CJDA 38

JUDGMENT SHEET

LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

Criminal Appeal No.481/2016
(Muhammad Iqbal vs. The State etc.)

Murder Reference No.140/2016
(The State vs Muhammad Iqbal)

Date of hearing: 05.12.2018.

Appellant: Mr. Muhammad Adil Khan, Advocate/ Defence Counsel at State expense.

State: Rai Akhtar Hussain, Deputy Prosecutor General.

Complainant: Mr. Imtiaz Hussain Khan Baloch, Advocate.

FAROOQ HAIDER, J. Through this single judgment ***Criminal Appeal No.481 of 2016*** filed by Muhammad Iqbal appellant against judgment dated 27.2.2016 passed by learned Addl. Sessions Judge, Jhang, *whereby he has been convicted and sentenced* ***under section 302(b) PPC as Ta'zir*** *to death on account of committing qatl-e-amd of Imam Bukhsh with payment of compensation Rs.5,00,000/- to the legal heirs of deceased under Section 544-A Cr.P.C and in default thereof to further undergo six months S.I. in private complaint arising out of case FIR No.340 dated 14.9.2012 under Sections 302/109/34 PPC registered at Police Station Qadirpur, District Jhang* and ***Murder Reference No.140/2016*** sent by learned trial Court under Section 374 Cr.P.C. for confirmation of death sentence awarded to Muhammad Iqbal (appellant) through above mentioned judgment, are being decided together because both these matters have arisen out of one and same judgment.

2. Facts of the case have been stated by Ghulam Raza complainant PW-1 in his statement before the trial court, which is hereby reproduced for narration of the facts: -

> *" About three years and some days back, at about 6/6.30 AM. 1 alongwith Muhammad Waseem s/o Muhammad Yar, Nawaz s/o Ranjha, was present in the house of Imam Bakhsh deceased. In the meanwhile, Iqbal armed with 30 bore pistol, Muhammad Nawaz accused armed with 12 bore gun alongwith an unknown accused, armed with firearm weapon came there. Accused Nawaz present in the court raised lalkara to my father in law that they had come to teach a lesson for pursuing the case of Aalya Bibi. Iqbal accused made a fire which hit on the head of Imam Bakhsh. Nawaz accused raised lalkara if someone came near he will be killed. The accused kept on making aerial firing and fled away on motorcycles. Imam Bakhsh succumbed to the injuries within 1/2 minutes at the spot.*
>
> *The motive behind this occurrence is that Imam Bakhsh was pursuing the case of Umair Hayat his nephew, due to this grudge, they committed the murder of Imam Bakhsh. The occurrence was seen by Nawaz s/o Ranjha, Waseem s/o Muhammad Yar alongwith other people including myself.*
>
> *Sharif accused asked Nawaz accused to commit the murder of Imam Bakhsh and they will handle the matters. Mehmoob-ul-Hassan s/o Muhammad Ashraf and Imtiaz s/o Ijaz heard the conspiracy hatched by Sharif accused.*
>
> *I have already informed the police telephonically about the occurrence, when I reached at Adda Kot Esa Shah, the police has reached there. I made my statement before Investigating Officer, who recorded my statement, which is Ex.PA, where my thumb impression is Ex.PA/1. The Investigating Officer did not investigate this case on merit and after this feeling aggrieved I filed private complaint which is Ex.PA/2, where my thumb impression is Ex.PA/3."*

3. After receipt of private complaint, learned trial court recorded the cursory evidence produced by the complainant and thereafter summoned the appellant and his co-accused mentioned above to face trial.

4. Learned trial court after observing legal formalities provided under the Criminal Procedure Code framed the charge against the appellant and his co-accused (since acquitted by the Trial Court through impugned judgment) under section 302/109/34 PPC to which they pleaded not guilty and prosecution evidence was summoned.

