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Judgment Sheet
IN THE LAHORE HIGH COURT
BAHAWALPUR BENCH BAHAWALPUR
JUDICIAL DEPARTMENT

Criminal Appeal No.279 of 2013/BWP
(Niaz Ahmed alias Nazo v. The State and another)
and
Criminal Appeal No.359 of 2013/BWP
(Ghulam Sarwar v. Noor Ahmed and 12 others)
and
Murder Reference No.32 of 2013/BWP
(The State v. Niaz Ahmed alias Nazo)

JUDGMENT

Date of hearing: 26.09.2018

Appellant by: Mian Muhammad Tayyab Wattoo, Advocate.
Complainant by: Mr. Rehan Zafar, Advocate.
State by: Mr. Asghar Ali Gill, Deputy Prosecutor General.

Ch. Abdul Aziz, J. Niaz Ahmed alias Nazo (appellant) along with 13-other co-accused, namely, Muhammad Sharif, Allah Rakha, Bakhtiar Ahmed, Naseer Ahmed, Muhammad Amin, Hassan Bakhsh, Muhammad Ayyub, Umer Draz, Mukhtiar Ahmed, Noor Ahmed, Sardar Ahmed alias Bholi, Ali Muhammad alias Alia and Muhammad Munir, involved in case FIR No.437/2009 dated 27.11.2009 registered under sections 302,148 & 149 PPC was tried by learned Additional Sessions Judge, Bahawalnagar. The learned trial court in terms of judgment dated 12.06.2018 while acquitting the afore-mentioned co-accused proceeded to convict and sentence the appellant in the following terms:-

Under section 302 (b) PPC to suffer death sentence and to pay Rs.200,000/- as compensation to the legal heirs of the deceased under section 544-A, Cr.P.C. and in default where to further undergo six months SI.

Challenging his conviction and sentence, Niaz Ahmad alias Nazo (appellant) preferred **Criminal Appeal No.279 of 2013,**

Ghulam Sarwar (appellant/complainant) filed **Criminal Appeal No.359 of 2013** against the acquittal of respondents, namely, Noor Ahmed, Muhammad Amin, Mukhtiar Ahmed alias Mukhi, Hassan Bakhsh, Bahtiar Ahmad, Umer Daraz alias Dara, Muhammad Naseer, Muhammad Sharif, Allah Rakha, Sardar alias Dhalla, Ali Muhammad alias Alia and Muhammad Munir, whereas learned trial court sent reference under section 374, Cr.P.C. which was numbered as **Murder Reference No.32 of 2013** for the confirmation or otherwise of death sentence awarded to Niaz Ahmed alias Nazo (convict/appellant). All these matters are being disposed of through this single judgment.

2. Succinctly stated the case of the prosecution as unveiled by complainant Ghulam Sarwar (PW.2) in FIR (Exh.PC/1) is to the effect that he was resident of Mauza Kora Bhuttna and agriculturist by profession; that on 01.05.1985 Niaz Ahmed alias Nazo etc. launched an attack at the house of the complainant party over a land dispute during which Naik Muhammad Chheena was murdered for which the complainant and his brother Noor Ahmed were sentenced to suffer imprisonment for life and were released in the year 1997; that his brother Noor Ahmed purchased land measuring 14-acres from one Allah Ditta Wattoo whereupon Niaz Ahmed alias Nazo filed declaratory suit qua impugned transaction which ultimately was decided in favour of the complainant party; that said Niaz Ahmed alias Nazo etc. were inimical against the complainant party due to previous murder; that on 27.11.2009 at 9:00 a.m. complainant Ghulam Sarwar along with Noor Ahmed, Saeed Ahmed, Bashir Ahmed and Mst. Hanifan Bibi wife of Noor Ahmed was present in his landed property, when Bakhtiar Ahmed armed with pistol .30 bore, Muhammad Ahmed armed with rifle .44 bore, Muhammad Sharif armed with rifle .222 bore, Allah Rakha armed with repeater .12 bore, Noor Ahmed alias Waalia armed with pistol .30 bore, Muhammad

