilyas complainant.

8. Before elaborating the prosecution case in the light of material available on the surface of record, we would like to observe here that the date, time and place of occurrence and the presence of Nasir Hussain (deceased), Yasir Riaz (injured), Muhammad Asif (injured) as well as the appellants, all are admitted facts in this case and the defence has only disputed the mode and manner in which the occurrence took place, therefore, in order to ascertain the exact mode and manner of occurrence, we intend to evaluate other facts and circumstances of the case. According to the case of Muhammad Ilyas complainant as mentioned in "*fard biyan*" (Ex.PA) and FIR (Ex.PA), as well as in the statements of eye witnesses recorded under section 161 Cr.P.C. by Yasir Riaz injured and Muhammad Asif injured, Rafaqat Hussain appellant has been burdened with the role of causing firearm injury on the back of Nasir Hussain deceased which later on proved fatal. Similarly Shafqat Hussain appellant has been assigned the role of causing firearm injury on the leg of Muhammad Asif injured, while Muhammad Imran appellant has been attributed the role of causing firearm injury on right leg of Yasir Riaz injured. To prove these attributions and allegations against the appellants, the prosecution has examined Muhammad Ilyas complainant (PW-1), Yasir Riaz injured (PW-2) and Muhammad Asif injured (PW-3). Perusal of their statements reveals that they have adduced evidence on the same facts and allegations as contained in FIR (Ex.PA). They are consistent to each other and have palpably explained time, place, specification of weapons of offence, nature and seats of injuries on the persons of deceased as well as injured and the mode and manner of

taking place of occurrence to prove the culpability of the assailants. They successfully endured lengthy cross-examination conducted by the defence but nothing adverse to the prosecution could be extracted from their mouths.

9. During arguments, learned counsel for the appellants argued that Asif and Rizwan Bashir co-accused were acquitted on the basis of same evidence which has been relied upon by learned trial court while convicting and sentencing appellants and the judgment of learned trial court to the extent of acquittal of Asif and Rizwan Bashir co-accused has also attained finality. In this regard, we have observed that the learned trial court while pronouncing acquittal of Asif and Rizwan Bashir co-accused has given separate reasons on the basis of which it came to the conclusion that their involvement in the instant case was doubtful. In such like cases, Hon'ble Supreme Court of Pakistan has laid down golden principle that the doctrine of "*falsus in uno falsus in omnibus*" (false in one thing, false in all), is not applicable in prevalent system of criminal administration of justice and more so there is no rule having universally applicable that where some accused were not found guilty, the other accused would *ipso facto* stand acquitted and it is the primary duty of the Court to sift grain from the chaff. In this regard, reliance can be placed upon the case titled "Samano vs. State" (1973 SCMR 162). Similarly, there is no cavil to the proposition that grain has to be sifted from the chaff in each case, in the light of its own peculiar circumstances. In this regard, guidance is sought from the case titled "Riaz Hussain vs. The State" (2001 SCMR 177). We would also like to refer to the case of "Ghulam Husain Soomro vs. The State" (PLD 2007 SC 71), wherein Hon'ble Supreme Court of Pakistan was pleased to hold as under:-

"We may not be misunderstood to mean that an innocent person wrongly roped by prosecution or falsely involved by an unscrupulous investigating officer should be unreasonably dealt with or made escape goat but the Courts must maintain balance while arriving at the truth or falsehood of the

matter by sifting the grain from the chaff. This may be treated as a rule of caution and circumspection.”

As far as the case against the appellants is concerned, all the eye witnesses have fully supported the prosecution version set forth in FIR (Ex.PA) in an unambiguous manner, therefore, they are worthy of reliance to the extent of the appellants.

10. Adverting to medical evidence, we have observed that Dr.Muhammad Iqbal (PW-8) has furnished the medical evidence, who, on 23.12.2010, medically examined Nasir Hussain deceased while in injured condition and he also medically examined Yasir Riaz injured (PW-2) and Muhammad Asif injured (PW-3). Later on, Nasir Hussain died as a result of injury sustained by him during the incident and postmortem examination on his dead body was also conducted by Dr. Muhammad Iqbal (PW-8). We have gone through the statement of Dr. Muhammad Iqbal (PW-8) as well as medico legal certificates (Ex.PK, Ex.PL, Ex.MM) of Muhammad Asif injured (PW-3), Yasir Riaz injured (PW-2) and Nasir Hussain deceased respectively alongwith postmortem report (Ex.PN) of the deceased, but we could not find any major infirmity, inconsistency or material contradiction between the ocular account and medical evidence. In our humble view, the medical evidence is in line with ocular account and has provided full support to the statements of Muhammad Ilyas complainant (PW-1), Yasir Riaz injured (PW-2) and Muhammad Asif injured (PW-3).

