

Criminal Appeal No.40490-J/2023

Muhammad Farhan

VS

The State

Murder Reference No.111/2023

The State

VS

Muhammad Farhan

J U D G M E N T

FAROOQ HAIDER, J.:- This single judgment will dispose of **Crl. Appeal No.40490-J/2023** filed by Muhammad Farhan (appellant) against his “conviction & sentence” and **Murder Reference No.111/2023** sent by trial court, as both the matters have arisen out of one and the same judgment dated: 30.03.2023 passed by learned Additional Sessions Judge, Faisalabad/trial court.

2. Muhammad Farhan (appellant) was tried in case arising out of F.I.R. No.971/2022 dated: 24.09.2022 registered under Sections: 302, 34 PPC at Police Station: Nishatabad, District: Faisalabad and trial court after conclusion of the trial, *vide* impugned judgment dated: 30.03.2023 has convicted and sentenced the appellant; in this regard, relevant portions from Paragraphs No.28 and 29 of the impugned judgment are reproduced as under: -

“28., thus, accused namely Muhammad Farhan is convicted under Section 302 (b) PPC for murder of Amjad Ali deceased.”

“29., therefore, he is sentenced to death. The convict shall also pay a sum of rupees 10,00,0000/- as compensation to the legal heirs of the deceased under section 544-A of Cr.P.C which will be recovered as arrears of land revenue. In default of payment of amount of compensation, or non recovery of the same as prescribed above, he shall further under-go six months SI.....”

3. Briefly, Shoaib Ali (complainant/PW-4) moved application (Ex.PJ) for registration of case to Muhammad Aslam Sabri, S.I. (PW-1) regarding murder of his father namely Amjad Ali by hands of Muhammad Farhan (accused/ appellant) while giving blows of iron rod on his head, who succumbed to the injuries at the spot; for ready reference, relevant portion of aforementioned application (Ex.PJ) is hereby scanned below: -

بخدمت جناب SHO صاحب قلمہ نشاط آباد فیصل آباد

جناب عالی

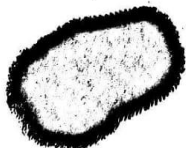
گزارش ہے کہ سائل محلہ رحمت ٹاؤن غلام محمد آباد کارہائشی و سکونت ہے اور محنت مزدوری کرتا ہے۔ میرا والد جو کہ وکی ایکسپورٹ سال اسٹیٹ میں تقریباً 17 سال سے ملازمت کرتا تھا۔ میں اور میرا چچا محمد اشرف ولد محمد صدیق اکثر اپنے والد کو ملنے آتے تھے عملہ اور چوکیداران کو جانتے ہیں۔ امر روز وقت قریب تقریباً 7:15 بجے صبح میں اور میرا چچا اپنے والد کو ملنے لیکٹری کے گیٹ پر پہنچے تو دیکھا تو والد کے ساتھ محمد فرحان ملزم تکرار کر رہا تھا اور محمد عبداللہ ملزم بھی پاس کھڑا تھا کہ دیکھتے ہی دیکھتے محمد فرحان ملزم نے آہنی راڈ والد کے سر پر مارنے شروع کر دیے جس سے والد شدید زخمی ہو کر گر گیا اور گرے ہوئے پر ملزم راڈ آہنی سے وار کرتا رہا جبکہ محمد عبداللہ ملزم بھی فرحان کے ساتھ ہی رہا ہم خالی ہاتھ تھے بخوف جان گیٹ کے ساتھ لگے رہے اور تو ہم ہذا چشم خود دیکھا والد کو سنبھالا جو کہ ضربات کی تاب نہ لا کر موقع پر ہی جاں بحق ہو گیا اور ملزمان موقع سے فرار ہو گئے۔ وجہ عناد یہ ہے کہ والد نے محمد فرحان ملزم سے کچھ رقم لینی تھی جس کا تقاضا کیا جس پر کل شام دونوں میں معمولی جھگڑا ہوا۔ جس رنجش کی بناء پر محمد فرحان وغیرہ ملزمان نے والد کو ناحق قتل کیا ہے ملزمان کے خلاف مقدمہ درج کر کے قرار واقعی سزا دلوائی جائے۔ عین نوازش ہوگی۔



العارض

شعیب علی ولد امجد علی قوم گوندل سکنہ محلہ رحمت ٹاؤن غلام محمد آباد مین بازار فیصل آباد

شعیب علی



0321-1332724

33102-9610052-9

On the basis of aforementioned application (Ex.PJ), case was registered *vide* F.I.R. No.971/2022 (Ex.PL) dated: 24.09.2022 under Sections: 302, 34 PPC at Police Station: Nishatabad, District: Faisalabad.