Amin armed with rifle, Mukhtiar alias Makhee armed with rifle .222 bore, Hussain Baksh armed with repeater .12 bore, Muhammad Ayyub armed with pistol .12 bore, Niaz Ahmed alias Nazo armed with hoe, Umar Draz alias Zada, Muhammad Naseer and Sardar Ahmed alias Dhola armed with hatchets, along with their two unknown accused emerged at the spot; that Niaz Ahmed alias Nazo raised lalkara that they had come for teaching lesson to complainant party regarding previous murder and for purchasing landed property whereupon Bakhtiar Ahmed shot a straight fire with pistol hitting Saeed Ahmed, nephew of the complainant, on the right side of his head; that Muhammad Sharif resorted to firing with rifle .44 bore hitting Saeed Ahmed on the right side of his neck; that Muhammad Ahmed shot fire with rifle .44 bore hitting on the right side of his head; that Allah Rakha shot fire with repeater .12 bore hitting him on the right ear, mouth and nose; that Noor Ahmed shot fire with pistol .30 bore straight on the chest of Saeed Ahmed; that Muhammad Amin shot fire with rifle hitting him on the left side of his chest; that Mukhtiar Ahmed alias Mukhee shot fire with rifle .222 bore hitting on his right shoulder; that Hassan Bakhsh resorted to firing with repeater .12 bore hitting him on his left shoulder; that Muhammad Ayyub shot fire with pistol .12 bore hitting him on right flank; that unknown accused persons resorted to firing upon Saeed Ahmed, who fell down, Noor Ahmed took to his heels who was encircled by Umer Draz, Naseer and Sardar Ahmed alias Dholla; that Umar Draz gave two hatchet blows hitting Noor Ahmed on the left side of his head, Naseer Ahmed inflicted two hatchet blows on his head, who fell down whereupon Niaz Ahmed alias Nazo while giving a hoe blow on his neck cut his throat; that besides the complainant the occurrence was also witnessed by Bashir Ahmed, Muhammad Pervaiz and Mst.Hanifa Bibi; that the accused persons decamped from the spot and Noor Ahmed and Saeed Ahmed succumbed to the injuries at the spot.

3. The law was set into motion on the application (Exh.PC) of Ghulam Sarwar complainant (PW.2) presented before Muhammad Rafique SI (PW.6) at the Police Station, on the basis of which formal FIR (Exh.PC/1) was chalked out. Subsequent to the registration of FIR, investigation of this case was conducted by Muhammad Rafique SI (PW.6). He visited the place of occurrence, prepared rough site plan (Exh.PL/2), took into possession blood stained earth of deceased Saeed Ahmad vide recovery memo Exh.PE. From the crime scene, he also took into possession three empties of .30 bore pistol lying near the dead body of Noor Ahmad deceased (P.6/1-3) vide memo Exh.PF. He also secured one crime empty and two live bullets of pistol .30 bore (P.10) and (P.9/1-2) vide memo Exh.PG. Then, he took into possession blood stained earth of deceased Noor Ahmad vide memo Exh.PD. He also prepared inquest reports of deceased Noor Ahmad and Saeed vide separate memos Exh.PM and Exh.PN respectively and then dispatched their dead bodies to THQ Hospital, Chishtian through Muhammad Arsahd 154/C for the purpose of post-mortem examination.

The investigation of this case was entrusted to Abdul Hakim SI (PW.4) on 21.12.2009. He arrested accused persons Niaz Ahmad, Muhammad Sharif, Allah Rakha and Muhammad Ahmad on 05.01.2010. He also arrested Mukhtiar Ahmad accused on 12.01.2010. In his investigation, accused persons, namely, Nasir Ahmad, Muhammad Amin, Hassan Bakhsh, Muhammad Ayyub, Umar Draz, Mukhtiar Ahmad alias Mukhi, Noor Ahmad, Sardar Ahmad, Ali Muhammad and Munir Ahmad were found innocent. On 13.01.2010, Niaz Ahmad (appellant), Muhammad Sharif, Allah Rakha, Muhammad Ahmad and Mukhtiar Ahmad while in police custody made separate disclosures and in pursuance thereof led to the recovery of weapons of offence i.e. Kassi/hoe (P.11), rifle .44 bore (P.12) along with .12 live cartridges (P.13/1-10), gun repeater (P.14) along with

four live cartridges (P.15/1-4), pistol 30 bore (P.16) along with 7 live bullets (P.17/1-7) and gun .12 bore (P.18) along with six live cartridges (P.19/1-6) which were taken into possession vide separate recovery memos Exh.PE, Ex.PI, Exh.PJ, Exh.PK and Exh.PL. On 15.01.2010, after the completion of investigation he handed over the file to SHO for the preparation of report/challan under section 173, Cr.P.C.