11. As far as the recovery of weapons of offence is concerned, record shows that Rafaqat Hussain appellant was arrested by the investigating officer on 22.04.2011 and on 06.05.2011, he led the investigating officer and the witnesses to the recovery of 44 bore rifle (P14) alongwith three live bullets (P14/1-3) vide memo Ex.PH and according to the report of the Forensic Science Laboratory (Ex.PZ), the weapon of offence recovered from Rafaqat Hussain was

the same which he used during the incident as it was matched with three crime empties collected by the investigating officer during spot inspection and sent to the office of the Forensic Science Laboratory much prior to the arrest of Rafaqat Hussain appellant. Similarly Muhammad Imran appellant also got recovered weapon of offence i.e. 44 bore rifle (P11) *vide* memo (Ex.PF) but nothing is available on the record that rifle (P11) was the same which he had used during the incident. Record further shows that nothing was recovered from Shafqat Hussain appellant, however, non-recovery of weapon of offence is not enough to create doubt about his involvement in this case. It can, therefore, be safely held that the recovery of weapon of offence from Rafaqat Hussain appellant has provided sufficient corroboration to the ocular account against him and the same to the extent of Muhammad Imran appellant in the absence of report of the Forensic Science Laboratory is inconsequential.

12. So far as motive is concerned, according to FIR (Ex.PA), one day prior to the occurrence, the appellants had taken away cotton crop sowed by the complainant party on six kanals land, but admittedly neither complainant reported that incident to the police nor the name of any person who had witnessed the alleged occurrence of taking away cotton crop has been brought on the surface of record. Even no documentary proof in support of the motive part of prosecution's case has been brought on the surface of record and the record suggests that instead of dispute of cotton crop, there was dispute of land between the parties which resulted into this untoward incident, therefore, we do hold that the prosecution has not been able to prove motive part of its case.

13. The prosecution evidence has been examined by us with utmost care and caution and as far as the defence version that the complainant party had launched attack in order to dispossess them from their land and they acted in self-defence, is concerned, it is proved beyond the shadow of doubt that none from the complainant

party was armed with any weapon at the time of occurrence and it has never been the case of the defence that the appellants or any other person from their side also sustained any injury during the occurrence. On the other hand, one person from the complainant side lost his life while two persons sustained injuries on their legs, so it is very hard to digest that the complainant party, while they were empty handed, had attacked upon the appellants' side with the intention to dispossess them from the disputed land. By keeping the defence version in juxtaposition to that of prosecution evidence and after having scrutinized it thoroughly, we are of the view that version of the prosecution is more probable and realistic than that of the defence, hence, the defence version is disbelieved and rejected.

14. Learned counsel for the complainant, while addressing arguments on Criminal Appeal No.637 of 2012, went on to submit that although Shafqat Hussain and Muhammad Imran appellants have not caused any injury to Nasir Hussain deceased and same is specifically attributed to Rafaqat Hussain appellant, yet they are vicariously liable for the acts of said Rafaqat Hussain appellant. In this regard, bare reading of FIR (Ex.PA) shows that it was the complainant, injured persons and the deceased who proceeded towards the place of occurrence and it is not believable that the appellants were aware about the arrival of complainant party at the spot at the time of occurrence. Apparently it is a sudden affair, because, the dispute of land existed between the parties and as soon as they came across with each other, the incident took place, therefore, the provisions of sections 34 or 149 PPC are not attracted because mere presence of a person at the spot does not mean that he is vicariously liable for the acts of co-accused or has shared common intention to commit the occurrence unless there is some strong circumstance to show common intention which is very much lacking in this case. Reference is made to the verdict of the Hon'ble Supreme Court of Pakistan in the case of "Hassan Din vs. Muhammad Mushtaq and 2 others" (1978 SCMR 49). To further

fortify our view, reliance is also placed on "Muhammad Yaqoob Sub-Inspector vs. The State" (PLD 2001 SC 378), wherein, at page 383, the Apex Court was pleased to observe as under:--

"...It was held few decades earlier by this Court which still holds the field that `it is well-established that a common intention pre-supposes prior concert. It requires a pre-arranged plan because before a man can be vicariously convicted for the criminal act of another, the act must have been done in furtherance of the common intention of them all. The inference of common intention should never be reached unless it is a necessary inference deducible from the circumstances of the case. All that is necessary is either to have direct proof of prior concert, or proof of circumstances which necessarily lead to that inference or the incriminating facts must be incompatible with the innocence of the accused and incapable of explanation on any other reasonable hypothesis. (1955) SCR 1083, (1955) Cr.L.J. F 572)".

