IN THE SUPREME COURT OF AZAD JAMMU AND KASHMI

Shariat Appellate Jurisdiction)

PRESENT:

MR. JUSTICE KH. MUHAMMAD NASIM
MR. JUSTICE RAZA ALI KHAN

CRIM. APPEALS No. 10, 20 & 32 OF 2023

(On appeal from the judgment of the Shariat Appellate Bench of the High Court dated 27.12.2022, passed in Cr. Appeals No. 48, 49, 50 & 51 of 2017).

Muhammad Yaseen alias Sajid s/o Muhammad Harron Balyoo by cast and another.
(In Cr. Appeal No.10/23)

Irfan Kayani son of Mehfooz Khan and others.
(In Cr. Appeal No.20/23)

Bilal Ali s/o Ch. Ali Muhammad Chacha and another.
(In Cr. Appeal No.32/23)

… Appellant(s)

VERSUS

The State through Advocate-General and 07 others.
(In Cr. Appeal No.10/23)

The State through Advocate-General and 07 others.
(In Cr. Appeal No.20/23)

Irfan Kiani s/o Mehfooz Khan and others.
(In Cr. Appeal No.32/23)

…Respondent(s)

Appearances:

For the convicts:	Raja Inamullah Khan, Advocate.
For complainant-respondents :	Mr. Reaz Alam & Ch. Bilal Ali, Advocates.
For the State:	Sh. Masood Iqbal, Advocate-General and Mr. Ahmed Saad Khan, Asstt. Advocate General.
Date of hearing:	27.02.2025.

JUDGMENT:

Raza Ali Khan, J:- All the captioned appeals arise from the consolidated judgment rendered by the Shariat Appellate Bench of the learned High Court (hereinafter referred to as "High Court") on December 27th, 2022, whereby the appeals preferred by both the convicts and the complainant were dismissed, and the reference forwarded by the trial Court seeking confirmation of the death sentence awarded to the convicts was answered in the affirmative.

2. The titled appeals stem from a written report by Muhammad Aslam Cheema on March 19, 2008, regarding the murder of Ch. Ali Muhammad Chacha. At 09:15 AM, while seated in his vehicle (No. AJKE-823) outside his counsel's residence in Sector F-2, Mirpur, two unidentified

individuals approached when Ch. Ali Muhammad Chacha entered the car. Without any exchange of words, one assailant, described as slim, shot the victim in the left abdomen, while the other, a bearded man of robust build, fired at his left arm before fleeing while indiscriminately shooting. The complainant and Zafran chased them, during which Zafran sustained a gunshot wound to the left leg. Raja Naveed Asghar, witnessing the attack, used his vehicle to pursue the culprits, colliding with one accused, causing him to fall, just as the police arrived and arrested both accused, identified as Sajid (of Shikarpur) and Ali Jan (of Karachi). Meanwhile, the injured Ch. Ali Muhammad Chacha was rushed to DHQ Hospital, Mirpur, where he succumbed to his injuries. The incident was corroborated by eyewitnesses, including Ch. Bilal Ali, Raja Naveed Asghar, and Zafran, leading the complainant to seek legal proceedings against the accused.

3. A criminal case was registered at Police Station Mirpur on March 19, 2008, under Sections 302, 324, 337, 109, 341, and 34 APC, leading to an investigation and the submission of a report under Section 173, Cr.P.C., before the Competent Court on August 6, 2008. During the inquiry, Irfan Kiani (son of Mahfooz, resident of Siakh) was apprehended, revealing that the murder of Ch. Ali Muhammad Chacha was orchestrated at his behest due to a

longstanding feud. Believing that the deceased supported his rivals in a dispute over his uncle's murder, Irfan Kiani conspired with Saeed Baloch and Naeem to eliminate him. Saeed Baloch engaged Muhammad Suleman Sumroo, who recruited Ishfaque and Muhammad Yaseen to execute the killing. The investigation also led to the implication of additional individuals based on Bilal Ali's statement. The police submitted a Challan, naming Muhammad Yaseen alias Sajid, Muhammad Ishfaque alias Ali Jan, Irfan Kiani, Naeem, Suleman Sumroo, Saeed Baloch, Muhammad Zaman, and Muhammad Ghaffar as the principal offenders, while others, including Raja Mahfooz and Javed Iqbal, were mentioned but left to the Court's discretion due to insufficient evidence. Saeed Baloch and Suleman Sumroo were declared proclaimed offenders, though the latter was subsequently arrested, warranting a supplementary report.

4. Upon submission of the report under Section 173, Cr.P.C., the Court took cognizance, and formal proceedings commenced. The accused were charged and, under Section 265-D, Cr.P.C., denied the allegations, pleaded not guilty, and stood trial, prompting the prosecution to present its evidence. The prosecution examined witnesses and submitted documentary exhibits, after which the accused were examined under Section 342, Cr.P.C. They reaffirmed their innocence, declined to testify under oath per Section

340(2), Cr.P.C., and refrained from presenting defense evidence, except for Muhammad Ashfaque, who produced a medical practitioner's testimony. Following exhaustive arguments, the District Criminal Court, Mirpur, after a thorough evaluation of the evidence, delivered its judgment on December 23, 2014, convicting and sentencing the accused in the following manner: -

1) Accused Muhammad Yaseen and Muhammad Ishfaq were convicted under section 302(a), 34 APC and have been awarded death sentence as "Qisas" and under section 544-A they have been ordered to pay 6 lac Rupees each as compensation to the legal heirs of deceased, failing which, they will undergo further six months imprisonment. Said accused were also convicted under section 13/20/65 Arms Act and have been awarded 3 years rigorous imprisonment each.
2) Accused Suleman Sumroo and Irfan Kiani were convicted under section 109APC and have been awarded 14 years rigorous imprisonment each and said accused Irfan Kiani was also convicted under section 13/20/65 Arms Act and has been awarded 3 years rigorous imprisonment.
3) Accused Naeem was convicted under section 109 APC and has been awarded seven years rigorous imprisonment. All the convict accused persons have been extended the benefit of section 382-B Cr.P.C along with the order that sentences awarded will run concurrently.
4) Accused persons Aqeel, Javed and Ghaffar were acquitted of the charge for want of proof.

5. Aggrieved by the Trial Court's verdict, both the convicted persons and the complainant filed appeals before the learned High Court, challenging its legality and validity, while the Trial Court forwarded a reference for confirmation

of the death penalty as required by law. After due proceedings, the learned High Court, through its consolidated judgment dated December 27, 2022, dismissed the appeals of both the convicts and the complainant, affirming the death sentence reference.

6. Raja Inamullah Khan, learned counsel for the appellants in Criminal Appeal No. 10 & 20 of 2023, challenged the High Court's judgment, arguing that it was legally flawed, contrary to settled principles, and not supported by the record. He contended that the appellants were falsely implicated, and the prosecution failed to prove its case beyond a reasonable doubt, relying on tainted and manipulated evidence. He highlighted the unlawful arrest, custodial harassment, and fabricated evidence against Irfan Kiani and Raja Mahfooz, casting doubts on the case. The delayed statement of PW-4 Bilal Ali, lack of corroboration from PW-6 Raja Naveed Asghar, and flaws in the identification parade further weakened the prosecution's case. The learned counsel asserted that no evidence established premeditation, common intention, or conspiracy, and the alleged motive was neither substantiated nor convincingly established. He argued that accused Muhammad Ashfaque, due to severe medical issues, was physically incapable of committing the offense, yet both courts ignored this fact. He also pointed

discrepancies in the forensic evidence, as the recovered 30-bore pistols did not match the FSL report, which suggested that a 9mm weapon was used. He emphasized that the prosecution's claim of a conspiracy at a guesthouse in Islamabad was disproven during the trial, and the reliance on partisan witnesses with inconsistent statements undermined the case. The learned counsel contended that the appellants' conviction was based on conjecture, as no direct evidence linked them to the crime, and their prolonged incarceration exceeded a life sentence. He concluded that even if the prosecution's case were accepted, the matter did not fall within the ambit of Qisas. To support his arguments, he cited various precedents from the Supreme Court and High Courts including *1992 SCR 1, 2009 SCR 273, 2009 SCR 432, 2017 SCR 428, 2011 SCMR 513, 2017 SCR 428, 2008 SCR 345, 2006 SCR 58, 2022 SCMR 1567, 2020 SCMR 857, 2021 SCMR 736, 2019 SCR 105, 2016 SCR 373, 2022 SCR 615, 2016 SCR 373, 2020 SCMR 505, 2003 SCMR 1588, 1997 SCMR 590, 2022 SCR 1489 1971 Pcr.LJ 257, 2020 SCMR 1493, 2010 SCMR 385, 2014 SCR 1653, NLR 1991 UC 631, PLJ 1977 Pesh. 65, PLD 1965 (W.P) Kar. 76, PLD 1960 (W.P) Kar. 697* and *PLJ 2007 Cr.C (Lah) 1213.*

7. Mr. Reaz Ahmed Alam, learned counsel for the complainant in all the titled appeals, contended that the High

Court failed to fully appreciate the prosecution's case and the gravity of abetment in a murder case, which is as heinous as the act itself. He emphasized that the targeted killing was executed without personal enmity or provocation, yet the convicts were not punished to the fullest extent of the law. He argued that the lower courts overlooked the role of the abettors, who conspired, facilitated, and aided the principal culprits apprehended at the crime scene. The prosecution witnesses, he maintained, had no reason to falsely implicate the accused, and their consistent testimonies proved the case beyond doubt. He asserted that both direct and circumstantial evidence established the planned execution of the murder, with hired killers caught red-handed. While upholding the conviction of Muhammad Yaseen and Muhammad Ishfaq, he strongly contended that abettors like Suleman Sumroo, Irfan Kiani, and Muhammad Naeem also deserved the death penalty. He further argued that the acquittal of Aqeel, Javed, and Ghaffar was based on a flawed appreciation of evidence, as sufficient material was available for their conviction. He concluded that the courts should have imposed the maximum punishment to deter such crimes and prayed for the death sentence of the abettors, along with the conviction of the acquitted accused. He relied on various judicial precedents to support his arguments including PLD 1979 SC AJK 2, PLJ 2007 (Cr.LJ)

634, PLJ 1998 SC AJK 38, 1998 SCR 337, 2005 SCR 166, 2014 SCR 155, and 2001 SCR 286.