4. The prosecution in order to prove its case against the appellant and his co-accused produced nine PWs including **Ghulam Sarwar (PW.2)** and **Muhammad Pervez (PW.3)**, who are eye-witnesses of the occurrence, **Dr.Muhammad Idrees (PW.8)** who furnished medical evidence and **Abdul Hakim SI (PW.4)** and **Muhammad Rafique (PW.6)**, are Investigating Officers of the case. The remaining witnesses, more or less, were formal in nature.

5. Dr. Muhammad Idrees (PW.8) on 27.11.2009 at 4:00 p.m. conducted the post-mortem examination of Noor Ahmed (deceased) and observed the following injuries:-

- “1. There were two lacerated wounds on parietal area measuring 3.5 x .1.5 cm into bone deep oblique in direction.
2. There were two lacerated wounds measuring 4 x 1.7 cm each into bone deep oblique in direction on central parietal area.
3. There was lacerated wound which was about 10 cm x 2.5 cm on right side of neck which is 9.5 deep and right carotid vessels (neck) trachea, Oesophagus and the third cervical vertebrae were incised and spinal cord can be seen.”

The doctor gave the following opinion:-

“After thorough external and internal post-mortem of the dead body I am of the opinion that injury No.3 was the cause of death leading to severe haemorrhage, hypovolemic shock, cardiac respiratory failure and death. This injury was sufficient in ordinary course of nature to cause death. All the injuries were ante mortem in nature and caused by sharp edged weapon. Probable time elapsed between injury and death was instantaneously and time between death and post-mortem written statement within eight hours.”

On the same day i.e. 27.11.2009 at about 4:30 p.m., Muhammad Idrees (PW.8) also conducted the post-mortem examination of Saeed Ahmed (deceased) and noted the following injuries:-

- “1. A lacerated wound on left parietal area measuring 2 x 5 cm into bone deep oblique in direction on right parietal area of scalp in middle.
- 2-A. A lacerated wound measuring 1 x 1 cm into deep going circular in direction in shape in right temporal region of scalp 3 cm lateral to pinna of right ear, margins of wound inverted no burning and blackening was present on the wound on exploration there was hole in bone present under the wound. Brain matter written statement badly damaged. There was injury to base of skull Haemotoma measuring 7 cm (intra central) also present due to this injury blood was coming from mouth and nose. There was also hole in the base of skull on left side of skull.
- 2-B. A lacerated wound measuring 1.5 cm x 1.5 cm x deep going circular in shape on upper part of lateral aspect of left side of neck. Muscles under the wound were damaged. Injury No.2 is in continuation of injury No.2-A in police injury statement this injury is mentioned as injury No.3.
3. A lacerated wound measuring 5 cm x 1.5 cm x skin deep oblique in direction on anterior aspect of left side of chest at the level of 4th and 5th rib. Margins of the wound were inverted, no burning or blackening was present. In the police injury statement this injury mentioned as injury No.5. Corresponding tear was present on covering cloth.
- 4-A. A lacerated wound measuring 1 cm x 1 cm x skin deep circular in shape on right side of chest interiorly on 6th intercostals space and auxiliary lines. Margins of wound were inverted. No burning or blackening was present. In police injury statement this injury as mentioned as injury No.6.
- 4-B. Another lacerated wound measuring 1.5 x 1.5 cm x skin deep circular in shape in right round area. Margins of wound were everted. No burning or blackening written statement present on the wound. Injury No.4-B is in continuation of injury No.4-A. In police papers injury statement this injury is mentioned as injury No.11.
- 5-A. A lacerated wound measuring 1 cm x 1 cm x deep going circular in shape on middle of medial aspect of right upper arm. Margins of the wound inverted, no burning or blackening present on the wound. On exploration muscles under the wound were crushed, bone was fractured. In police injury statement this injury is mentioned as injury No.10.
- 5-B. Another lacerated wound measuring 1.5 x 1.5 cm x deep going circular in shape on middle of lateral aspect of right upper arm. Margins of wound were everted. No burning or blackening was present on the wound. On exploration