The above-referred view was reiterated in a latest judgment of the Hon'ble Supreme Court of Pakistan in the case of "Shakeel and 5 others vs. The State" (PLD 2010 Supreme Court 47), wherein, at page 59, the Apex Court has been pleased to observe as under:--

"...It is worth-mentioning that to have some intention independently each other is not to have common intention. Common intention requires a pre-arranged plan. There must be a prior meeting minds. (emphasis provided). Several persons can simultaneously attack a man may have the same intention, namely, the intention to kill and each can individually inflict a separate fatal blow and yet none would have the common intention as there was no prior meeting of mind to form a pre-arranged plan. In a case like that each would be individually liable for whatever injury be caused but none could be convicted for the act of the other vicariously (PLD 1956 SC Ind. 176)".

15. Keeping in view the above discussion coupled with the fact that Shafqat Hussain and Muhammad Imran appellants did not cause any injury to the deceased, they cannot be held vicariously liable for his murder. It is also established on the surface of record that Shafqat Hussain appellant caused single firearm injury on the leg of Muhammad Asif injured (PW-3) and same is the position of Muhammad Imran appellant who caused firearm injury on the right leg of Yasir Riaz injured (PW-2). Both these appellants chose legs of Yasir Riaz injured (PW-2) and Muhammad Asif injured (PW-3) which do not come within the definition of vital part of the body and in spite of having ample opportunity, they neither caused injury on any vital organ of the injured PWs nor repeated the fire shot, so the provisions of offence under section 324 PPC are also not attracted in this case.

16. The upshot of above discussion is that the prosecution has proved the roles played by Rafaqat Hussain, Shafqat Hussain and Muhammad Imran appellants during the occurrence through the confidence inspiring statements of Muhammad Ilyas complainant (PW-1), Yasir Riaz injured (PW-2) and Muhammad Asif injured (PW-3), which are duly supported by medical evidence of Dr.Muhammad Iqbal (PW-8) and corroborated by recovery of weapon of offence from Rafaqat Hussain appellant coupled with positive report of the Forensic Science Laboratory (Ex.PZ), hence, we are of the definite view that learned trial court has rightly convicted Rafaqat Hussain appellant on the charge of offence under section 302(b) PPC and same does not call for any interference by this Court, therefore, the conviction of Rafaqat Hussain appellant on the charge under section 302(b) PPC is maintained and upheld by this Court. Similarly, we are of the definite view that learned trial court has rightly convicted and sentenced Shafqat Hussain and Muhammad Imran appellants on the charge of offence under section 337F(iv) PPC for causing injuries to Yasir Riaz injured (PW-2) and Muhammad Asif injured (PW-3), which are also maintained and upheld by this Court,

but for the foregoing reasons, we are not satisfied with the conviction and sentence of Shafqat Hussain and Muhammad Imran appellants on the charge under section 324 PPC, which are hereby set aside.