8. Mr. Ahmed Saad, the learned Assistant Advocate-General (AAG) appearing for the State, supported the prosecution's case and argued that the matter pertained to a meticulously orchestrated conspiracy. He maintained that the prosecution had successfully established the roles of both the principal offenders and the abettors beyond any reasonable doubt. He contended that the acquittal of Aqeel, Javed, and Ghaffar resulted from a misinterpretation of evidence, as sufficient material was available to warrant their conviction. The learned AAG asserted that the prosecution's case was substantiated through both direct and circumstantial evidence, which collectively pointed to the guilt of the accused without ambiguity. He further argued that in premeditated and cold-blooded murders cases, courts must adopt a stringent approach to ensure justice and deter such heinous crimes. He prayed that the appeal of complainant be allowed, the sentences of the abettors be enhanced to capital punishment, and the acquitted accused be convicted in accordance with the law.

9. We have heard the learned Advocates for the parties and thoroughly examined the case record. The trial Court convicted Muhammad Yaseen and Muhammad Ishfaq under Section 302(a) read with Section 34 APC, sentencing

them to death as "Qisas," along with a compensation of Rs. 600,000 each to the legal heirs of the deceased under Section 544-A APC, with an additional six months of imprisonment in case of default. They also received three years of rigorous imprisonment under Section 13 of the Arms Act. Convict-appellants Suleman Sumroo and Irfan Kiani were sentenced to 14 years of rigorous imprisonment under Section 109 APC, while Irfan Kiani also received three years under the Arms Act. Muhammad Naeem was sentenced to seven years under Section 109 APC. All convicts were granted the benefit of Section 382-B Cr.P.C., with their sentences running concurrently. Meanwhile, accused Aqeel, Javed, and Ghaffar were acquitted due to insufficient evidence. Before delving into the merits of the case, we find it essential to address key legal issues raised by the defense: whether the case meets the strict evidentiary standard for Qisas, the reliability of Muhammad Aslam Cheema (PW-3) as a chance witness, and the credibility of Ch. Bilal Ali (PW-4), considering his relationship with the deceased. These aspects require careful examination before analyzing the broader evidentiary record.

10. It is a settled principle that for a conviction under *Qisas*, the prosecution must establish its case beyond a shadow of doubt through unimpeachable,

independent, and direct evidence, free from inconsistencies or contradictions. The learned counsel for the convict-appellants contended that the testimonies of the eyewitnesses lacked credibility and failed to meet this high threshold. In this regard, we must scrutinize whether the available evidence satisfies the stringent standard required for *Qisas*.

11. The prosecution's case primarily rests on the statements of two key witnesses, Muhammad Aslam Cheema (PW-3) and Ch. Bilal Ali (PW-4). Muhammad Aslam Cheema, the complainant, as alleged by the defense, is a chance witness with no plausible reason for his presence at the crime scene, while the latter, being the son of the deceased, is alleged to have a vested interest in securing the conviction of the accused. Before reaching a determination, it is imperative to assess the consistency, reliability, and corroborative strength of their testimonies in light of other material evidence, including forensic reports, recoveries, and circumstantial factors. We shall now proceed to examine whether the prosecution has succeeded in proving its case to the level required for a conviction under Qisa*s*.

12. The first argument presented by the learned counsel for the convict-appellants is that the evidentiary threshold required for Qisas has not been met. It is contended that the trial court, without comprehensively

evaluating the entire body of evidence, awarded the death sentence under Qisas despite the absence of the requisite standard of proof, which demands a high degree of certainty. To determine whether the conviction and sentence should have been recorded under the doctrine of *Qisas* or whether the case falls within the ambit of *Tazir*, it is necessary to meticulously examine the relevant statutory provisions, particularly those outlining the parameters of *Qisas* and *Tazir*. This requires a thorough assessment of the evidentiary prerequisites prescribed under the law and, in light of these principles, a careful evaluation of the prosecution's case.

13. The security of human life has, since time immemorial, remained a sacred trust, deeply rooted in customary practice, statutory law, and divine principles. The sanctity of life is recognized as a fundamental right, as enshrined in the Azad Jammu and Kashmir Interim Constitution. The doctrine of *Qisas* embodies both divine commandments and principles of justice, ensuring that punishment is proportionate to the crime committed. The *Qisas* and *Diyat* laws, as incorporated into the legal framework of Azad Jammu and Kashmir, are derived from Islamic jurisprudence and aim to maintain justice, deter crime, and uphold the sanctity of human life. Under these laws, *Qisas* refers to retributive justice, where punishment mirrors the severity and nature of the offence. However,

its application in murder cases is strictly governed by statutory provisions, requiring a high standard of proof. A conviction under *Qisas* demands direct, unequivocal, and unimpeachable evidence, free from inconsistencies, doubt, or contradictions. Witness testimonies must fulfill the criteria of *Tazkiyah al-Shuhood*, ensuring absolute credibility and moral integrity. Moreover, the evidence must establish the guilt of the accused beyond any reasonable doubt, leaving no room for conjecture or speculation. Conversely, if the strict evidentiary standards for *Qisas* are not met, the case may be adjudicated under *Tazir*, allowing for discretionary punishment based on corroborative or circumstantial evidence. *Tazir* sentences are imposed when the prosecution fails to fulfill the strict conditions of *Qisas* yet presents sufficient evidence to establish guilt beyond a reasonable doubt. Given these principles, it is essential to determine whether the present case meets the evidentiary requirements for *Qisas* or whether it falls within the domain of *Tazir*.

14. An aspect of paramount consideration is whether the complainant, Muhammad Aslam Cheema (PW-3), cited by the prosecution as an eyewitness, qualifies as a chance witness. In jurisprudence, a chance witness is defined as an individual whose presence at the crime scene is fortuitous unplanned and not expected due to routine, professional

obligations, or personal association. Unlike a natural eyewitness, whose presence at the *locus criminis* is anticipated due to occupational or relational ties. A chance witness's testimony is subjected to heightened judicial scrutiny. Courts evaluate such testimony by examining whether the witness's presence is satisfactorily explained and weather their account is corroborated by independent evidence. If the presence of the witness remains unexplained or appears suspicious, the testimony may be accorded less evidentiary weight. Conversely, if a cogent, plausible, and credible explanation is provided, the witness's narration is consistent and unimpeachable, its testimony cannot be disregarded solely on the basis of being a chance witness. In the instant matter, the prosecution contends that PW-3 falls within the category of a chance witness, implying that his presence at the crime scene was unexpected and fortuitous. However, a meticulous examination of his testimony, reveals that his presence was neither incidental nor unnatural. PW-3 unequivocally stated that the deceased was his counsel, and that he had proceeded to meet him specifically to escort him to court for a scheduled hearing. This reasonable and substantiated explanation, negates the assertion that PW-3 was at the scene merely by chance or without a justifiable cause. It is a well-settled principle of law that a witness cannot be discredited solely because he is labeled as a chance witness if his presence is rationally accounted for and

his testimony remains free from contradictions or improbabilities. Accordingly, in the absence of any material infirmity affecting the PW-3's credibility, his status as an eyewitness should not be undermined by the prosecution's assertion of his being a chance witness. Moreover, this Court, in a case *Ghazanfar Ali vs. The State and another*[1], has unequivocally held that the prosecution's case cannot be discarded merely on the basis that the eyewitnesses are categorized as chance witnesses, particularly when the prosecution has successfully established their presence at the scene of occurrence through credible and convincing evidence. The relevant excerpt from the said judgment is reproduced hereunder for proper appreciation:

> "10. The next argument of the learned counsel for the convict- appellant that all the eyewitnesses are chance witnesses and it is not safe to award the death sentence as Qisas while relying upon their statements. There is no doubt that the eyewitnesses are the chance witnesses and this fact has also not been denied by the other side even before this Court. However, it may be observed here that merely on the ground that the eyewitnesses are the chance witnesses the case of the prosecution cannot be smashed out especially, when the prosecution has succeeded to prove the presence of the witnesses, satisfactorily. However, if the prosecution failed to establish their presence at the relevant time then the corroboration was necessary for making the evidence admissible."

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[1] [2015 SCR 1042]

Similar proposition has been dealt with in the case reported as *Riaz Ahmed vs. The State*[2], wherein, it has been held as under: -

> "13. A chance witness is the one who should not normally be there where the occurrence takes place. When the presence of a witness at the spot is reasonably B explained by the circumstances or the narration of occurrence given by him inspire confidence he would not be a chance witness. As already stated Muhammad Nasrullah, complainant, the father of the deceased was a natural companion of the deceased at the time of occurrence. Bashir Ahmed, P.W.2 not only had shop on the main road but was also named in the F.I.R. and he is also an absolutely independent witness. The depositions of both these P.Ws. are supportive of each other as both of them have reasonably explained their presence at the spot and have narrated the occurrence in the manner which duly inspires confidence. Their testimony can be considered and relied upon safely in view of the dictum laid down in Iqbal v. State 1998 MLD 1732."