After completion of investigation, report under Section: 173 Cr.P.C. was submitted before trial court where appellant was formally charge sheeted to which he pleaded not guilty and claimed trial. Prosecution during trial examined nine witnesses, out of whom, ocular account was furnished by Shoaib Ali (complainant/PW-4) and Muhammad Ashraf (PW-5), Dr. Moin Atta (PW-3) provided medical evidence whereas detail of investigation was deposed by Muhammad Aslam Sabri, S.I. (Investigating Officer/PW-1). Prosecution after giving up PW namely Safeer Hussain being unnecessary and tendering reports of experts, closed its evidence. Thereafter statement of the appellant under Section 342 Cr.P.C. was recorded wherein he refuted allegations levelled against him, he did not opt to appear as his own witness under Section 340 (2) Cr.P.C. or produce any evidence in his defence. Trial court after conclusion of trial has convicted and sentenced the appellant as mentioned above through the impugned judgment.

4. Learned counsel for the appellant has submitted that conviction recorded and sentence awarded to the appellant through impugned judgment are against the 'law and facts' of the case; ocular account is neither trustworthy nor corroborated by any other independent evidence; prosecution has remained unable to prove its case. Learned counsel for the appellant finally prayed for acquittal of the appellant.

5. Conversely, learned Deputy Prosecutor General has submitted that prosecution has proved its case and she while supporting the impugned judgment has prayed for dismissal of the appeal.

Complainant (present before the Court in person) has also opposed this appeal.

6. Arguments heard. Record perused.

7. As per case of prosecution, occurrence took place at about 07:15 a.m. on 24.09.2022 within the area of Vicky Export Small Estate situated at

a distance of 2-kilometers from the police station as per Column No.4 of the Crime Report (F.I.R./Ex.PL); Muhammad Aslam Sabri, S.I. (PW-1) after getting intimation of the occurrence reached at the spot where Shoaib Ali (complainant/PW-4) presented written application (Ex.PJ) to him, which was sent for registration of the case through Ali Haider 5089/C to the police station at 08:30 a.m. on 24.09.2022 and F.I.R. (Ex.PL) was recorded at 08:45 a.m. on 24.09.2022 at Police Station: Nishatabad, District: Faisalbad. *Prima-facie*, there does not appear any undue delay in recording the First Information Report (F.I.R.) in the case, however, close scrutiny of the record reveals that though dead body was received in the dead house on 24.09.2022 at 11:00 a.m. yet complete documents from police were received on 24.09.2022 at 07:00 p.m. and autopsy was conducted at 07:15 p.m. on 24.09.2022 after about 12 hours of the occurrence whereas 10 and half hours of stated recording of F.I.R.; in this regard, relevant portion of statement of Dr. Moin Atta (PW-3) is hereby reproduced as under: -

“Date and time of death according to police paper was 24.09.2022 at 07:15am, received dead body in dead house on same day at 11:00am, received complete documents from police on same day at 07:00pm and autopsy was conducted on the same day at 07:15pm.”

Furthermore, as per statement of the doctor (PW-3), probable time that elapsed between death and postmortem of the deceased was within 12 to 24 hours and relevant portion of his statement in this regard is also produced as under: -

“The probable time that elapsed between injury and death within few minutes and between death and post mortem within 12 to 24 hours.”

Neither any plausible reason regarding aforementioned noticeable delay in conducting postmortem examination over dead body of the deceased could be offered by the prosecution nor otherwise is discernible from the record rather said delay was caused due to delayed submission of police papers for autopsy; in this regard, relevant portion of statement of Dr. Moin Atta (PW-3) is reproduced as under: -

“As soon I received the complete police paper, I started the conducting the postmortem on deadbody of deceased.”