- muscles were damaged and bone fractured. Injury No.5-B is in continuation of injury No.5-A. In police injury statement this injury is mentioned as injury No.7.
- 6-A. A lacerated wound measuring 1 x 1 cm x deep going circular in shape on 1/3 of lateral aspect of left upper arm, margins of the wound were inverted, no burning or blackening was present on the wound. On exploration muscle were damaged. Bone fractured. In police injury statement this injury is mentioned as injury No.8.
- 6-B. A lacerated wound measuring 1.5 x 1.5 cm x deep going circular in shape in lateral aspect of left side of neck, margins of the wound were everted. No burning or blackening was present on the wound. Injury No.6-B is in continuation of injury No.6-A. In police injury statement this injury is mentioned as injury No.3 corresponding holes were present on shirt.
- 7-A. A lacerated wound measuring 1 x 1 cm x skin deep circular in shape on back of left shoulder joint, margins of the wound were inverted, no burning or blackening were present on the wound. In police injury statement this injury is mentioned as injury No.9.
- 7-B. A lacerated wound measuring 1.5 x 1.5 cm x skin deep circular in shape on lateral aspect of left side of neck, margins of the wound were everted, no burning or blackening was present on the wound. In police injury statement this injury has been mentioned as injury No.7. Injury No.7-B is in continuation of injury No.7-A.
8. A lacerated wound measuring 3 cm x 2 cm x skin deep oblique in direction on lateral aspect of upper 1/3 of right upper arm. In police injury statement this injury is mentioned as injury No.12.
9. A lacerated wound measuring 2.5 x 1 cm x skin deep oblique in direction on upper side of lower 1/4 of left thigh. In police injury statement this injury is mentioned as injury No.13.
10. A lacerated wound measuring 2 cm x .75 cm x skin deep oblique in direction on medial aspect of left knee joint. In police injury statement this injury is mentioned as injury No.14.
- Note. In police injury statement, injury No.4 was not separate injury but is part of injury No.2-A,B.

The doctor gave the following opinion:-

“After thorough external and internal post-mortem of the dead body I am of the opinion that injury No.2 was the cause of death severe damage to brain matter leading to cardiac respiratory failure and death. This injury was sufficient in ordinary course of nature to cause death. All the injuries were ante mortem in nature and caused by sharp edged weapon. Injuries No.1,8,9 & 10 were caused by blunt weapons and remaining were caused by firearms. Probable time elapsed between injury and death was within ten minutes, and time between death and post-mortem was within eight hours.”

6. After the conclusion of prosecution evidence, the learned trial court examined the appellant and his co-accused under section 342, Cr.P.C. Niaz Ahmad (appellant) in response to question “why this case against you and why the PWs have deposed against you” made the following reply:-

“Allegations levelled against me in the FIR and statements U/S 161 Cr.P.C. and when they appeared as P.Ws they alleged that I caused firearm injury on the right side of neck of deceased Muhammad Saeed whereas no injury was found on the right side of his neck. Injury on the neck of left side was the exit wound. So they falsely involved me in this false case. It proved from the medical evidence. Allegations levelled against me proved false from medical evidence. No crime empty of gun 12 bore was found. In first part of FIR complainant party alleged that I was armed with 222 and in second party they showed me armed with 444 bore gun this shows credibility of complainant party. This involved me in this case by widening the net and due to previous enmity. In this respect detailed statement of my co-accused Niaz recorded.”

The appellant also opted to appear as witness in his own defence under section 340 (2) of Cr.P.C. and made a statement on oath. In addition, seventeen other witnesses appeared as DW.1 to DW.17 in support of the defence plea of acquitted co-accused. On the conclusion of trial, the appellant was convicted and sentenced, whereas his co-accused were acquitted, as mentioned above, hence, the instant appeals and murder reference.