Furthermore, the trend of cross-examination also negates the version of the prosecution that he is a chance witness and came to the scene by chance. In *PLJ 1985 Cr.C. (Lah.) 13*, the Lahore High Court considered the impact of cross-examination trends on the credibility of witnesses. The judgment observed that the manner and direction of cross-examination could lead to inferences about a witness's reliability and his role as an eyewitness. Specifically, the court noted that the trend of cross-examination and suggestions made by the defense not only connected the

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[2] [2008 YLR 2754]

appellant with the crime but also eliminated the possibility of the victim being a consenting party. The court held that suggestions given and admitted by the witness amounted to proof of the facts suggested. Similarly, in *1992 SCMR 305*, the Supreme Court of Pakistan addressed how the trend of cross-examination could influence the assessment of evidence. The court highlighted that the nature of questions posed during cross-examination might suggest acceptance of certain facts by the defense. For instance, if the defense counsel questions the functionality of a weapon recovered at the appellant's instance, it may imply acknowledgment of the recovery itself. In the case at hand, a careful examination of the trend of cross-examination of the witness in question suggests that certain material facts were implicitly conceded by the defense while formulating questions during the cross-examination. The specific line of questioning directed at the witness revolved around the manner in which the accused allegedly fired at the victim, thereby indicating an acceptance of the broader occurrence of the incident, albeit with an attempt to shift focus towards the specifics of the act. In response to a question concerning the exact trajectory and location of the gunshot wounds, the witness unequivocally stated:

> "یہ درست ہے کہ حملہ آور ملزم نے مقتول کے سر پر اور کندھے پر فائر نہ کیا تھا۔ یہ درست ہے کہ حملہ آور ملزم نے گاڑی کے قریب آ کر کھڑی حالت میں اوپر سے نیچے کی جانب مقتول کی بائیں بغل کے نیچے، سینہ کے بائیں جانب (بغل کے نیچے) فائر کیا تھا۔ فائر کار کے شیشے کے نچلے لیول کے تقریبا برابر مقتول کو لگا ہوگا۔ "

This statement, when analyzed in conjunction with the defense's line of questioning, reveals an important inference. The questions posed by the defense, such as whether it was correct that the accused did not fire at the victim's head or shoulder, and whether it was correct that the accused moved closer to the vehicle before firing from a higher position downwards, suggest an implicit recognition of the act of firing itself. The attempt to delineate the exact angle, proximity, and points of impact of the gunshots rather than outrightly denying the occurrence of the shooting indicates an acknowledgment of the fundamental event while merely contesting its details. Such a trend in cross-examination, when viewed through the lens of judicial interpretation, allows the court to infer that the accused was not contesting the occurrence of the shooting but was instead focusing on modifying the perceived circumstances under which it took place. This aligns with the well-established principle that suggestions made during cross-examination, if not categorically denied, may be treated as admissions, thereby strengthening the prosecution's case. The manner in which the defense framed its questions, rather than outright refuting the incident, supports the conclusion that the witness was not a mere chance observer but an eyewitness who had a direct and clear view of the events as they transpired.

15. Furthermore, in a case of *State of Rajasthan vs. Kashi Ram*[3], the Supreme Court of India emphasized the importance of witness credibility and the legal burden of proof. The Court held that when a complainant files an FIR and actively participates in the case, his testimony carries significant evidentiary weight. The Court ruled that unless there are strong reasons to doubt the complainant's testimony, it should be treated as substantive evidence forming the foundation of the prosecution's case. Similarly, in the other case of *State of Uttar Pradesh vs. Rajesh Gautam*[4], the Supreme Court of India addressed the distinction between a chance witness and a complainant. The Court held that a complainant, by virtue of reporting the crime and being explicitly named in the FIR, cannot be regarded as a chance witness. Instead, his testimony assumes primary evidentiary status as he is directly connected to the incident. The judgment underscored that a complainant's proactive role in initiating legal proceedings establishes his presence at the crime scene, thereby enhancing the reliability of his statement. The Court ruled that unless mala fide intent or fabrication is established, a complainant's deposition should be given due weight in assessing the prosecution's case.

16. The third point for judicial consideration concerns the testimony of PW-4, Ch. Bilal Ali, the son of the deceased.

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[3] https://indiankanoon.org/doc/116940/
[4] https://indiankanoon.org/doc/182802008/

The learned counsel for the convict-appellant has contended that his testimony should be discounted because of his familial relationship with the deceased. However, this contention is unavailing, as it runs counter to well-established legal principles consistently upheld by this Court. Numerous judgments have affirmed that ocular testimony, when credible and confidence-inspiring, cannot be discarded solely on the ground of the witness's close relationship with the deceased. It is a settled proposition of law that the evidence of a witness should not be disregarded merely due to consanguinity unless it is proven that the witness harbored animosity towards the accused or possessed any ulterior motive to falsely implicate him. In this context, reference may be made to the judgment rendered by this Court in *Habib Hussain Shah vs. The State*[5], wherein it has been categorically held as under:

> "13. The learned counsel for the convict-appellant has taken the plea that the eyewitnesses of the occurrence and the male Doctor who conducted the Post-mortem of the dead body are the close relatives of the convict-appellant, therefore, their testimony cannot be relied on. This argument of the learned Advocate has no substance, as it would be material to make it clear that it is not the relationship which makes one a witness of truth or otherwise. It is now a well-settled principle of law that the evidence of a witness could not be disbelieved or discarded merely on the basis of relationship, unless and until it is proved that the witness was inimical towards the accused. The defence has failed to bring any such proof

[5] 2023 SCR 442

> or evidence which could be helpful in this regard. This Court in its authoritative judgment reported as *Syed Kamran Hussain Shah vs. State*[6], has held as under: -
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> "23. Here another aspect is worth-understanding that the term 'related' should not be confused with the term 'interested' because both are entirely distinct concepts. There is considerable distinction between the terms 'related and 'interested', because the interested witness need not necessarily, be a related but it is the person who has such a motive on account of enmity or any other consideration that due to such enmity or consideration, he has prepared himself to depose falsely. The term 'related' is positive in its meaning while the term 'interested' is negative in its meaning because the term 'interested' has a concept to gain favour for whom or what he/she is interested with. Although the burden is always upon the prosecution to prove truthfulness of a related witness but where the defense claims the witness as 'interested', burden shifts upon defense to establish that such witness had a motive on account of enmity or any other consideration which compelled him to depose falsely against the accused."

17. Proceeding to the merits of the instant case, which originates from the FIR registered at Police Station City Mirpur on March 19, 2008, it is an admitted position that the case rests on direct evidence. The prosecution has produced two ocular witnesses, namely PW-3 Muhammad Aslam Cheema and PW-4 Ch. Bilal Ali, whose testimonies along with other witnesses accounts and circumstantial evidence, corroborate the occurrence. Both the learned Courts below

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[6] [2022 SCR 365]

have awarded the sentence of death as *Qisas* to the two principal accused, whereas the remaining convicts have been sentenced as detailed in the preceding paragraphs. In order to reach a just and fair determination, it is imperative to reappraise the evidence adduced by the parties and meticulously examine the record to ascertain whether the trial Court as well as the learned High Court have rightly appreciated the evidence and rendered their judgments in accordance with law. To that end, the role attributed to each convict shall be scrutinized individually, and findings shall be recorded in the light of the available evidence. At the outset, we analyze the sentences awarded to Muhammad Yaseen and Muhammad Ashfaq, who have been sentenced to death as *Qisas*.

18. According to the contents of the FIR, the role attributed to Muhammad Yaseen, the principal accused-convict, is as follows: on *March 19, 2008*, at about *09:15 AM*, the complainant was seated in his vehicle bearing registration No. AJK-823 at the driving seat, waiting for his counsel, (i.e., the victim), outside his residence situated at Sector F-2, Mirpur, where the occurrence took place. As soon as the victim came out from his residence and boarded complainant's vehicle, two unidentified assailants advanced towards him, one of those assailants described as slim-bodied and later on identified as Muhammad Yaseen alias

Sajid, opened fire at the victim, striking him on the left side of the abdomen. Subsequently, as the accused attempted to flee the scene, he continued indiscriminate firing; however, he was pursued by several persons present there. Meanwhile, a police contingent arrived, and he was immediately arrested at the spot. The victim was transported to the hospital, where he ultimately succumbed to the injuries. During the trial, PW-3, Muhammad Aslam Cheema, in his examination-in-chief, deposed as follows:: -

"مورخہ 19-03-2008 ء کا واقعہ ہے۔ صبح سوا نو بجے کا وقت تھا۔ مظہر اپنی گاڑی نمبری AJK E 823 میں اپنے وکیل چوہدری علی محمد چاچا اور ان کے بیٹے بلال علی کو لینے ان کے گھر واقع سیکٹر F/2میر پور میں ان کے گیٹ کے باہر ان کے انتظار میں کھڑا تھا اور چاچا علی محمد آکر مظہر کی گاڑی متذکرہ کی فرنٹ سیٹ پر بیٹھے تو سامنے سے دو نامعلوم افراد اچانک ہماری گاڑی کی طرف آنا شروع ہوئے۔ اس دوران چوہدری علی محمد چاچا کے بیٹے بلال علی ایڈووکیٹ بھی گیٹ کے قریب آگئے اور گیٹ کھلا ہوا تھا۔ متذکرہ دونوں افراد میں سے پتلے جسم والے شخص نے گاڑی کے قریب آکر چوہدری علی محمد چاچا پر بائیں جانب والی گاڑی کی کھڑکی سے فائر کر دیا جو مقتول کے پیٹ کے بائیں جانب لگا۔ پھر دوسرے ملزم جو کہ قدرے موٹے جسم کا تھا اور اس نے داڑھی بھی رکھی ہوئی تھی نے قریب آکر دوسرا فائر مقتول چوہدری علی محمد پر کیا جو ان کو بائیں بازو پر لگا ۔ ملزمان متذکرہ فائز کرتے ہوئے وہاں سے بھاگ گئے۔ مظہر ان کے تعاقب میں پیچھے بھاگا اور شور کیا کہ قاتل ہیں اور بھاگ رہے ہیں۔ اس دوران راستے میں ایک شخص جس کا نام بعد میں زعفران علی ولد محمد تاج معلوم ہوا نے پتلے جسم والے ملزم جس کا نام بعد میں معلوم ہوا کو پکڑنے کی کوشش کی تو دوسرے ملزم جو قدرے موٹے جسم والا اور داڑھی والا تھا جسکا نام بعد میں علی جان ولد عزیز اللہ پتہ چلا نے فائر کیا جو زعفران کو دائیں ٹانگ پر لگا۔ ملزمان آگے بھاگتے رہے اور مظہر ان کا تعاقب کرتا رہا ہے۔ جب ملزمان بھاگتے ہوئے F-2 روڈ پر آئے تو مقتول کا پڑوسی آ گیا۔ جس پر نوید اصغر اپنی کار نمبری AJK 1981 = از قسم سوزوکی برنگ سفید لیکر آگیا۔ کار سے یسین عرف ساجد کو ٹکر ماری تو مظہر نے ملزم یسین عرف ساجد کو پکڑ لیا۔ اس کے بعد نوید اصغر نے اپنی گاڑی سے دوسرے موٹے جسم والے ملزم کو ٹکر مارنے کی کوشش کی تو ملزم نے اس پر فائر کیا جو گاڑی کی سکرین پر لگا۔ لیکن پھر بھی نوید اصغر نے ملزم کو ٹکر مار کر ے گرا دیا اور پکڑ لیا اور پولیس بھی آگئی۔ پولیس کے آنے پر ملزمان کو گرفتار کر لیا اور وہی پر ملزمان سے ان کے نام و پتے پوچھے۔ جس سے مظہر کو ملزمان متذکرہ کے نام پتہ چلے کہ پتلے جسم والے ملزم کا نام یسٰن عرف ساجد ولد ہارون ساکن شکار پور سندھ جبکہ دوسرے ملزم کا نام علی جان ولد عزیز اللہ ساکن کراچی معلوم ہوئے۔ "