5. Medical evidence has been furnished by Dr. Muhammad Arsalan Tayyab PW5, who conducted postmortem examination on the dead body of Imam Bukhsh deceased and observed as under:-

> "***Injury No.1:-***
>
> *A lacerated wound 3 cm x 2 cm with burning, blackening, greasing, collar of abrasion, inverted margins into star shape on the top and middle of the head 7cm from hair line. Compound fracture of skull measuring about 18x10 cm extending to the left eye ball was found with multiple fragments of bone present on exploration of brain matter. Membrane ruptured and massive hematoma of about 13x8 cm was found just beneath the fractured bone covering the brain matter. On exploration a small piece of metallic ballistic was found and preserved.*
>
> *REMARKS.*
>
> *In my opinion, injury No.l is the cause of death in this case i.e. compound fracture of skull with diffuse brain injury, which is sufficient to cause the death of the person in ordinary course of nature. Injury No.l was ante mortem and was caused by firearm weapon.*
>
> *Probable time that lapsed between injury and death was within fifteen minutes and between death and post mortem was 9 to 10 hours."*

6. Prosecution produced as many as 10 witnesses and after tendering certain documents, closed the prosecution evidence. Investigating Officer was examined as Court Witness i.e. CW-1.

7. On the other hand, statement of Muhammad Iqbal appellant along with his co-accused (mentioned above) was recorded under section 342 Cr.P.C, who refuted the case of prosecution. The appellant neither opted to appear as witness under section 340(2) Cr.P.C nor produced any evidence in defence, in reply to question "why this case against you and why the PWs deposed against you?" Muhammad Iqbal appellant replied as under: -

> *"The false and fabricated story has been engineered against me and co-accused with mutual consultation and deliberation, which has no nexus with the reality, same has been based on pseudopodial footings. I have been involved in the instant case on the motive that Aalya Bibi was abducted by Umair the close relative of complainant party. I am implicated alongwith other co-accused due to previous enmity. The motive which has been introduced by the complainant regarding abduction of my paternal cousin Aalya Bibi by Umair Hayat said to be close to the complainant party is false one, because, Umair Hayat is not the nephew of deceased Imam Bakhsh and same fact has been transpired during the cross examination. If the motive part of story of the prosecution is kept in mind, then surely we have to take the revenge from Umair Hayat directly not from deceased. According to investigation and during the cross examination it is established that Imam Bakhsh deceased was done to death by complainant party by himself as he has developed illicit relation with the mother of complainant and wife of his brother Muhammad Yar The complainant party while cross examination on the Investigating Officer also admitted the fact that one female shoe was present below the cot of deceased Imam Bakhsh, which strengthen our defence version that the deceased was*

murdered by the complainant party due to honour and the murder was result of honour killing. No incriminating material was collected by the Investigating Officer against me and my co-accused as well as prosecution has failed to produce any incriminating material against me and co-accused. No recovery of crime weapon was effected by the Investigating Officer by me as well as co-accused. Although I was subjected to physical remand in police custody for 13 days. Ocular evidence was also falsified by the medical evidence. No empty was recovered, which also makes the prosecution case and story highly doubtful regarding the manner of occurrence, The prosecution failed to prove regarding my coming and retreating from the place of occurrence. It is also established that on the tongue of the people of the area that Imam Bakhsh was done to death due to domestic differences of complainant party. No independent witness has been engaged by the prosecution in order to prove their case. All the Pws are interested one and closely related. We also furnish offer to complainant party during investigation that we are ready to give oath on holy Quran that we have not murdered the deceased Imam Bakhsh and today also before the court we are ready to swear on the Holy Quran that we have no nexus with the occurrence and are totally innocent."

8. After conclusion of the trial, learned trial court, while acquitting co-accused (mentioned above) convicted and sentence the appellant as mentioned above through the impugned judgment.

9. Learned counsel for the appellant has contended that prosecution has failed to prove its case against the appellant; that witnesses produced by the prosecution are chance witnesses; that ocular account has been negated by the medical evidence; that no incriminating material was recovered from the appellant although he remained on physical remand for thirteen days; that after thorough investigation, the appellant was found as not involved in

the occurrence; and that impugned judgment containing conviction and sentence is against the law and facts and is liable to be set aside.

10. Learned Deputy Prosecutor General assisted by learned counsel for the complainant has supported the impugned judgment by contending that it is a day light occurrence and prosecution has proved its case beyond shadow of doubt against the appellant.