7. It is contended on behalf of appellant that though at first look the case in hand appears to be arising out of promptly lodged FIR, however, the perusal of record proves that it is not so; that for the murder of two persons, as many as fifteen persons were grilled in the case through wider net; that this is also an admitted fact that both sides, on account of multiple litigation of civil and criminal nature were inimically placed against each other, thus the eye-witnesses can easily be termed as interested and partisan witnesses; that out of the fifteen accused charge sheeted by the trial court, fourteen were acquitted; that in these circumstances, the deposition of two eye-

witnesses has no legal significance and conviction cannot be awarded on the basis thereof to appellant; that in these circumstances, conviction awarded to the appellant can only be upheld if the ocular account is getting due support from some other independent evidence; that the medical evidence is also found not to be in conformity with the eyewitness account furnished by Ghulam Sawar and Muhammad Pervaiz; that it is evident from the medical evidence that certain blunt weapon injuries were also noticed on the person of Saeed Ahmad for which no explanation was put forth by the two eye-witnesses; that even the postmortem examination of both the deceased was held with the delay which gives rise to further doubt about the truth of prosecution case; that though, a specific motive was taken up by the prosecution, however, prosecution failed to attribute it exclusively to the appellant and that though reasonable doubt arises out from the plain view of prosecution case, however, its benefit was not given to appellant. With these submission, it is urged by the learned counsel that the conviction awarded to the appellant is liable to be set-aside.

8. On the other hand, learned Deputy Prosecutor General assisted by learned counsel for the complainant vehemently opposed the arguments advanced on behalf of the appellant and submitted that the occurrence took place at about 9:00 a.m. and its information was conveyed to police without any delay; that the case is arising out of a day-light occurrence where there is no chance of mistaken identity; that during occurrence, the appellant inflicted Kassi blow on the neck of Noor Ahmad deceased which proved fatal; that it reflects from the medical evidence furnished by Dr.Muhammad Idrees that the injury ascribed to appellant was found present on the neck of Muhammad Saeed deceased during postmortem examination; that though eye-witnesses of the occurrence were subjected to lengthy cross-examination, however, the defence failed to extract any benefit out of it; that the case of prosecution is further corroborated from the

recovery of Kassi effected from appellant during investigation which was found by the Serologist to be stained with human blood; that the motive taken up by the prosecution was not even denied by the defence, thus it provides required corroboration to the case of prosecution; that the eye-witnesses of the occurrence since are residents of the vicinity of crime, hence are natural witnesses and there is no reason to disbelieve them; that since the appellant was part of bunch of criminals who committed cold blooded murder of two innocent persons, hence he deserves no mercy and sentence of death awarded to him needs no interference from this court.

9. Arguments heard. Record perused.

10. A peep through the record reveals that the case of prosecution is comprising upon the ocular account furnished by Ghulam Sarwar and Muhammad Pervaiz (PW.2 & PW.3), the medical evidence brought on record through Dr. Muhammad Idrees (PW.8), the recovery of hoe/Kassi (P.11) witnessed by Muhammad Pervaiz (PW.3) and the motive which was described as a grudge arising out of previous criminal and civil litigation.

11. It emerges from the wade through of record that the case in hand is arising out of an occurrence which took place on 27.11.2009 at about 9:00 a.m. in an area known as "Mauza Korra Bootna" situated at a distance of 8-kilometers from Police Station Shehar Fareed, District Bahawalnagar. The detail of crime was reported by Ghulam Sarwar (PW.2) through written application (Exh.PC) presented before Muhammad Rafique SI (PW.6) in the Police Station at about 11:00 a.m. which shortly thereafter was transcribed into First Information Report (Exh.PC/1). Though from above it appears that the case is arising out of a prompt FIR, however, review of record reflects that it is not so. In this regard, it is noticed that though complainant Ghulam Sarwar (PW.2) was a graduate but even then the complaint (Exh.PC) was written by a person not known to him.

Surprisingly though the complainant remained associated with the case during investigation as well as trial, however, the veil was not lifted from the identity of the author of complaint (Exh.PC).

According to the detail mentioned in the crime report, two persons, namely, Saeed Ahmad and Noor Ahmad were done to death during this occurrence and as many as fifteen persons were burdened with the blame of having actively participated in the commission of crime. Out of these accused fourteen were acquitted by the trial court. Admittedly, all the assailants were from one brotherhood, closely related to each other. This aspect gives a strong indication that the case in hand, as of first impression, appears to be of wider net. In cases of like nature, the courts are always cautious in appraising the prosecution case so as to exclude all hypotheses of false implication and looming danger of conviction to innocents. For this reason record of such cases is required to be scanned with utmost care and watchful approach. Such rule is derived by us from the observation of Hon'ble Supreme Court of Pakistan expressed in Muhammad Zaman v. The State (2014 SCMR 749) which is as under:-

“The tragedy may have been enacted by Mukhtar who has gone into hiding or Munawar who has been acquitted because the deceased Shabbir was alleged to have illicit relations with their sister, but many who have no visible nexus with this part of the story have also been roped in. It is so because it is customary in this part of the country to throw wide the net of implication to rope in all those who could possibly pursue the case or do something to save the skin of the one who is innocent or who is actually responsible for the commission of crime. The Courts, therefore, is required to exercise much greater care and circumspection while appraising evidence.”