19. The role of Muhammad Yaseen alias Sajid in the commission of the offense stands conclusively established through the testimony of PW-3, Muhammad Aslam Cheema, whose account remained consistent, confidence-inspiring, and corroborated by other evidence on record. As per the prosecution's case, the incident occurred on *March 19, 2008*, at approximately *9:15 AM*, when the complainant, seated in his vehicle bearing registration No. AJK-823 outside the residence of his counsel i.e. the deceased Chaudhry Ali Muhammad Chacha availing for his arrival. As soon as the deceased exited his residence and took his seat in the vehicle, two unknown individuals approached, among them Muhammad Yaseen alias Sajid, a slim-bodied individual, moved by left side of window, and discharged his firearm at the victim, striking him in the left side of his abdomen. Immediately thereafter, the assailants, including his accomplice Ali Jan, attempted to flee the scene while engaging in indiscriminate firing, thereby instilling fear and panic among bystanders. The complainant, undeterred, pursued the fleeing accused and raised hue and cry drawing the attention of several individuals, including Zafran Ali, who endeavored to intercept Muhammad Yaseen but was fired upon by Ali Jan, resulting in a gunshot injury to his right leg, thereby facilitating their escape. As the accused reached F-2 Road, Naveed Asghar, a neighbor of the victim, intervened by ramming his white Suzuki vehicle (AJK-1981) into

Muhammad Yaseen, causing him to fall, enabling the complainant to overpower and apprehend him. Simultaneously, Naveed Asghar attempted to subdue Ali Jan by striking him with his vehicle, prompting the latter to retaliate by firing at Naveed's car, hitting its windshield, yet he was ultimately knocked down and restrained. Shortly thereafter, law enforcement personnel arrived at the scene and formally took both accused into custody. The unimpeachable evidence categorically establishes that Muhammad Yaseen alias Sajid was the principal accused who fired the fatal shot at the victim. His conduct, marked by an attempt to evade capture while engaging in indiscriminate firing, demonstrate premeditated intent and culpable mens rea. His immediate apprehension at the crime scene further fortifies his unambiguous involvement, dispelling any hypothesis of false implication. The chain of events, corroborated by multiple independent witnesses, negates any element of doubt, rendering his presence at the scene incontrovertible and his role in the commission of the offense beyond reproach.

20. An exhaustive cross-examination of the aforesaid witness was conducted; however, for the sake of brevity and to avoid redundancy, its reproduction is deemed unnecessary. The second eye-witness to the occurrence, namely Ch. Bilal Ali (PW-4), provided an account which

substantially concurs with the narration furnished by other eye witness, Mohammad Aslam Cheema. His testimony remains consistent, corroborative, and free from material contradictions, thereby reinforcing the prosecution's version of events. His examination-in-chief is reproduced hereunder:

"مظہر شہادت دینے حاضر آیا ہے۔ مظہر اپنے ایمان سے سچی شہادت دیگا۔ مظہر اپنے والد چوہدری علی محمد چاچا کے قتل کے مقدمہ میں چشم دید گواہ ہے اور اسلئے عدالت میں شہادت دینے حاضر آیا ہے۔ مورخہ 2008-03-19 ء صبح سوا نو بجے مظہر اور مظہر کے والد علی محمد چاچا حسب معمول تیار ہو کر کچہری جانے کے لیے تیار ہوئے مظہر کے والد گھر سے باہر نکل کر گیٹ کے سامنے کھڑی حاجی محمد اسلم چیمہ کار نمبری 823 AJK E کی فرنٹ سیٹ پر بیٹھے جسکی ڈرائیونگ سیٹ پر حاجی محمد اسلم چیمہ بیٹھے تھے۔ مظہر لائبریری سے لفافے لیکر گیٹ سے تھوڑا دور ہی پہنچا تھا کہ اچانک دو اشخاص والد کے قریب آئے اور جن میں سے پتلے والے شخص نے پستول 30 بور سے سیدھا فائر والد پر کیا جو والد کو لگا جو پیٹ کی بائیں جانب لگا۔ جس کا نام موقعہ پر پکڑے جانے پر یسین عرف ساجد پتہ چلا۔ گواہ نے ملزم یسین موجودہ عدالت کو ہاتھ لگا کر درست طور پر شناخت کیا۔ پھر دوسرے موٹے داڑھی والے شخص نے فوری علی محمد چاچا پر فائر کیا جو بھی والد کے بائیں بازو پر لگا جسکا موقع پر پکڑے جانے پر اپنا نام علی جان بتایا جو بعد میں اشفاق عرف علی جان معلوم ہوا۔ ملزم حاضر عدالت اشفاق عرف علی جان کو گواہ نے درست طور پر شناخت کیا۔ اس کے بعد یہ دونوں ملزمان موقعہ سے بھاگ پڑے۔ مظہر والد کے پاس گیا جبکہ حاجی محمد اسلم چیمہ جو گاڑی کی ڈرائیونگ سیٹ پر بیٹھے تھے ملزمان کا پیچھا کیا اور ہمارے ہمسایہ نوید اصغر اپنی گاڑی جو اس کے مکان کے باہر کھڑی تھی جسکا نمبر AJK F 1981 ہے جو سوزو کی مہران ہے۔ اس گاڑی پر ان دو ملزمان کا پیچھا کیا۔ مظہر والد کو سرکاری ہسپتال لے گیا جبکہ موقعہ پر سے حاجی محمد اسلم چیمہ اور نوید اصغر نے ان دو ملزمان کو مع اسلحہ پستول پکڑ لیا۔ اس دوران پولیس بھی وہاں آگئی۔ ہسپتال میں مظہر کو پتہ چلا کہ والدم زخموں کی تاب نہ لاکر جان بحق ہو گئے ۔ اس واقعہ کو مظہر کے علاوہ حاجی محمد اسلم چیمہ اور نوید اصغر نے دیکھا۔ جب تعاقب کے دوران زعفران نے ملزم یسین کو پکڑنے کی کوشش کی تو ملزم علی جان نے زعفران پر فائر کیا جس سے زعفران مضروب ہوا۔ اس واقعہ میں راجہ محفوظ آف سیاکھ، راجہ عرفان کیانی، راجہ جاوید، راجہ شمس، راجہ مہتاب، راجہ محمود (راجہ محفوظ ملزم کا بھائی) راجہ محمود سابق مینجر الائیڈ بنک، راجہ عقیل ولد مظہر جہانگیر، راجہ نعیم، راجہ غفار ملوث ہیں۔ انہوں نے یہ وقوعہ کرایا ہے۔ ملزمان حاضر عدالت کو گواہ نے فرداً فرداً شناخت کیا۔ ملزمان نے یہ واقعہ اس بنا پر کرایا ہے کہ والدم مقدمہ قتل سرکار بنام نصیر اکبر وغیرہ میں کونسل صفائی ۔ اس وجہ سے متذکرہ بالا ملزمان کو والدم سے رنجش تھی۔ یہ متذکرہ بالا افراد راجہ عرفان کیانی، راجہ محفوظ ، راجہ جاوید، راجہ عقیل مقدمہ قتل عنوانی سرکار بنام نصیر اکبر وغیرہ میں مستغیث مقدمہ کی جانب سے پیروی کرتے تھے مقدمہ قتل سرکار بنام نصیر اکبر وغیرہ میں تاریخ پیشی بھی والد کے قتل ہونے والی تاریخ پر ہی مقرر تھی اور اس روز والدم نے گواہ پر جرح کرنی تھی۔ مذکورہ بالا ملزمان کے ساتھ وقوعہ ہذا میں عرفان سلیم ڈی ایس پی بھی ملوث تھے۔ وقوعہ ہذا سے

قبل والدم اور ڈی ایس پی عرفان سلیم کے مابین ایس پی آفس میں مقدمہ عنوانی سرکار بنام نصیر اکبر کے سلسلہ میں تلخ کلامی ہوئی تھی جس میں عرفان سلیم ڈی ایس پی نے والد کو دھمکی دی تھی کہ میں آپ کو دیکھ لوں گا۔ موقعہ سے ملزمان قاتل جو محمد یسین عرف ساجد، اشفاق عرف علی جان کے پکڑے جانے اور بعد از نشاندہی اور تفتیش یہ ملزمان ملوث پائے گئے تھے"

21. The testimony of Ch. Bilal Ali (PW-4) unequivocally establishes that Muhammad Yaseen alias Sajid played a pivotal and active role in the murder of Chaudhry Ali Muhammad. The witness testified that at the moment when the victim seated himself in the car, two unidentified assailants approached, among whom Muhammad Yaseen alias Sajid, described as a slim-bodied individual, suddenly fired a shot from a 30-bore pistol, targeting the victim through the left-side window of the vehicle. The bullet struck Chaudhry Ali Muhammad in the left side of his abdomen, inflicting a grievous and ultimately fatal injury. Subsequently, the second accused, later identified as Ali Jan alias Ashfaq, also discharged his firearm at the victim, hitting him in the left arm. The unimpeachable ocular account of PW-4 corroborates the prosecution’s version and aligns with the testimony of PW-3, leaving no room for doubt regarding the role of Muhammad Yaseen alias Sajid as the principal accused. His direct involvement in firing the first and fatal shot, coupled with his subsequent conduct, unequivocally establishes premeditation and criminal intent, and his arrest at the scene of the occurrence further strengthens the prosecution’s case beyond any reasonable doubt.