17. As regard the quantum of sentence in respect of Razaqat Hussain appellant is concerned, no doubt the sentence of death on the murder charge is normal penalty yet considering the facts and circumstances of the case, Court can award sentence of imprisonment for life to the convict, which is also a legal sentence. After thrashing out the whole prosecution case, we are not inclined to maintain the death sentence of Razaqat Hussain appellant, because, we have found certain extenuating circumstances which suggest that it is not a case of capital sentence. It is proved beyond the shadow of doubt that Razaqat Hussain appellant caused single firearm injury on the back of Nasir Hussain deceased during the occurrence. In such like circumstances, Hon'ble Supreme Court of Pakistan has held that non-repetition of injury by the assailant on the person of deceased demonstrates an implied impression that he has not taken unfair advantage of his position as armed person at the spot rather despite of having ample opportunity he refrained from doing so and this circumstance can be taken as an extenuating/mitigating circumstance. Reliance is placed on the cases of "Qurban Ali v. Sheroo Machi and another" (1991 SCMR 2339) and "Muhammad Arshad and 2 others v. State" (PLJ 1996 SC 746). Moreover, we have already disbelieved the motive part of prosecution case, the benefit of which is to be given to Razaqat Hussain appellant while deciding quantum of his sentence. Reliance is placed on "Hasil Khan vs. The State" (2012 SCMR 1936), "Muhammad Nadeem Waqas and another vs. The State" (2014 SCMR 1658) and "Qaddan and others vs. The State" (2017 SCMR 148). It is settled law that the accused is entitled for the benefit of each extenuating circumstance while deciding question of his sentence. Reliance is placed upon "Mir Muhammad alias Miro vs. The State" (2009 SCMR 1188). In another judgment reported as "Ansar Ahmad Khan Barki vs. The State and another" (1993 SCMR

1660), the Hon'ble Supreme Court of Pakistan has held that the prosecution is bound by law to exclude all possible extenuating circumstances in order to bring the charge home to an accused for awarding normal penalty of death. We have also fortified our view *qua* the quantum of sentence from the case reported as "Sharafat Ali Khan vs. The State" (2010 SCMR 1205), wherein the Hon'ble Supreme Court has observed as under:-

"In Muhammad Riaz and another v. The State (2007 SCMR 1413), while considering the penalty for an act of commission of qatl-e-amd it was observed "No doubt, normal penalty for an act of commission of qatl-e-amd provided under law is death, but since life imprisonment also being a legal sentence for such offence must be kept in mind wherever the facts and circumstances warrant mitigation of sentence, because no hard and fast rule can be applied in each and every case. Reference in the context may also be made to Iftikhar Ahmad Khan vs. Asghar Khan and another (2009 SCMR 502)."

The Hon'ble Supreme Court of Pakistan in another judgment reported as "Ghulam Mohy-ud-Din alias Haji Babu and others vs. The State" (2014 SCMR 1034) has held as under :-

"A single mitigating circumstance, available in a particular case, would be sufficient to put on guard the Judge not to award the penalty of death but life imprisonment. No clear guideline, in this regard can be laid down because facts and circumstances of one case differ from the other, however, it becomes the essential obligation of the Judge in awarding one or the other sentence to apply his judicial mind with a deep thought to the facts of a particular case. If the Judge/Judges entertain some doubt, albeit not sufficient for acquittal, judicial caution must be exercised to award the alternative sentence of life imprisonment, lest an innocent person might not be sent to the gallows. So it is better to respect the human life, as far as possible, rather to put it at end, by assessing the evidence, facts and circumstances of a particular murder case, under which it was committed.

.....

In any case, if a single doubt or ground is available, creating reasonable doubt in the mind of Court/Judge to award death penalty or life imprisonment, it would be sufficient circumstances to adopt alternative course by awarding life imprisonment instead of death sentence.”

Taking into consideration the above facts as mitigating circumstances in favour of Razaqat Hussain appellant, his sentence of **death** on the charge under section 302(b) PPC is converted into **imprisonment for life** which will meet the ends of justice. He is directed to pay compensation to the tune of Rs.100,000/- instead of Rs.50,000/- under 544-A Cr.P.C. to the legal heirs of Nasir Hussain deceased and in case of default thereof he shall further under simple imprisonment for **six months** instead of **two months**. The benefit of section 382-B Cr.P.C. is also extended in favour of all the appellants. Shafqat Hussain and Muhammad Imran appellants are on bail and are present in Court. They are directed to be sent to jail to serve out their remaining sentence and for this purpose a copy of this judgment is sent to the learned trial court for further necessary action in accordance with law.

18. With the above modifications in the conviction and sentences of the appellants, **Criminal Appeal No.542-J of 2012**, **Criminal Appeal No.453 of 2012** and **Criminal Appeal No.637 of 2012** are hereby **dismissed**. **Murder Reference** sent by learned trial court under section 374 Cr.P.C for confirmation of death sentence of Razaqat Hussain appellant is answered in the **negative** and the sentence of **death** is **not confirmed**.

(Ch. Abdul Aziz)
Judge

(Abdul Sami Khan)
Judge

APPROVED FOR REPORTING.

(Ch. Abdul Aziz)
Judge

(Abdul Sami Khan)
Judge