12. It is further unveiled from the review of record that both sides were in worst of terms with each other on account of hard pitched enmity arising out of blood feud criminal litigation comprising upon multiple cases. The origin of this enmity is found in the roots of a murder occurrence which took place 26-years before this case, during

which three persons lost their lives, whereas eleven others received injuries. Ghulam Sarwar (PW.2) and his brother Noor Ahmad (deceased of this case) were arrested in that case and later awarded imprisonment for life. Both of them were released from the jail in the year 1997 after serving out their sentence. Though certain other criminal cases were also registered between both sides, however, for the purposes of brevity, their detail is considered not appropriate to mention here. Besides these criminal cases, two families remained at loggerheads with each other, over a dispute of 14-acres of land. These circumstances strongly demonstrate that the witnesses had a deep rooted animus against the appellant and his family. Such persons, in legal parlance, are called interested witnesses. Since inimically placed two factions generally resort to implicate innocent persons in the crime, either to deter them from pursuing the case or for satisfying their personal grudge, vengeance and hatred, hence, this is always considered not in the interest of justice to place reliance on their testimony without subjecting it to a test from corroboratory or confirmatory evidence. While forming such opinion, we are fortified by the observation of Hon'ble Supreme Court of Pakistan expressed in the case of Haji Muhammad Ilahi and others v. Muhammad Altaf alias Tedi and others (2011 SCMR 513) wherein the Hon'ble Supreme Court of Pakistan observed as under:-

“Admittedly all the witnesses are interested and inimical witnesses. It is a settled law that the evidence of such witnesses has to be taken with caution and unless it is corroborated by an independent circumstance, it cannot be credited with truth as law laid down by this Court in Misry Khan's case (PLD 1977 SC 642).”

13. It is discernible from record that as many as fifteen persons were indicted in the case by trial court, out of whom, the prosecution failed to prove its case against fourteen and they earned acquittal. The set of evidence produced against acquitted fourteen accused was almost same as adduced against the appellant. Though the two eye-witnesses obsessively burdened some of the accused with the role of

causing firearm injuries on the person of Saeed Ahmad and saddled others with inflicting blunt and sharp traumas on the head of Noor Ahmad, however, their testimony was not considered worth reliance for awarding conviction to them. As a necessary corollary, the question arises that whether it would be in consonance with the dictates of safe administration of justice to uphold conviction of appellant on the same ocular account. In response to such query, we are of an inescapable view that law for appraisal of evidence cannot be stretched to an extent so as to give unchecked leverage to such a witness by declaring his credibility as divisible in nature by accepting it against similarly placed accused and to discard it against his co-accused. While forming such view, we are enlightened from the wisdom of Hon'ble Supreme Court of Pakistan expressed in case reported as Imtiaz alias Taj v. The State and others (2018 SCMR 344) which is as under:-

“It is not disputed that four co-accused of the appellant attributed effective firing at and specific injuries to Rustam Ali deceased had been acquitted by the trial court. The law is settled that if the eye-witnesses have been disbelieved against some accused persons attributed effective roles then the same eye-witnesses cannot be believed another accused person attributed a similar role unless such eye-witnesses receive independent corroboration qua the other accused person and reference in this respect may be made to the cases of Ghulam Sikandar v. Mumraz Khan (PLD 185 SC 11), Sarfraz alias Sappi v. The State (2000 SCMR 1758), Iftikhar Hussain and others v. The State (2004 SCMR 1185) and Akhtar Ali v. The State (2008 SCMR 6).”

In the aftermath of above discussion, we have arrived at conclusion that the intrinsic worth of prosecution evidence is to be analyzed with great circumspection for tracing the existence of corroboratory and confirmatory evidence of unimpeachable character in its support.