11. After hearing the learned counsel for the parties and going through the record, it has been observed by us that as per case of prosecution, occurrence took place at 6.30 a.m. on 14.9.2012 but First Information Report has been recorded at 9.30 a.m., for which, no explanation whatsoever has been given by the prosecution. In this regard, complainant/PW-1 tried to introduce dishonest improvement while stating in his examination-in-chief that I have already informed the police telephonically about the occurrence but when during cross examination he was duly confronted with his statement Ex.PA, it was not found therein; relevant portion from his statement is hereby reproduced:-

> *"I have stated in my statement Ex.PA and complaint Ex.PA/2, that I informed the police telephonically about the occurrence. Confronted with Ex.PA and Ex.PA/2, where it is not so mentioned".*

It is further important to mention here that PW-1 during cross examination has stated as under: -

> "I have got recorded my statement for registration of F.I.R before Investigating Officer after half an hour of the occurrence. The Investigating Officer reached at the place of occurrence after half hour"

Perusal of above deposition of the complainant/PW-1 leads towards three situations: one is that if Investigating Officer reached at the place of occurrence after half an hour and PW-1/complainant got recorded his statement to

him after half an hour of the occurrence, then this occurrence has not occurred at 6.30 a.m. rather at 8.00 a.m. because the time of recording of statement of PW-1/ complainant in Ex.PA at its bottom has been mentioned as 8.30 a.m. So, in the light of this, occurrence has not taken place at 6.30 a.m. and prosecution could not prove exact time of the occurrence, which sole fact is sufficient to give fatal blow to the case of the prosecution; while considering the second situation, if occurrence has taken place at 6.30 a.m. and Investigating Officer had reached at the place of occurrence after half an hour meaning thereby Investigating Officer reached at the place of occurrence at 7.00 a.m. and complainant has got recorded his statement to him at 7.00 a.m., then where is that statement because F.I.R of the case in hand has not been got registered on any statement, which might have been recorded at 7.00 a.m. Hence, one can come to the conclusion that said statement was destroyed and thereafter another statement has been prepared at 8.30 a.m. and in the light of same, instant F.I.R has been registered, which again is fatal for the prosecution and the third situation coming out from the scenario is that if Investigating Officer had reached at the place of occurrence after half an hour, then time has been consumed for consultation, deliberation, inducement and procurement and thereafter this case has been registered, which further signals that occurrence was un-witnessed and this time has been consumed for above mentioned purposes, which is again fatal for the prosecution. Even if all these three situations are ignored and simply registration of the case through F.I.R Ex.PA/4 is considered, same is delayed without any plausible explanation and straightaway leads to the view that same is afterthought, result of concoctions, deliberation, consultation and this time has been consumed for

procuring and engaging witnesses and concocting version for registration of the case. So, this aspect which lays foundation of the case, has given fatal blow to the case of prosecution. Reliance is placed upon the case of ***"Mehmood Ahmad and 3 others versus The State and another"*** (1995 SCMR 127). It is important to mention here that had any cited eyewitness or complainant been present at the place of occurrence, then situation might had been otherwise i.e. case would have been registered promptly after the occurrence. So this aspect has negated the presence of complainant and cited eyewitnesses at time of occurrence.

12. As far as ocular account is concerned, prosecution has produced two cited eyewitnesses i.e. Ghulam Raza as PW-1, who also happens to be complainant of F.I.R, and Muhammad Waseem as PW-2. Ghulam Raza/PW-1 did not give any plausible reason about his presence at the place of occurrence in Fard Bayan Ex.PA and complainant Ex.PA/2. Similarly Muhammad Waseem/ PW-2 also did not give any reason for his presence at the time and place of occurrence; during his evidence before Court deposed as under: -

> *"It is correct that I have not mentioned the reason of my presence in my statement before the police as well as court at the time of cursory statement"*

These both witnesses are not resident of the house of occurrence, they could not give any plausible reason about their presence at the place of occurrence. It is strange enough to note that they are resident of the same village and claimed that they were sleeping in the house of deceased without any plausible cause. Hence, their presence seems to be improbable and they are not only chance and casual witness rather interested and related also, thus, cannot be believed/relied. Guidance has been sought from the dictum laid down in case of

"Mst. Sughra Begum and another versus Qaiser Pervez and others" (2015 SCMR 1142), the relevant portion whereof is reproduced as under: -

> *"14. A chance witness, in legal parlance is the one who claims that he was present on the crime spot at the fateful time, albeit, his presence there was a sheer chance as in the ordinary course of business, place of residence and normal course of events, he was not supposed to be present on the spot but at a place where he resides, carries on business or runs day to day life affairs. It is in this context that the testimony of chance witness, ordinarily, is not accepted unless justifiable reasons are shown to establish his presence at the crime scene at the relevant time. In normal course, the presumption under the law would operate about his absence from the crime spot. True that in rare cases, the testimony of chance witness may be relied upon, provided some convincing explanations appealing to prudent mind for his presence on the crime spot are put forth, when the occurrence took place otherwise, his testimony would fall within the category of suspect evidence and cannot be accepted without a pinch of salt"*