22. The learned counsel for the convict-appellant contended that the statement of Ch. Bilal Ali recorded under Section 161 Cr.P.C., was delayed, as it was recorded on March 27, 2008, after 08 days of the date of occurrence, therefore, such belated statement lacks credibility. In support of this contention, certain judicial precedents were cited during the course of arguments. However, to properly appreciate this contention, it is imperative to examine the testimony of Investigation Officer Aamir Shehzad Nawabi, who, in his statement recorded on June 29, 2013, categorically affirmed that Bilal Ali's statement was formally recorded on March 27, 2008, even though, Ch. Bilal Ali had already expressed his willingness to record his statement before the police on March 19, 2008. Additionally, his written statement is part of the police record, and as per the prosecution version, the same was subsequently formalized as a statement under Section 161 Cr.P.C. Against this backdrop, even if the delay in recording the witness's statement is presumed to be correct, such belated recording of the statement does not automatically vitiate the witness's crediblity, particularly when the accused, Muhammad Yaseen and Ashfaq, were arrested on the same day of the occurrence, and the name of Ch. Bilal Ali as eye-witness was already incorporated in the FIR. Thus, the delay in recording the witness's statement does not, by itself, undermine the prosecution's case or render his testimony untrustworthy.

Our view finds fortification from the judgment of this Court in *Abdul Rasheed and others vs. Abdul Ghaffar and others*[7], wherein it was held as under: -

> "18. The contention of the learned counsel for the accused-respondents that there are discrepancies between the eye-witnesses as to the date when their statements were recorded under section 161, Cr.P.C., renders the prosecution case doubtful is also not tenable because the eye-witnesses in this case have been named in the F.I.R. which was promptly recorded. Therefore, even the belated recording of the statements under section 161, Cr.P.C., would not help the accused-respondents; thus, the discrepancies on the said point do not make the prosecution case doubtful."

23. The learned counsel for the convict-appellant, while referring to site plans Ex-PYY and Ex-PBBB, has contended that, even if the presence of PW-4 at the crime scene is conceded, he was not standing at the position to witness the occurrence. However, after a meticulous examination of the case record and evidence, this argument does not hold merit. The prosecution's version unequivocally establishes that two unidentified individuals approached the deceased vehicle, at which point Ch. Bilal Ali, the son of the deceased Ch. Ali Muhammad Chacha, had already reached to open gate. One of the assailants approached the car and fired at the victim through the left-side window. In such a scenario, the site plans Ex-PYY and Ex-PBBB are of secondary relevance compared to ocular testimony, particularly when

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[7] [2001 SCR 240]

that testimony remains consistent and unimpeachable. Moreover, these site plans do not substantiate the alleged impossibility of the witness observing the accused firing at the victim. Witness Faiz Rasool, Overseer, who made the site plan as well as the Investigating Officer, during cross-examination, affirmed the existence of two gates at the deceased house, a large gate and a small gate. The site plan clearly delineates both gates, with the larger gate facing north and the smaller gate facing south. Although the exact numerical demarcation of these gates is absent, the small gate is recorded as being four feet wide, even though its dimensions are not explicitly mentioned in the plan. Additionally, the site plan unequivocally notes that the gate was "open" without clarifying whether it was fully or partially open. Furthermore, Faiz Rasool categorically refuted the assertion that Point No. 7 inside the courtyard was erased to suppress the fact that the front seat of the car and individuals standing outside were not visible from that position. He also dismissed the claim that he did not personally visit the crime scene and explicitly affirmed that the incident was visible from Point No. 6, as the doors were open. In Ex-PBBB, the small gate is not positioned at the erased Point No. 7 but rather at an unaltered location. Moreover, no prosecution witness stated that the small gate was closed at the time of the occurrence. Considering the incident transpired at 9:15 AM, and in view of the relative distances between Point No.

7 and Points 1 and 2, as marked in the site plan, it was not entirely plausible for the witness to observe the scene from that position, a fact further corroborated by the testimony of Faiz Rasool. Additionally, during the cross-examination, Ch. Bilal Ali emphatically denied the contention that he did not witness the occurrence. In light of these facts, the argument advanced by the learned counsel for the convict-appellant, questioning the credibility of PW-4's testimony, lacks merit and is accordingly rejected.

24. So far as the contention of the learned counsel for the convict-appellants regarding a contradiction existed between the oral testimony and the Forensic Science Laboratory (FSL) report as the convict, Muhammad Yaseen, was allegedly armed with a 30-bore pistol, whereas the FSL report refers to a 9mm firearm. Based on this discrepancy, he has argued that the prosecution's case lacks certainty and cannot be proven beyond a reasonable doubt. While it may be factually correct that the accused was initially associated with a 30-bore pistol, and that the FSL report refers a 9mm firearm, it is crucial to emphasize that FSL report holds secondary significance when juxtaposed against the reliable and confidence-inspiring ocular account of eyewitnesses, who have categorically testified that the accused fired at the deceased. Furthermore, the immediate recovery of a weapon from the accused, coupled with the medical evidence,

sufficiently corroborates the prosecution's version. In view of the foregoing factors, the prosecution's case remains fully substantiated. Additionally, it is now a well-settled principle of criminal jurisprudence that when a case is based on direct evidence, wherein the prosecution witnesses have personally observed the accused committing the offense, no further corroboration is required, provided that the testimony is confidence-inspiring. Our view finds support from the judgment of this Court reported as *Zabir Masood alias Kashif Maqsood vs. The State*[8], wherein it has been held as under

> "The case is of direct evidence. In the F.I.R., four eye-witnesses were nominated, who appeared as witnesses in support of prosecution case. It is now a well settled law that when the entire prosecution case rests upon the direct evidence of witnesses, who have seen the accused committing the crime, there is no requirement of corroboration, like the report of Ballistic Expert or postmortem report, provided that the testimony of witnesses is confidence inspiring. Corroboration from the report of Ballistic Expert and the postmortem report is required when the case is not of direct evidence and rests upon the circumstantial evidence."

In an identical case titled *Javaid Azam vs. Muhammad Saleem and others*[9] this Court observed as under: -

> "17. The entire case of the prosecution depends upon the eye-witnesses account not upon the circumstantial or corroborative evidence. In the presence of witnesses two of whom are injured

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[8] [2013 SCR 642]
[9] [PLJ 1997 SC (AJK) 226]

and others having personally, seen the accused attacking upon the complainant party, the opinion of the Firearms Expert or Ballistic Expert etc. matters least. The opinion of .Firearms Experts, Ballistic Expert and Chemical Examiners is necessary in the case when the occurrence is not witnessed by the eye witnesses and the case entirely depends .upon circumstantial evidence. The opinions and reports of these experts are always to support or corroborate the other evidence if direct evidence is not available. In the case in hand, the occurrence did not require any corroboration as the direct evidence itself was available. It was the case of broad day light firing in the very busy Chowk witnessed by the prosecution witnesses and all others, who could be produced in defence by the respondents if the matter was otherwise. The following dictum from the case of Muhammad Hanif vs. The State [PLJ 1982 SC (AJK) 212] may be advantageously reproduced:— '10. Due consideration was given to the arguments. Whether a witness is to be believed depends on the circumstances and facts of each case. Assessment of interested and partisan evidence is, of course, a difficult matter which engaged the attention of superior Courts time and again. The first thing which is of paramount importance is to see whether the witness is a natural witness and if the Courts come to the conclusion that the witness is a natural witness then in the case of testimony of such a witness, law does not make incumbent upon the Courts to ask for corroboration before relying on the testimony of such a witness. Evidence of such a witness, however, is required to be scrutinized with great care and caution in order to eliminate any possibility of doubt and Courts must also determine as to whether or not he is a witness on whose words implicit can be placed without independent corroboration. Nevertheless, no inflexible rule can be formulated in this In such case the evidence of witnesses has to be evaluated on merits and if it rings true m the context and circumstances of the case, free from any fault and uncontradicted by any cogent circumstances emerging from the case, it must be

> relied upon as the basis for conviction without any corroboration. In a case where the statement of an interested but natural witness can be believed with implicit faith without difficulty, corroboration is not to be insisted upon as a rule of law or as a rule of prudence and evidence will not be rejected merely because the witnesses are related with the deceased and inimical towards the accused. The safe administration of criminal justice demands that Court should draw its own inference flowing from evidence and circumstances and not be deterred by reason of incompleteness of tale given by each party. It, therefore, follows that where ocular evidence is reliable and satisfactory, conviction in law can be recorded or such evidence alone without any further corroboration. Here in this case due scrutiny of the statements of eye-witnesses of truth and conviction can safely be recorded on the basis of their evidence without any further corroboration."

25. A similar issue has been addressed in the cases reported as *2011 SCR 324, 1998 SCMR 182,* and *PLJ 1997 (SC AJK) 226*, where it was held by this Court and Apex Court of Pakistan that when the prosecution's case is based on direct evidence, the requirement for corroboratory evidence such as a ballistic expert's report is not much relevant. The rationale behind this principle is that credible and confidence-inspiring ocular testimony is sufficient for establishment of a guilt.

26. As previously discussed in detail, there are two eyewitnesses to the occurrence, both of whom testified that the convict-appellant, Muhammad Yaseen, fired at the deceased in their presence. The criterion (*Nisab*) for conviction in *Qisas* cases requires two male eyewitnesses,

and if these witnesses are found to be Adil (truthful and competent) and their testimony is credible, the accused becomes liable for *Qisas* under Section 302(a) APC. In the present case, as examined in the preceding paragraphs regarding Section 304(b) APC and Article 17 of the Qanun-e-Shahadat, 1984, the *Nisab* for conviction is met. Furthermore, the witnesses' testimonies are confidence-inspiring and align with the requirement of *Tazkia-ul-Shahood*, as duly conducted by the trial court. Therefore, the convict-appellant, Muhammad Yaseen was rightly sentenced to death under Section 302(a) APC, along with the other punishments enumerated above.