14. In the wake of claim of defence that narrators of ocular account are residents of a place situated 10-kilometers away from the crime scene and the counterclaim of eye-witnesses regarding their ordinary place of abode in the same vicinity, we have meticulously scanned the

prosecution case. It is noticed at the very outset that according to the theory of crime advanced by prosecution, one of the deceased, namely, Saeed Ahmed fell prey to inescapable clutches of death after receiving only the firearm injuries. The eye-witnesses remained consistent while deposing so and even during cross-examination stated beyond any shred of ambiguity that Saeed (deceased) received no blunt trauma. In this regard, it does not appear to be out of context to reproduce an excerpt from the cross-examination of Ghulam Sarwar (PW.2) which is as under:-

“It is correct that on the head of deceased Saeed Ahmed no body inflicted any Sota blow at the time of occurrence. It is correct that no body inflicted Sota blow on left shoulder, left thigh and left knee of deceased Saeed Ahmed. Volunteered he received fire shot only.”

However, it transpired from the detail of injuries noticed by Dr. Muhammad Idrees (PW.8) during post-mortem examination of Saeed deceased that some of them were caused through blunt weapons. To be precise, according to Dr. Muhammad Idrees injuries No.1,8,9 & 10 were caused by blunt weapons. Now the question arises that if at all the occurrence was witnessed by Ghulam Sarwar and Muhammad Pervaiz (PW.2 & 3) then why no reference was made to these blunt traumas. So much so, that neither in the crime report nor in their depositions before the court, any accused was alleged to be armed with any club, rod stick, etc. This fact gains more importance when seen in the context that the same set of witnesses ascribed as many as nine firearm injuries with their locales to respective assailants which otherwise is not humanly possible as an eye cannot catch the velocity of a bullet. We are mindful of the fact that such microscopic narration of an occurrence in which volley of bullets is being fired by numerous persons is not even a remote possibility.

It is further noticed by us that the firearm injuries alleged to have been caused by Sharif and Allah Rakha (since acquitted) on the right side of the neck, ear and mouth of Saeed Ahmed (deceased)

were not found present during autopsy. Though the acquittal of Sharif and Allah Rakha was challenged through Criminal Appeal No.359 of 2013, however, it was withdrawn to their extent on 11.10.2017. Thus, the finding of learned trial court regarding the acquittal of aforementioned two accused attained finality and this is a factor which adversely reflects upon the presence and credibility of the eye-witnesses and goes long way in demonstrating that the ocular account runs contrary to the medical evidence.

We are also not impressed from the eye-witness account of the occurrence, according to which, Saeed Ahmed deceased remained standing like an oak tree even after the receipt of nine firearm injuries and fell on the ground after further injuries inflicted by unknown persons. It does not appear even to be a remote possibility that a human being can stand on his legs even after receiving nine/ten firearm injuries caused through high velocity weapons and that too on his vital organs. We have further observed that during spot inspection, conducted shortly after the occurrence, only three empties of .30 bore (P.8/1-3) were recovered from the spot which raises an eyebrow about the prosecution version wherein the assailants were shown armed with weapons like .44 bore, .30 bore, .222 bore and .12 bore.

16. There is another factor which has persuaded us to draw an inference adverse to the case of prosecution and arises out of motive. According to Ghulam Sarwar (PW.2), the instant bloodbath took place in the wake of a murder enmity which started in 1985 and rejuvenated due to a dispute arising out of 14-acres of land. An in-depth analysis of record reveals that Saeed Ahmed (deceased) was figuring in neither of the afore-mentioned two disputes. It came in evidence that at the time of murder of 1985, Saeed (deceased) was a minor boy and was in no manner connected with it. Likewise, nothing emerges from the prosecution evidence that Saeed Ahmed had any stake in the ongoing land dispute. In this backdrop, the narration of occurrence provided by

the eye-witnesses is reviewed from which it divulges that Saeed Ahmad (deceased) was taken as a primary target of this murderous assault whereas, Noor Ahmad (deceased) fell prey to the aggression of assailants only when he tried to intervene. It can safely be inferred from the brutality in which Saeed Ahmed was eliminated that the murderers were having venom against him. As this is not enough, it is further noticed that Ghulam Sarwar (PW.2) was a central figure in the 1985 murder occurrence and was awarded guilty verdict by the trial court. He underwent an imprisonment for life and was released from jail in the year 1997. In such circumstances, the unhurt survival of Ghulam Sarwar (PW.2) gives rise to certain unpleasant queries regarding prosecution case. Even otherwise, motive is always regarded as double edged weapon and if on one hand it is taken as a driving force behind the commission of crime then on other hand, it provides a reason for false implication.