By now it is well settled that if postmortem examination over dead body of the deceased has been conducted with such unexplained delay due to late submission of police papers for postmortem examination, then it means that none of the cited eyewitnesses including the complainant were present at the time and place of occurrence, this time was consumed by the prosecution in engaging as well as procuring the complainant and witnesses, concocting story for registration of case after deliberation as well as consultation and then registering the case in its present form at belated stage, and therefore time was consumed in preparation of police papers for autopsy. In this regard, statement of Shoaib Ali (complainant/PW-4) is very much relevant, who clearly deposed that twice the application for registration of F.I.R. was not approved by Muhammad Aslam Sabri, S.I. (PW-1) due to which, F.I.R. was registered by the police at about 05:00 p.m. on 24.09.2022; in this regard, relevant portion of statement of the complainant (PW-4) is reproduced below: -

“The postmortem was conducted at about 06:07 p.m. Volunteer twice the application for the registration of FIR was not approved by Muhammad Aslam Sabri ASI due to which the FIR was registered by the police at about 05:00 p.m. on 24.09.2022.”

(emphasis added)

Perusal of aforementioned statement of the complainant (PW-4) clearly reflects that F.I.R. was not registered at 08:45 a.m. rather at about 05:00 p.m. on 24.09.2022 however ante-time was mentioned in the record *qua* chalking out of the FIR. In this regard, guidance has been sought from the case of **“SUFYAN NAWAZ and another versus The STATE and others”** (2020 SCMR 192) and relevant portion from Paragraph No. 4 (Page 194) of the same is being reproduced as under: -

“The unexplained delay of about ten hours in autopsy of Kabeer Ahmad (deceased) alone creates dent in the prosecution story so far as presence of eye-witnesses at the place of occurrence is concerned.”

Furthermore, it also reflects from aforementioned statement of the complainant (PW-4) that when twice application for registration of F.I.R. was not approved by Muhammad Aslam Sabri (police official), then it means that present application (Ex.PJ) has been prepared after deliberation, consultation and with the approval of aforementioned police official. It is also worth mentioning here that as per case of prosecution, application (Ex.PJ) for registration of case was presented by the complainant (PW-4) to Muhammad Aslam Sabri, S.I. (PW-1) at the place of occurrence but Shoaib Ali (complainant/PW-4) clearly deposed during his statement before the Court that application (Ex.PJ) for registration of case was drafted at Police Station: Nishatabad but he does not know the name of scribe, he further deposed that the application was presented to the S.H.O. for registration of case at the police station; in this regard, relevant portion of statement of the complainant (PW-4) is reproduced as under: -

“The application Ex.PJ was drafted at Police Station Nashatabad, but I do not know the name of scribe. Application Exh.PJ was presented to the SHO for registration of case at P.S Nashatabad.”

And in such circumstances, application (Ex.PJ) and F.I.R. (Ex.PL) can neither be termed as promptly recorded nor any due evidentiary value can be attached to them and superstructure of the case of prosecution built on such delayed F.I.R. is bound to fall like house of cards; in this regard, guidance has been sought from the case of **“GHULAM ABBAS and another versus The STATE and another”** (2021 SCMR 23), **“PERVAIZ KHAN and another versus The STATE”** (2022 SCMR 393) and **“ABDUL GHAFUOR versus The STATE”** (2022 SCMR 1527).

Ocular account produced by the prosecution consists of statements of Shoaib Ali (complainant/PW-4) and Muhammad Ashraf (cited eyewitness/PW-5). It is relevant to mention here that admittedly, they both witnesses are residents of Rehmat Town, Ghulam Muhammadabad, Faisalabad and occurrence did not take place in front of, adjacent to or near the house of the witnesses including the complainant rather the occurrence took place in the

area of Vicky Export Small Estate and this fact can simply be verified through site plan (Ex.PK) of the place of occurrence which clearly reflects that house of the witnesses including complainant was not located there and even their place of job was not over there; in this regard, relevant portion of statement of Muhammad Aslam Sabri, S.I. (Investigating Officer/PW-1) is reproduced as under: -

“It is correct that complainant and PWs do not have any place of work, house and job inside the factory, volunteer they are resident of main Bazar Ghulam Muhammadabad.”

Relevant portion of statement of Mehmood Akbar Nizam, Draftsman (PW-6) is also reproduced as under: -

“It is correct that the complainant and PWs have no business, residence or place of work inside, near or around the place of occurrence (factory).”