27. Addressing the case of the co-accused, Muhammad Ashfaq alias Ali Jan, the trial court sentenced him to death as *Qisas* under Section 302(a) APC, on the grounds that he, along with the principal accused, fired at the victim, causing his death. However, upon examining the FIR, it is evident that no specific role was attributed to Muhammad Ashfaq regarding firing at the victim. The FIR explicitly states that Muhammad Yaseen, a slim-bodied individual, fired at the victim, striking him on the left side of his abdomen, while both accused fled the scene while firing indiscriminately. For better clarity, the relevant portion of the FIR is reproduced below:

"اسی دوران وہاں پر چوہدری بلال علی چاچا بھی پہنچ گئے۔ چونکہ دونوں
باپ بیٹا اکھٹے کچہری جاتے ہیں تو پتلے والے ملزم نے ایک فائرچوہدری

علی محمد چاچا پر کیا جو ان کے پیٹ کی بائیں جانب لگا تو دونوں ملزمان فائرنگ کرتے ہوئے موقعہ سے بھاگ پڑے۔ بھاگتے ملزمان کا پیچھا جب زعفران نامی شخص نے کیا تو موٹے داڑھی رکھے ہوئے شخص نے اس پر فائر کیا جو زعفران کو دائیں ران پر لگا ۔ اسی دوران موقع پر کافی لوگ جمع ہو گئے اور دوڑتے ہوئے ملزمان کو راجہ نوید اصغر ولداصغر علی پڑوسی نے پکڑنے کی کوشش کی۔"

28 The FIR does not attribute any role to Muhammad Ashfaq in firing at the victim. It merely narrates that as soon as the victim came out of his house and boarded the complainant's car, two unknown individuals approached. At that moment, Ch. Bilal Ali (PW-4) also arrived at the scene, and suddenly, the slim-bodied accused fired at the victim, through the left side of window striking him to left side of abdomen. Both the accused then fled away while firing indiscriminately, and later, Muhammad Ashfaq fired at Zafran, who was chasing him. There is no mention in the FIR of Muhammad Ashfaq fired at the victim. Instead, the act of shooting the victim is solely attributed to the principal accused Muhammad Yaseen. However, during examination-in-chief, the complainant (PW-3) stated that the second shot was also fired by the co-accused, Muhammad Ashfaq. For better appreciation, the relevant portion of his testimony is reproduced below:

" چچا علی محمد آکر مظہر کی گاڑی متذکرہ کی فرنٹ سیٹ پر بیٹھے تو سامنے سے دو نامعلوم افراد اچانک ہماری گاڑی کی طرف آنا شروع ہوئے۔ اس دوران چوہدری علی محمد چاچا کے بیٹے بلال علی ایڈووکیٹ بھی گیٹ کے قریب آگئے اور گیٹ کھلا ہوا تھا۔ متذکرہ دونوں افراد میں سے پتلے جسم والے شخص نے گاڑی کے قریب آکر چوہدری علی محمد چاچا پر اچانک بائیں جانب والی گاڑی کی کھڑکی سے فائر کر دیا جو مقتول کے پیٹ کے بائیں جانب لگا۔ پھر دوسرے ملزم جو کہ قدرے موٹے جسم کا تھا اور اس نے داڑھی بھی رکھی ہوئی تھی نے قریب آکر دوسرا فائر مقتول چوہدری علی محمد پر کیا جو ان کو بائیں بازو پر لگا ۔ ملزمان متذکرہ فائز کرتے ہوئے

وہاں سے بھاگ گئے۔ مظہر ان کے تعاقب میں پیچھے بھاگا اور شور کیا کہ قاتل ہیں اور بھاگ رہے ہیں۔ اس دوران راستے میں ایک شخص جس کا نام بعد میں زعفران علی ولد محمد تاج معلوم ہوا نے پتلے جسم والے ملزم جس کا نام بعد میں معلوم ہوا کو پکڑنے کی کوشش کی تو دوسرے ملزم جو قدرے موٹے جسم والا اور داڑھی والا تھا جسکا نام بعد میں علی جان ولد عزیز اللہ پتہ چلا نے فائر کیا جو زعفران کو دائیں ٹانگ پر لگا۔ "

29 In his statement before the Court, the complainant stated that as soon as Chaudhry Ali Muhammad Chacha sat the front seat of the vehicle, two unidentified individuals suddenly came on the spot. At that moment, Chaudhry Ali Muhammad's son, Bilal Ali Advocate, also arrived near the gate, which was open. Among them, the slimmer one moved closer to the vehicle and fired a shot through the left-side window, hitting the victim at the left side of his abdomen. Thereafter the second accused, who was heavier and having beard, stepped forward and fired another shot at Chaudhry Ali Muhammad Chacha, striking him on the left arm. After the shooting, both the assailants fled away the scene. The complainant chased them, shouting that they were the murderers and were escaping. Similarly, Ch. Bilal Ali (PW-4) stated in his examination-in-chief that:

"مورخہ 19-03-2008 ء صبح سوا نو بجے مظہر اور مظہر کے والد علی محمد چاچا حسب معمول تیار ہو کر کچہری جانے کے لیے تیار ہوئے مظہر کے والد گھر سے باہر نکل کر گیٹ کے سامنے کھڑی حاجی محمد اسلم چیمہ کا رنمبری AJK E 823 کی فرنٹ سیٹ پر بیٹھے جسکی ڈرائیونگ سیٹ پر حاجی محمد اسلم چیمہ بیٹھے تھے۔ مظہر لائبریری سے لفافے لیکر گیٹ سے تھوڑا دور ہی پہنچا تھا کہ اچانک دو اشخاص والد کے قریب آئے اور جن میں سے پتلے والے شخص نے پستول 30 بور سے سیدھا فائر والد پر کیا جو والد کو لگا جو پیٹ کی بائیں جانب لگا۔ پھر دوسرے موٹے داڑھی والے شخص نے فوری والد علی محمد چاچا پر فائر کیا جو بھی والد کے بائیں بازو پر لگا جسکا موقعہ پر پکڑے جانے پر اپنا نام علی جان بتایا جو بعد میں اشفاق عرف علی جان معلوم ہوا۔ ملزم حاضر عدالت اشفاق عرف علی جان کو گواہ نے درست طور پر شناخت کیا۔ اس کے بعد یہ دونوں ملزمان موقعہ سے بھاگ پڑے۔"

30. The witness stated in his Court statement, echoing the account of pw-3, that as soon as his father stepped out of his house and sat on the front seat of Haji Mohammad Aslam Cheema's vehicle, which was parked in front of the gate, Haji Mohammad Aslam Cheema was already in the drivers' seat. Meanwhile, pw-4 went to the library to collect some envelope and had just reached near the gate when, suddenly, two individuals approached his father. Among them, the slimmer man fired directly at his father with 30- bore pistol, hitting him in the left side of abdomen. Immediately after that, the second accused, described as heavier and with a beard, fired another shot, striking his father's left arm. One important aspect noting is the contradiction between the FIR and Court statements regarding convict Ishfaq. Initially no active role was attributed to him for firing at the victim, but later, both eye-witnesses assigned him responsibility for the second shot. It is acknowledged that after the murder, when the complainant lodged a written report at the police station, certain details might have been inadvertently omitted. However, in such situations, the only way to resolve inconsistencies is through corroboration with other pieces of evidence. In this regard, the post-mortem report prepared by Dr. Amjad Mehmood, CMO, District Headquarters Hospital (Time), is highly relevant. At the conclusion of the post-mortem, Dr. Amjad Mehmood opined that:

> *"In my opinion, the cause of death is perforation of abdominal aorta by fire arm injury which resulted massive hemorrhage leading to hypovolemic shock, cardiac arrest and finally death."*

31. The medical opinion provided by Dr. Amjad Mehmood clearly establishes that the cause of death was a gunshot wound that perforated the abdominal aorta, leading to massive hemorrhage. The excessive blood loss resulted in hypovolemic shock, which ultimately caused cardiac arrest and death. Dr. Amjad Mehmood also appeared in court, got recorded his statement, and the post-mortem report was also exhibited as PHHH. During his examination-in-chief, he testified that the post-mortem report was prepared by him and bore his signatures. A critical point to understand is that the fatal abdominal gunshot mentioned in the report was attributed to the principal accused, which directly caused the victim's death. Consequently, it can be logically inferred that accused Muhammad Ishfaq either did not fire a shot or, if he did, it was not the cause of death. In this situation, the corroborative evidence supports the initial version recorded in the FIR. While there is no dispute regarding his presence at the scene and his active participation in the act with common intention, his exact role in firing the fatal shot remains doubtful from the record. The trial court awarded him the death penalty as *'Qisas'* under Section 302(a) APC. However, as discussed in detail, a conviction under *Qisas* requires a high standard of evidence, and even the slightest

doubt must benefit accused. In the present case, not only is the case for *Qisas* not made out, but he also cannot be punished for an act that is either unproven or not directly attributed to him from the record. While his presence at the crime scene, his alleged firing at another injured person, and the issue of common intention are separate questions. The specific issue here is whether he fired the fatal shot or not. Given that doubt exists regarding his role in causing the victim's death, both the trial court and the learned High Court failed to consider the fundamental factual position. Thus, we hold that Muhammad Ishfaq was wrongly convicted under Section 302(a) APC.

32. Let us now scrutinize the conviction of Muhammad Ashfaq, who has also been awarded the death penalty under 302(a) APC, read with Section 34 APC. The pivotal question requiring determination is whether the provisions of section 34 APC are attracted in the present case. To resolve this point, it is imperative to undertake a meticulous analysis of the statutory provision, juxtaposing it with the established facts, surrounding circumstances, and evidentiary material on record. A comprehensive evaluation of Section 34 APC is essential to ascertain whether the requisite ingredients, particularly the element of common intention, have been sufficiently met to justify the conviction of the accused under

this provision. For a precise and accurate appreciation, the statutory text of section 34 APC is reproduced hereunder: -

> "**34. Acts done by several persons in furtherance of common intention.** – When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone."