17. We have also pondered in detail upon the recovery of Kassi (P.11) alleged to have been effected from Niaz Ahmad (appellant). Though, according to the report of Serologist (Exh.PT/1), the Kassi (P.11) was found to be stained with human blood, however, for convincing reasons, we are not ready to take it as a sufficient corroboratory material in aid of prosecution case. Firstly, it is observed that the occurrence took place on 27.11.2009, whereas the Kassi was recovered on 13.01.2010 and forwarded to Chemical Examiner on 10th of February, 2010. The scrapping taken from it forwarded to Serologist was examined by him on 06.07.2010 i.e. after about 7/8 months and even then was opined to be of human origin which is not possible as the blood is likely to disintegrate during this period. While forming such view, we have followed the wisdom expressed in Muhammad Arif alias Mahi and others v. The State and another (2007 YLR 1115) and Faisal Mehmood v. The State (2016 SCMR 2138).

18. From above discussion, it can safely be gathered that the case in hand is dubious in nature as from its very appearance, it is of wider net, the ocular account produced therein is furnished by interested witnesses, who were disbelieved against similarly placed thirteen accused persons. Their statements apparently are found to be in conflict with the medical evidence and even after subjecting to scrutiny from motive and recovery, the prosecution case failed to get required corroboration. Hence, as a rule of abundant caution, we are swayed not to place explicit reliance upon them. We are also mindful of the fact that during occurrence two persons were ruthlessly murdered, however, on this score alone the appellant cannot be hanged to death. In order to secure conviction of Niaz Ahmad (appellant), the prosecution had to prove its case beyond any scintilla of doubt on the basis of unimpeachable and confidence inspiring evidence. From the failure of prosecution to prove its case beyond any shred of suspicion, we are swayed to follow the golden principle of Criminal Jurisprudence, according to which benefit of every doubt ought to be extended to none other than the accused. In the light of afore-discussion, we accept **Criminal Appeal No.279 of 2013** and set-aside the conviction and sentence of Niaz Ahmed alias Nazo (appellant). He shall be released forthwith if not required to be detained in any other criminal case. Resultantly, **Murder Reference No.32 of 2013** is answered in the negative and death sentence awarded to Niaz Ahmad alias Nazo (convict/appellant) **IS NOT CONFIRMED.**

19. While advertng to **Criminal Appeal No.359 of 2013**, it is noticed to have been filed initially against twelve persons. However, it was withdrawn as not pressed against Muhammad Sharif, Allah Rakha, Sardar alias Dhulla, Ali Muhammad alias Alia and Muhammad Munir (respondents No.8 to 12) on the ground that role ascribed to them was found not supported by the medical evidence. As

a necessary corollary, it can reasonably be gathered that aforementioned five persons faced the ordeal of a murder trial, though the attribution of role in occurrence given by prosecution which was in conflict with medical evidence. We have already observed in detail the grounds which strongly reflect the absence of eye-witnesses at the crime scene and have disbelieved them. In the given circumstances, we do not see any reason to interfere with the finding of acquittal passed by learned trial court which otherwise on a scrutiny is found to be well reasoned. Even otherwise, it is well settled proposition of law that when a court of competent jurisdiction passes the judgment of acquittal on the basis of cogent grounds, the same is not to be disturbed in a mechanical manner. In order to set-aside the judgment of acquittal, it is to be proved that the judgment of acquittal is arbitrary, fanciful, perverse and contrary to record. An accused person on the judgment of acquittal acquires a verdict of innocence, hence it is to be disturbed in exceptional and extraordinary circumstances. In this regard, reliance can be placed on the cases of *Iftikhar Hussain and others v. The State* (2004 SCMR 1185) and *Haji Amanullah v. Munir Ahmad and others* (2010 SCMR 222). The instant appeal to the extent of respondents No.1 to 7 merits no acceptance and the same is accordingly dismissed.

(Qazi Muhammad Amin Ahmed)
Judge

(Ch. Abdul Aziz)
Judge

APPROVED FOR REPORTING

(Ch. Abdul Aziz)
Judge