Furthermore, Shoaib Ali (complainant/PW-4) deposed during his statement before the Court that his father was working in said factory for seventeen years, who lefts the house for the job at 06:00 a.m. and returns back in the evening, he (PW-4) went to the factory at 07:15 a.m., on the day of occurrence, his father went to the factory from home, he and his uncle Muhammad Ashraf have no work at the factory of occurrence; in this regard, relevant portion of statement of the complainant (PW-4) is hereby reproduced as under: -

“My father was working in the said factory since 17 years. My father left the house for job at 06:00a.m and returned back in the evening. I went to the factory at 07:15a.m. On the day of occurrence my father went to factory from home. I as well as my uncle Muhammad Ashraf have no work at the factory of occurrence.”

(emphasis added)

So, when deceased went from home for going to job at 06:00 a.m. on the day of occurrence, then the urgency or necessary work/reason, which compelled the complainant (PW-4) and Muhammad Ashraf (PW-5) for going to the factory, has not been explained by the complainant (PW-4) rather he clearly stated before the Court that he and his uncle Muhammad Ashraf (PW-5) were having no work at the factory of the occurrence; though Muhammad Ashraf (PW-5) stated during cross-examination that he went to meet his nephew

Muhammad Zohaib at his factory situated at Small Estate at about 07:15 a.m. yet it was contrary to the contents of application (Ex.PJ) where it is categorically mentioned that the complainant (PW-4) and Muhammad Ashraf (PW-5) went factory for seeing/meeting father of the complainant and furthermore, Muhammad Ashraf (PW-5) did not explain any reason for going to meet Muhammad Zohaib, any proof could not be brought on the record to show that Muhammad Zohaib was nephew of Muhammad Ashraf (PW-5) and was working in the factory, so much so that even Muhammad Zohaib was not produced in support of said claim. Hence, they both cited eyewitnesses including the complainant (PW-4) were chance witnesses and thus were required to offer valid, plausible and cogent reason for going to the place of occurrence at the time of occurrence but they failed to provide and establish any such valid reason; hence their testimony is “suspect” evidence and cannot be accepted without pinch of salt; in this regard, guidance has been sought from the case of “**Mst. SUGHRA BEGUM and another vs. QAISER PERVEZ and others**” (2015 SCMR 1142) and relevant portion from paragraph No.14 of said case law is hereby reproduced: -

“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.”

Further guidance on the subject has been sought from the cases of “**MUHAMMAD ASHRAF alias ACCHU versus The STATE**” (2019 SCMR 652), “**Mst. MIR and another versus The STATE**” (2020 SCMR 1850) and “**SARFRAZ and another versus The STATE**” (2023 SCMR 670).

It is relevant to mention here that Shoaib Ali (complainant/PW-4) is son of deceased of the case whereas Muhammad Ashraf (cited

eyewitness/PW-5) is real brother of deceased of the case and their conduct is very unnatural for the reason that they were two in number but did not attempt to intervene at the time of occurrence particularly when it is not case of the prosecution that the appellant was equipped with any sophisticated firearm weapon like *Kalashnikov* from which various shots can be at once fired rather he was only having iron rod and it was very easy for them to intervene/catch hold/apprehend the accused and rescue the deceased, who was having repeater .12 bore at the time and place of occurrence but they did not do so rather remained there as silent spectators and had been seeing the receiving of multiple injuries on different parts of his body by the deceased; in this regard, relevant portion of statement of complainant is reproduced as under: -

“We did not rescue my father at the time of occurrence.”

Relevant portion of statement of Muhammad Ashraf (PW-5) is also reproduced below: -

*“My deceased brother was working as security guard in the said factory at the time of occurrence and **he was having repeater 12 Bore.** Volunteer he was not having occasion to make fire.”*

Said conduct of aforementioned cited eyewitnesses including the complainant, who are closely related to the deceased, falsifies their presence at the place of occurrence; in this regard, guidance has been sought from the cases of **“PATHAN versus The STATE” (2015 SCMR 315)** and **“ZAFAR versus The STATE and others” (2018 SCMR 326)**; relevant portion from the latter case law is being reproduced:-

“7. The conduct of the witnesses of ocular account also deserves some attention. According to complainant, he along with Umer Daraz and Riaz (given up PW) witnessed the whole occurrence when their father was being murdered. It is against the normal human conduct that the complainant, Umer Daraz and Riaz (PW since given up) did not make even an abortive attempt to catch hold of the appellant and his co-accused particularly when the complainant himself has stated in the FIR and before the learned trial Court that when they raised alarm, the accused fled away. Had they been present at the relevant time, they would not have waited for the murder of their deceased father and would have raised alarm the moment they saw the appellant and his co-accused standing near the cot of their father.”