Guidance can also be sought from the case of "Muhammad Ameer and another versus Riyat Khan and others" (2016 SCMR 1233), the relevant portion whereof is also reproduced: -

> *"4. As already observed above, one of the eye-witnesses relied upon by the prosecution, i.e. Noor Muhammad had not been produced by the prosecution before the trial Court and the ocular account was furnished in this case only by Ghulam Abbas (PW-9). The said witness was a first cousin of Muhammad Afzal deceased and was admittedly a chance witness who ordinarily resided about one kilometer away from the place of occurrence. The stated reason for availability of this witness near the place of occurrence had never been established through any independent evidence at all"*

Even no convincing reason or plausible explanation has come on the record to corroborate presence of PW-2

Muhammad Waseem at the place of occurrence, hence he is also a chance/casual witness, interested and related witness. Nutshell is that testimony of both eye witnesses PW-1 Ghulam Raza and PW-2 Muhammad Waseem fell within the category of suspect evidence, hence, neither can be accepted nor relied.

13. Another important aspect is that it is own case of the complainant in his statement Ex.PA that he alongwith Muhammad Waseem PW-2 and Muhammad Nawaz PW (given up) was sleeping in the house of Imam Bakhsh, when at once at 6.30 a.m. accused persons came there and soon after their arrival, accused Muhammad Nawaz raised lalkara and accused Iqbal fired at Imam Bakhsh deceased but during his examination in chief he intentionally omitted word ***sleeping***, however, when he was confronted during his cross examination, then following deposition came on record, which is hereby reproduced: -

> *"I have got recorded in my statement about the presence of PWs and mine in the house of Imam Bakhsh deceased at the time of occurrence in complaint Ex.PA/2 and Fard Bayan Ex.PA. confronted with Ex.PA/2 and Ex.PA where the Ghulam Raza alongwith other PWs were present in sleeping condition"*

Now perusal of aforementioned deposition reveals that dishonest omission was made by PW-1 in order to conceal ***sleeping condition*** and it is crystal clear that this dishonest omission was caused because from the perusal of contents of Fard Bayan Ex.PA, it reveals that complainant alongwith other cited eyewitnesses were sleeping when at once accused came and made fire shot, in this situation when only one fire shot has been allegedly made by the accused/appellant and said first and only fire shot has been received by the deceased, and after hearing report of said fire shot, the complainant and

other cited eyewitnesses awoke then in that situation how it was possible for them to see that who has made said fire shot and where it has landed; this factor clearly hits the *claim* of the complainant and cited eyewitnesses regarding seeing the episode, hence this dishonest omission was introduced. Reliance is placed upon the case of ***"Syed Saeed Muhammad Shah and another versus The State"*** (1993 SCMR 550), the relevant partition whereof is reproduced below: -

> *"27. Secondly, statements of the witnesses in the Court in which improvements are made to strengthen the case of the prosecution are not worthy of reliance. It is held in the case of Amir Zaman v. Mehboob and others (1985 SCMR 685) that testimony of witnesses containing material improvements are not believable. Reference can also be made to the cases of Haji Bakhsh v. The State (PLD 1963 Kar. 805), Qaim Din and others v. The State (1971 PCr.LJ 229) and Fazla and another v. The State (PLD 1960 Lah. 373)"*

Reliance is further placed upon the case of "Muhammad Saleem versus Muhammad Azan and another" (2011 SCMR 474), the relevant portion whereof is reproduced as under: -

> *"It is settled law that the witnesses while appearing in the court had made improvements in their statements to strengthen the prosecution case cast serious doubt on the veracity of such witnesses, therefore, the learned High Court was justified to come to the conclusion that their statements are not worthy of reliance. See Saeed Muhammad Shah's case (1993 SCMR 550) and Muhammad Shafique Ahmad's case (PLD 1981 SC 472)"*

In this regard statement of PW-2 Muhammad Waseem can also be referred, who has categorically deposed that he alongwith Ghulam Raza complainant and Nawaz was sleeping in the house of Imam Bakhsh when accused came and fire was made. In this scenario, it was not possible for these cited eyewitness to see that who has made fire shot and to whom it had hit because only one

fire shot was made and its report awoke all these cited eyewitnesses. When complainant or eyewitness makes such sort of conflicting statements, he cannot be considered as truthful witness. Reliance is placed upon the case of ***"Muhammad Nadeem alias Banka versus The State"*** (2011 SCMR 1517).