33. The statutory provision under discussion encapsulates the doctrine of joint liability, enshrining the fundamental principle that when a criminal act is perpetrated by multiple individuals in furtherance of a common intention, each participant shall be held equally culpable as if the act had been committed individually by each of them. This legal precept underscores the notion that the extent or degree of participation is immaterial, for once the prosecution establishes the existence of a shared intent among the accused, all individuals involved are to be treated as co-perpetrators, thereby ensuring parity in accountability. However, for the proper invocation of section 34 APC, it is incumbent upon the prosecution to adduce cogent and unequivocal evidence demonstrating the presence of a premeditated design or a concerted plan amongst the accused, as the mere presence of an individual at the scene of occurrence, absent proof of a common objective, shall not suffice to attract criminal liability under this provision. The burden of establishing such a shared intent rests squarely upon the prosecution, which must prove beyond reasonable

doubt that the accused acted in unison, pursuant to a preconceived plan or mutual understanding. The superior courts have consistently maintained this interpretation, as reaffirmed in the authoritative pronouncement of the Supreme Court of Pakistan in the case titled *Ahtisham Ali vs. The State*[10], wherein the principle governing joint liability under section 34 APC has been elaborated in its true perspective.

> "In order to constitute an offence under Section 34 PPC, it is not required that a person should necessarily perform any act by his own hand, rather the common intention presupposes prior concert and requires a prearranged plan. If several persons had the common intention of doing a particular criminal act and if, in furtherance of their common intention, all of them joined together and aided or abetted each other in the commission of an act, then one out of them could not actually with his own hand do the act, but if he helps by his presence or by other act in the commission of an act, he would be held to have himself done that act within the meaning of Section 34 PPC."

In the case of *Shoukat Ali vs. The State*[11], the Supreme Court of Pakistan has rendered an authoritative pronouncement, wherein various precedents from the superior courts have been meticulously examined and referred to. The judgment comprehensively elucidates the legal principles governing the doctrine of common intention and its application under Section 34 APC. For a thorough

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[10] [2023 SCMR 975]
[11] PLD 2007 SC 93]

appreciation of the ratio decidendi laid down by the Apex Court, the relevant excerpt from the judgment (supra) is reproduced hereunder.

> "We would like to discuss the import and objects of section 34, P.P.C. The main object for the enactment of section 34 is to meet a case in which it may be difficult to distinguish between the acts of individual members of a party or to prove exactly what part was taken by each of them. The reason why all are deemed guilty in such cases is, that the presence of accomplices gives encouragement, support, and protection to the person actually committing the act. The nature of the offence committed by an accused depends upon the act done by him and the effect produced by it, and the sole object of this section is to lay down what act will be deemed to be done by the conspirators. This section is not a punitive section and does not enact a rule of evidence but enacts a common law principle of substantive law' 1935 Cr.LJ 1393, 1953 all.
> 214. "This section embodies the common-sense principle that if two or more persons intentionally do a thing jointly it is just the same as if each of them had done it individually. If two or more persons combine in injuring another in such a manner that each person engaged in causing the injury must know that the result of such injury may be the death of the injured person, it is no answer on the part of anyone of them to allege and perhaps prove that his individual act did not cause death, and that by his individual act he cannot be held to have intended death. Everyone must be taken to have intended the probable and natural results of the combination of acts in which he joined. All are guilty of the principal offence, not of abetment. But a party not cognizant of the intention of his companion to commit murder is not liable, thought in his company, to do an unlawful act." In re Basappa (Vol 51 Cr.LJ 1950). "common intention implies acting in concert, existence of a pre-arranged plan which is to be proved either from conduct or from circumstances or from any incriminating facts. The leading

feature of this section is the element of participation in action. It embodies a principle of joint liability in the doing of a criminal act and the essence of that liability is the existence of a common intention." (Sitaram v. State (Vol. 59 1958 Cr.LJ 1380) Pandurang, Tukia and Bhillia v. The State of Hyderabad 1955 SCR 1083. It may not be out of place to mention here that "the section contemplates the case where more persons than one share in the doing of the act and it is necessary to bear in mind the definition of 'act' given in S.33 and also the provisions of Ss.35, 37 and 38. The term 'act' contemplates a series of done by several persons, some perhaps by one of those persons and some by another, but all in pursuance of a common intention. A criminal' act means that unity of criminal behavior which results in something, for which an individual would be punishable, if it were all done by himself alone, that is, in a criminal offence" NGA TUN BAW and another v. Emperor 1907 UBR (P.C.) Crl.LJ 205. "The words 'in furtherance of the common intention of all' have introduced, as an essential part of the section the element of a common intention prescribing the condition under which each might be criminally liable when there are several actors. 'Common intention' is an intention to commit the crime actually committed and each accused person can be convicted of that crime, only if he has participated in that common intention. The common intention contemplated by this section is anterior in time to the commission of the crime., and does not refer to the time when the act is committed.

It is difficult if not impossible to procure direct evidence to prove the intention of an individual; in most case it has to be inferred from his act or conduct or other relevant circumstances of the case. Same or similar intention must not be confused with common intention; the partition which divides "their bounds" is often very thin; nevertheless, the distinction is real and substantial, and if over looked, will result in miscarriage of justice. The inference of common intention should never be reached unless it is a necessary inference deducible from the

> circumstances of the case. Common intention does not mean similar intention of several persons. To constitute common intention it is necessary that the intention of each one of them be known to the rest of them and shared by them. The common intention ought to be determined from such known facts and circumstances which existed before the commencement of the criminal act as the criminal act itself is committed in furtherance of that common intention." Muklesure Rahman and another v. The King (Vol. 51 1950 Cr.LJ 945)
>
> It must be proved that criminal act was done by various persons.
>
> (b) The completion of criminal act must be in furtherance of common intention as they all intended to do so.
>
> (c) There must be a pre-arranged plan and criminal act should have been done in concert pursuant whereof.
>
> (d) Existence of strong circumstances (for which no yardstick can be fixed and each case will have to be discussed on its own merits) to show common intention.
>
> (e) The real and substantial distinction in between 'common intention' and 'similar intention' be kept in view."

34. Section 34 APC comprises four essential elements that must be established to invoke its application. Firstly, the act in question must constitute a criminal act under the law. Secondly, such an act must be perpetrated by multiple individuals, signifying that more than one person were involved in its commission. Thirdly, the act must be carried out in furtherance of the common intention of all the accused, thereby necessitating proof that the individuals acted in concert with a shared objective. This principle imposes collective liability, ensuring that each participant is held

equally accountable for the entire criminal act, regardless of their specific role. The applicability of section 34 APC, like other penal provisions depends on the particular facts and circumstances of each case, no rigid or inflexible rule can be prescribed for its invocation. It is not a prerequisite that all co-accused must have executed identical or indistinguishable actions; rather, their respective acts may differ in nature, provided they emanate from a singular and unified intent. However, in the absence of pre-planning or premeditation, section 34 APC does not apply, as it mandates the existence of a prior common intention to commit the crime.

35. In the present case, all essential elements required for the application of Section 34 APC are manifestly established. The evidence on record unequivocally demonstrates that the accused engaged in preconceived planning and exhibited a meeting of minds to perpetrate the offence. Furthermore, each accused participated in some manner in the commission of the crime, and the criminal act was executed in furtherance of their common intention. Consequently, the principal accused, Muhammad Yaseen, has rightly been sentenced to death under Section 34 APC as *Qisas*. However, we find ourselves unpersuaded by the sentence of *Qisas* awarded to Muhammad Ishfaq. There exists no doubt that he was engaged by the co-accused for the commission of the offence, remained actively involved in

the conspiratorial meetings, and was present at the scene of the crime, where he was subsequently apprehended. Nonetheless, as previously analyzed, no overt act of firing at the victim was attributed to him in the FIR, and the post-mortem report corroborates this version, thereby introducing a mitigating factor in his favor. It is an established legal principle that when the prosecution succeeds in proving its case beyond any shadow of doubt, it becomes the legal obligation of the Court to impose a deterrent punishment upon the offenders, so as to make them an exemplary caution for others harboring similar criminal intent. However, in presence of even the slightest doubt, the imposition of a sentence under Section 302(a) APC is not justified. Instead, punishment under Section 302(b) APC would be warranted. It must be appreciated that in cases falling under Section 302(a) APC, the Court is left with no discretion regarding the quantum of punishment, whereas, in the application of section 302(b) APC, judicial discretion is available, permitting the imposition of either death penalty or life imprisonment as *Tazir*, depending upon the presence of mitigating or extenuating circumstances. Furthermore, it is a well-settled proposition of law that even a single mitigating factor is sufficient to convert a death sentence into life imprisonment. This legal principle finds reinforcement in the authoritative pronouncement of the Supreme Court of Pakistan in *Ghulam*

Mohiuddin alias Haji Babi and others v. The State[12], wherein it has been enunciated as follows: -

> " 21. 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 a case of *Iftikhar Hussain Vs. Israr Bashir and others*[13], The Supreme Court of Pakistan held as under: -

> *"….The difference of punishment for Qatl-e-Amd as Qisas and Tazir provided under sections 302(a) and 302(b), P.P.C, respectively is that in a case of Qisas, Court has no discretion in the matter of sentence whereas in case of Tazir Court may award either of the sentence provided under section 302(b), P.P.C, and exercise of this direction in the case of sentence of Tazir would depend upon the facts and circumstances of the case. There is no cavil to the proposition that an offender is absolved from sentence of death by way of Qisas if he is minor at the time of occurrence but in a case in which Qisas is not enforceable, the Court in a case of Qatl-e-Amd, keeping in view the circumstances of the case,*

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[12] [2014 SCMR 1034]
[13] *(PLD 2007 SC-111)*

> *award the offender the punishment of death or imprisonment for life by way of Tazir. The proposition has also been discussed in Ghulam Murtaza v. State 2004 SCMR-04, Faqirullah v. Khalil-uz-Zaman 1999 SCMR-2203, Muhammad Akram v. State 2003 SCMR-885 and Abdus Salam v. State 2000 SCMR-338".*

In light of the foregoing detailed discussion, we are unequivocally convinced that the death penalty is not warranted in the case of Muhammad Ishfaq. The presence of mitigating factors, particularly the absence of any attributed overt act of firing upon the victim, coupled with the corroborative medical evidence, renders the imposition of *Qisas* inappropriate. Accordingly, we hold that the ends of justice would be adequately served by substituting the death sentence with life imprisonment under section 34 APC read with section 302(b).