Likewise, Shoaib Ali (complainant/PW-4) also stated before the Court that at the time of occurrence, they were standing at outside gate of the factory; relevant portion of his statement in this regard reads as under: -

“At the time of occurrence we were standing at out side of the main gate of factory and occurrence took place inside the factory.”

Whereas Muhammad Ashraf (PW-5) clearly stated before the Court that the outer gate of the factory was 6/7 feet in height and may be more than in width, no one can see inside the factory if stand outside the factory; relevant portion of his statement in this regard reads as under: -

“The outer gate of factory was 6/7 feet in height and may be more than in width. No one can see inside the factory if stand out side the factory.”

In such circumstances, identity of the assailant as well as seeing the occurrence by the complainant (PW-4) and Muhammad Ashraf (PW-5) is a question mark.

Another relevant factor in this case is that Shoaib Ali (complainant/PW-4) deposed during his statement before the Court that the accused Farhan was not known to him, he had no business, blood relation or any kind of link with said accused and in this regard, relevant portion of statement of the complainant (PW-4) is reproduced below: -

“The accused Farhan was not known to me, I have no business, blood relation or any kind of link with the accused Farhan.”

Now question does arise that if Muhamad Farhan (present appellant) was even not known to the complainant (PW-4), then who told the identity/name of the accused/appellant to the complainant (PW-4) but entire record is silent in this regard, which is another blow to the case of prosecution.

In view of above-mentioned discussion, ocular account furnished by the complainant (PW-4) and Muhammad Ashraf (PW-5) has not been found by us as confidence inspiring, trustworthy, truthful or reliable in the case, hence, same cannot be relied and is hereby discarded.

Though it was mentioned in the application (Ex.PJ) for registration of case that motive behind the occurrence is that Amjad Ali (deceased of the case) had to take some amount from Muhammad Farhan (present appellant) which was demanded and for said reason, trivial altercation took

place on last evening and due to said grudge, accused committed the occurrence yet it has not been brought on the record that how much amount was to be taken by the deceased from the appellant, when this amount was given, in whose presence, same was demanded by the deceased from the appellant and who saw said altercation, rather Shoaib Ali (complainant/PW-4) deposed before the Court that the quarrel did not take place between his father and the accused over dispute of loan of money in his presence as well of Muhammad Ashraf PW, one day prior to the occurrence; relevant portion of statement of the complainant (PW-4) in this regard is reproced below: -

“The quarrel did not took place between my father and accused over the dispute of the loan of money in my presence as well of Muhammad Ashraf PW one day prior to the occurrence.”

Whereas Muhammad Ashraf (PW-5) clearly stated before the Court that he was having no knowledge about the motive part of the occurrence; in this regard, relevant portion of his statement is reproced below: -

“I was having no knowledge about the motive part of the occurrence.”

Muhammad Aslam Sabri, S.I. (Investigating Officer/PW-1) also stated that the complainant did not produce any sort of evidence regarding motive part of the occurrence; relevant portion of his statement in this regard reads s under: -

“The complainant did not produce any sort of evidence regarding motive part of the occurrence volunteer that complainant had mentioned the motive in this application.”

So, any evidence to prove alleged motive has not been brought on the record by the prosecution; hence, motive has not been proved in this case.