14. There is another important feature of the case that Ghulam Raza complainant in his Fard Bayan Ex.PA has not recorded the ***"nature of firearm weapon"*** allegedly carried by Muhammad Iqbal appellant and only firearm has been mentioned therein, however, he introduced dishonest improvement in this regard while appearing before the Court and in his examination-in-chief stated that Iqbal was armed with pistol 30-bore but when he was duly confronted during cross examination, then following reply was offered: -

> *"I have got recorded that the accused Iqbal was armed with 30-bore pistol in Fard Bayan in Ex.PA and complaint Ex.PA/2, confronted with Ex.PA and Ex.PA/2 where it is not so recorded"*

Same is position regarding PW-2 Muhammad Waseem, who stated in his examination-in-chief before the Court that Iqbal was armed with pistol but during his cross examination he replied as under:-

> *"I have not got recorded that Iqbal accused was armed with pistol at the time of occurrence in my statement under Section 161 of Cr.P.C."*

So, the factum of not deposing about kind of firearm weapon by these witnesses also raises eyebrows regarding their presence at the place of occurrence and further introduction of dishonest improvement in this regard shatters testimonial value of their evidence. So, conduct of these both witnesses does not establish their presence at the place of occurrence and they are not reliable. Reliance is placed upon case of

"Muhammad Akram versus The State" (2010 P.Cr.L.J. 1515) and ***"Ghulam Qasim versus The State"*** (2007 YLR 1067).

15. It is case of prosecution that Iqbal appellant made firearm shot which hit Imam Bakhsh deceased at his head. In the postmortem report and statement of the doctor said injury was carrying burning, blackening, greasing and collar of abrasion. Relevant portion of statement of Dr. Muhammad Arslan Tayyab PW-5 is hereby reproduced: -

> *"It is correct that the forensic science is the part of MBBS course. It is correct that if fire is made from the range 3/4 feet then blackening occurs around the entry wounds. If the fire is made within the range of 6 inches, then the burning occurs around the injury. That if the fire is made at a distance of 16 feet no blackening or burning occurs around the entry wound"*

Now coming to the case of prosecution, Ghulam Raza PW-1 in his statement deposed as under: -

> *"The site plan was prepared by the Investigating Officer as well as draftsman on my pointation as well as pointation of PWs"*

Similarly PW-2 in his statement deposed as under: -

> *"It is correct that I have pointed out to Investigating Officer that accused Iqbal made fire to Imam Bakhsh deceased from the distance of 16 feet"*

Site plan with scale depicts that fire was made at Imam Bakhsh from a distance of 16 feet, hence, it is crystal clear that ocular account has been negated by the medical evidence because if a fire is made from a distance of 16 feet, then no burning or blackening can occur. In this regard, guidance has been sought from the dictum laid down by the august Supreme Court of Pakistan in the case of ***"Muhammad Ali versus The State"*** (2015

SCMR 137), the relevant portion whereof is hereby reproduced:-

> *"The doctor has also found blackening on the injuries which means that the injuries could have been caused from a distance of three feet or less. But according to site plan, the distance between the assailants and the deceased was about 2 karams which is equal to 11 feet. In such circumstances, the presence of the eye-witnesses at the spot is doubtful"*

Reliance is further placed upon the case of ***"Faiz Meeran versus Muhammad Khan and others"*** (2016 SCMR 1456) where it has been held as under*:*

> *"The said allegation leveled against respondents Nos.1 and 2 was not supported by the medical evidence because according to the eyewitnesses produced by the prosecution respondents Nos.1 and 2 had fired at and injured Muhammad Arif (PW7) from a distance of thirty-five feet but the medical evidence had shown availability of burning on the relevant injuries which was not possible from a distance of thirty-five feet"*

Hence, it can be safely held that ocular account has been negated and falsified by the medical evidence, and this state of affairs negates presence of cited eyewitnesses at the place of occurrence.