36. In addressing the conviction of Suleman Somroo, Irfan Kiani, and Naeem, it is pertinent to note that, they have been acquitted of all the other charges but their conviction under section 109 APC has been upheld. Suleman Sumroo and Irfan Kiani have been sentenced to 14 year's rigorous imprisonment each and Naeem to 07 years' rigorous imprisonment. Additionally, Irfan Kiani has been sentenced to three years' rigorous imprisonment under Section 13 of the Arms Act. At the core of section 109 APC lies the doctrine of abetment, which renders a person equally liable for a crime if they have knowingly and voluntarily aided,

instigated, or facilitated its commission. The law recognizes two principal categories of accomplices: (i) the abettor, who directly incites or assists in the perpetration of the offence, and (ii) the accessory, who provides assistance before or after the commission of the crime. The distinction, however, does not exonerate either category from criminal liability, as the law treats the abettor with equal culpability as the principal offender[14]. The terms "accessory" and "abettor" originate from English common law, which historically differentiated between accomplices and principals in determining criminal liability. An abettor was recognized as a "principal in the second degree," meaning they were present at the scene and assisted in the commission of the crime. However, with the evolution of modern statutory frameworks, these distinctions have been abolished, and the law now treats all accomplices as principals, holding them equally liable for the offence. Consequently, it is no longer necessary to establish the exact role of an accomplice, nor is it a prerequisite to secure the conviction of the principal offender before convicting the accomplice. This shift underscores the principle that liability is determined by participation in the offence rather than the specific role played in its commission[15]".

[14] Encyclopedia Britannica, https://www.britannica.com/topic/abettor
[15] Ibid

37. In the commission of an offense, three distinct stages are recognized: first, the cognitive or mental stage, wherein the intent to commit the crime is conceived and a determination is made; second, the preparatory stage, which encompasses all acts undertaken to facilitate the execution of the intended offense; and third, the stage of actual execution, wherein the intended criminal act is carried out.

38. Section 109 APC unequivocally establishes that its applicability is contingent upon the abetment of an offense, whereas Section 107 pertains to the abetment of an act. The latter provision necessitates active participation by the abettor at a stage preceding the actual commission of the offense, as the very essence of abetment is that the abettor must provide substantial assistance to the principal offender in effectuating the crime. Mere concurrence in the criminal act of another, absent direct participation, does not ipso facto render one culpable, nor does mere negligence bring an individual within the ambit of abetment. A meticulous examination of Section 107 further delineates that three essential elements must be established to attribute liability as a conspirator: (i) instigation, (ii) engagement with the co-accused, and (iii) intentional facilitation, whether by act or omission, aimed at the consummation of the offense. Section 108 of the APC provides a precise definition of an "abettor," encompassing any person who abets either the commission

of an offense or an act which, if committed by an individual legally capable of bearing criminal liability, would constitute an offense, provided the abettor shares the requisite intent or knowledge. The fundamental component of abetment is the deliberate intent to facilitate the commission of a crime, and in the absence of such intent, the offense does not materialize. As a general principle, an abettor bears co-extensive liability with the principal perpetrator of the crime. In the present case, although no direct evidence of abetment has been adduced, the circumstantial evidence available unequivocally indicates their involvement in furthering the commission of the crime. This finding justify the sentences awarded by the learned trial Court to the abettors and subsequently upheld by the learned High Court in accordance with their respective degrees of complicity. In this regard, reliance is placed upon the pronouncement of the Hon'ble Supreme Court of Pakistan in the case titled *The State v. Ahmed Omar Sheikh*[16], wherein it has been enunciated as follows: -

> "In most of the cases, criminal conspiracy is hatched in secrecy and no direct evidence could be obtained. Therefore, the circumstances and manner in which each accused plays his role and his level of involvement would be the relevant factors. The circumstances indicating the guilt of the accused would be cumulatively considered in view of the common design and object. The isolated approach, by evaluating the role of

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[16] 2021 SCMR 873
(https://www.supremecourt.gov.pk/downloads_judgements/crl.a._599_2020_26032021.pdf)

> individual accused, cannot be adopted. However, the acts or conduct of the parties must be conscious and clear enough to infer their concurrence as to the common design and its execution."

Similarly, in another case titled Haji Arshad Mehmood vs. Farrukh Imtiaz Khokhar etc.[17], the Lahore High Court observed as under: -

> "11. It seems that the learned Additional Sessions Judge took lightly the accusation of abetment pointed towards the respondent. Offences of abetment and criminal conspiracy hail from the genesis of the crime, wherein collection of direct evidence is nothing less than a hard nut to crack. The abetment is always corelated with the main crime, whereas criminal conspiracy is an independent offence under Section 120-A PPC and in both of them the delinquents make sure to maintain secrecy. In the given circumstances, the culpability of an accused in reference to the charge of abetment and criminal conspiracy is to be assessed from the attending circumstances through a pragmatic and dynamic approach."

Even otherwise, neither the learned counsel for the convict-appellant seriously contested the punishments awarded to Suleman Somroo, Irfan Kiani, and Naeem, submitting that they have already undergone their respective sentences and are no longer under any legal restraint, nor the learned counsel for the prosecution seriously argued for the enhancement of the sentences. In view thereof, no further deliberation is required on the question of enhancement or reduction of their sentences.

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[17] https://sys.lhc.gov.pk/appjudgments/2023LHC20.pdf

39. It is imperative to underscore that the judicial precedents have consistently held that once the prosecution successfully discharges its burden of proving the case beyond any shadow of doubt, it becomes the solemn obligation of the Court to impose a deterrent punishment upon the offenders. This ensures that they serve as an example and a cautionary precedent for those harboring similar criminal inclinations. Despite the alarming rise in criminal activities within society, Courts have often demonstrated reluctance in awarding the prescribed penalty of death for capital offences. This tendency, however, risks culminating the grave miscarriage of justice. Judicial duty demands that justice be administered impartially, without unwarranted leniency or deviation from the mandate of law. It has been observed with grave concern that when aggrieved individuals fail to receive justice through the established judicial system, they are inclined to take the law into their own hands. This exacerbates the menace of lawlessness and anarchy. Such a situation is perilous and necessitating an unwavering commitment from the Courts to dispense justice with absolute impartiality, ensuring that the scales of justice remain evenly balanced. Our considered view finds fortification in the authoritative pronouncement of this Court

in the case titled *Ghazanfar Ali v. The State and another*[18], wherein it has been explicitly observed as follows: -

> "It may be observed here that it is the recognized phenomenon of law that when the prosecution proved its case beyond reasonable doubt then it is paramount duty of the Courts to impose deterrent punishment on the offenders to make the evil doers an example and a warning to like-minded people."

40. Before parting with, we find it necessary to express our grave concern regarding the persistent and unwarranted prolongation of cross-examination of witnesses, a practice that has become increasingly disconcerting. The fundamental purpose of cross-examination is to aid the Court in ascertaining the truth by exposing inconsistencies or biases a witness may harbor. It remains one of most effective legal mechanisms for uncovering the truth allowing scrutiny of witnesses relationship with the parties and their interests, prejudices, character and the reliability of their testimony. Additionally, it serves to assess the witness's discernment, memory, and ability to accurately recount events. However, it is deeply regrettable that this essential procedural safeguard is frequently misused to fatigue the witness through excessive and irrelevant questioning, not for the pursuit of truth, but rather to induce error through undue mental and physical exhaustion. Such manipulation of cross-examination deviates from its intended purpose and amounts

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[18] [2015 SCR 1042]

to an obstruction of justice. In such circumstances, the presiding officer of the Court must not remain a passive observer but should actively oversee the proceedings with vigilance. The right of cross-examination is neither absolute nor unfettered. When it becomes apparent that this right is being exploited through irrelevant, vexatious, or scandalous questioning designed to prolong the proceedings or harass the witness, the trial Judge must intervene and curtail such tactics.

41. In light of the foregoing detailed deliberation, the appeals preferred by Irfan Kiani and Bilal Ali are dismissed. However, the appeal filed by Muhammad Yaseen and another is partially allowed, and the judgment rendered by the learned High Court is accordingly modified in the following terms:

- *Muhammad Yaseen* is convicted under Section 302(a) & 34 APC and is sentenced to death as *Qisas*. Under Section 544-A Cr.PC, he is ordered to pay a sum of Rs. 600,000/- as compensation to the legal heirs of the deceased, failing which he shall undergo an additional six months' imprisonment. Furthermore, he is convicted under Section 13 of the Arms Act and sentenced to three years rigorous imprisonment.
- The death sentence awarded to *Muhammad Ishfaq* by the learned trial Court as well as the learned High Court is hereby set aside, and he is acquitted of the charge of murder by extending him the benefit of doubt.

However, he is convicted under Section 34 APC and sentenced to life imprisonment as *Tazir*. Additionally, under Section 544-A APC, he is ordered to pay Rs. 600,000/- as compensation to the legal heirs of the deceased, failing which he shall undergo an additional six months' imprisonment. Moreover, he is convicted under Section 13 of the Arms Act and sentenced to three years' rigorous imprisonment.

- The sentences awarded to *Suleman Sumroo, Irfan Kiani,* and *Naeem* by the learned trial Court, as upheld by the learned High Court, are maintained and shall remain intact.

JUDGE JUDGE

Muzaffarabad,
07.04.2025.