16. Appellant Muhammad Iqbal remained in custody of police on physical remand for a period of thirteen days but no weapon/incriminating material could be recovered from him.

17. It was case of prosecution, mentioned in Fard Bayan Ex.PA, that accused persons had got registered case against Umair Hayat (nephew of the deceased of the case) and deceased was pursuing the same and due to said grudge they have committed murder of Imam Bakhsh. It has come on record that Umair Hayat was not nephew of Imam Bakhsh deceased. In this regard,

relevant portion of statement of PW-1 is being reproduced: -

> *"Imam Bakhsh deceased was son of Ghulam Haider. The grand father's name of Umair Hayat is Ramzan"*

Relevant portion of statement of PW-2 Muhammad Waseem in this regard is also being reproduced as under:-

> *"The name of the father of Imam Bakhsh deceased is Ghulam Haider. The name of father of Umair Hayat is Ahmad Hayat. Ramzan is the father of Ahmad Hayat"*

Perusal of aforementioned statements clearly establishes that Umair Hayat was not nephew of Imam Bakhsh. Furthermore if accused persons had got registered any case against Umair Hayat and nourished any grudge due to said case, then he would have been targeted and murdered; particularly when it has also come on the record that house of Imam Bakhsh was situated within populated area from all the four sides, which was a difficult target, whereas house of Umair Hayat was situated outside the village in agricultural land hence easy to target; it has further not been brought on record by the prosecution that when very same Umair Hayat has not been targeted, then what was the reason to target Imam Bakhsh deceased particularly when no proof regarding alleged pursuit of case by Imam Bakhsh has come on record, hence, motive has not been proved by the prosecution.

18. Investigating Officer appeared as Court Witness and perusal of his statement reveals that it was the very first version of Muhammad Iqbal appellant that he is not involved in the occurrence; many persons have appeared during investigation in support of his version, which remained the same throughout investigation; nothing incriminating material was got recovered from him and

CW-1 also deposed during his statement before the Court as under: -

> *"Muhammad Iqbal and Muhammad Nawaz accused joined investigation and both the accused stated that they are innocent and have no nexus with the occurrence ----------No evidence was produced by complainant or eye witnesses regarding the rebuttal of first version which has been made by accused Muhammad Nawaz and Muhammad Iqbal ----------It also came into my knowledge and in my express investigation that it was the month of September at 6.30 AM, many persons woke up in village but no one has stated regarding the coming and leaving of accused. It also came into my knowledge and it is in the tongue of the town that Imam Bux was murdered by complainant party due to domestic difference. It transpired during investigation that accused Muhammad Nawaz and Muhammad Iqbal were implicated in the instant case due to enmity. I also made effort but no weapon of offence was recovered from the possession of accused (emphasis added)---------- The investigation conducted by me was verified by the SHO"*

So the investigation conducted in this case has also negated the version of complainant party and has signalled about non-involvement of Muhammad Iqbal appellant in the alleged occurrence. Though opinion of police is not binding upon the Court yet in the peculiar facts and circumstances of the case, same has not been found as biased particularly when inspite of cross examination over Investigating Officer by the learned counsel for the complainant, nothing could be pointed out, which could make same as ***"biased"***. Reliance is placed upon the case of ***"Sikandar Shah versus Raza Shah and another"*** (2015 SCMR 10), the relevant portion whereof is reproduced as under: -

> *"Even otherwise in two successive inquiries by he CIA Raza Shah was found innocent on the basis of evidence having come on record that he was not present at the spot at the time of occurrence. In such circumstances the statement of complainant cannot be relied upon for conviction of Raza Shah and the learned High Court had rightly acquitted him of the charge"*

12. In view of above, we have reached at the conclusion that prosecution has failed to prove its case against the appellant. Thus, instant appeal is allowed, impugned conviction and sentence recorded through the impugned judgment dated 27.2.2016 passed in private complaint arising out of F.I.R No.340/2012 dated 14.9.2012 registered under Sections 302, 109, 34 PPC at Police Station Qadirpur, District Jhang, are set aside and the appellant is acquitted of the charge. Appellant shall be released forthwith if not required in any other case. **Murder Reference No.140/2016** is answered in negative and death sentence is not confirmed.

(Shehram Sarwar Ch.) Judge

(Farooq Haider) Judge

Naeem

Approved for reporting

Judge Judge