As far as medical evidence is concerned, it is trite law that medical evidence is mere supportive/confirmatory type of evidence; it can tell about locale, nature, magnitude of injury, duration of the injury and kind of weapon used for causing injury but it cannot tell about identity of the assailant or the person who caused the injury; therefore, same neither can

provide any corroboration nor is of any help to the prosecution in peculiar facts and circumstances of the case and in this regard guidance has been sought from the cases of “**MUHAMMAD RAMZAN versus The State**” (2025 SCMR 762) and “**IMRAN versus The STATE**” (2026 SCMR 47); relevant portion from the latter case law is hereby reproduced as under: -

“8. Insofar as the medical evidence is concerned, it is by now well settled that the medical evidence is only supportive evidence, which may confirm the ocular account with regard to receipt of injury, nature of the injury, kind of weapon used in the occurrence but it would not identify the assailant. Reference in this context may be made to the cases of "Muhammad Tasaweer v. Hafiz Zulkarnain and 2 others" (PLD 2009 Supreme Court 53), "Altaf Hussain v. Fakhar Hussain and another" (2008 SCMR 1103) and "Mursal Kazmi alias Qamar Shah and another v. The State" (2009 SCMR 1410).”

It is also important to mention here that any weapon of offence was not recovered from the appellant during investigation of the case; in this regard, relevant portion of statement of the Investigating Officer (PW-1) is reproduced as under: -

“It is correct that no weapon of offence was recovered during the course of investigation.”

As per case of prosecution, iron rod was used as weapon of offence for causing injuries to the deceased of the case; Muhammad Ahsan Raza, Junior Forensic Scientist (JFS/PW-7) reached at the crime scene, prepared seven parcels i.e. nail swabs from right hand of deceased, nail swabs from left hands of deceased, buccal swabs, swabs from metallic stands having four legs, from metallic having three legs, one pipe, last hair from fist of the deceased, and handed over to the Investigating Officer (PW-1); relevant portion of statement of Muhammad Ahsan Raza, (JFS/PW-7) is reproduced as under: -

“Stated that on 24.09.2022 I received a call from police and reached at crime scene where I prepared seven parcels i.e. nail swabs from right hand of deceased, nail swabs from left hands of deceased, buccal swabs, swabs from matalics stands having four legs and from matalic having three legs and one pipe and last hair from fist of deceased and handed over to Muhammad Aslam Sabri SI/IO.”

(emphasis added)

Perusal of his aforementioned statement clearly reflects that Muhammad Ahsan Raza (JFS/PW-7) neither found any **iron rod** at the place of occurrence nor prepared parcel of any iron rod and he did not hand over any parcel of iron rod to Muhammad Aslam Sabri, S.I. (Investigating Officer of the case). However, it is astonishing to note here that as per recovery memo (Ex.PD, available at Page No.62 of the paper book), Crime Scene Team handed over seven sealed parcels to Muhammad Aslam Sabri, S.I. (PW-1) including parcel of metallic rod and relevant portion regarding detail of said parcels is scanned below: -

قرہ جیو نیٹ 7 عدہ پارسل ہند کر کے PFSA کے پاس بھیج دیے

اگر کوئی گواہان ذیل جگہ وقوعہ قتل سے PFSA کے پاس نہیں لے کر آئے ہیں کہ وہ
پارسل ہند کر کے عدہ پارسل ہند کر کے عدہ پارسل ہند کر کے عدہ پارسل ہند کر کے
اگر کوئی شہوت نہ لے کر عدہ پارسل ہند کر کے عدہ پارسل ہند کر کے عدہ پارسل ہند کر کے

تفصیل پارسل ہند

1 پارسل 2 عدہ پارسل ہند کر کے عدہ پارسل ہند کر کے عدہ پارسل ہند کر کے
2 پارسل 2 عدہ پارسل ہند کر کے عدہ پارسل ہند کر کے عدہ پارسل ہند کر کے
3 پارسل 2 عدہ پارسل ہند کر کے عدہ پارسل ہند کر کے عدہ پارسل ہند کر کے
4 پارسل 2 عدہ پارسل ہند کر کے عدہ پارسل ہند کر کے عدہ پارسل ہند کر کے
5 پارسل 2 عدہ پارسل ہند کر کے عدہ پارسل ہند کر کے عدہ پارسل ہند کر کے
6 پارسل 2 عدہ پارسل ہند کر کے عدہ پارسل ہند کر کے عدہ پارسل ہند کر کے
7 پارسل 2 عدہ پارسل ہند کر کے عدہ پارسل ہند کر کے عدہ پارسل ہند کر کے

MOHAMMAD MANSOOR
ATA
Add. District & Sessions Judge
Faisalabad

13/3/23

It is very much noticeable that when Muhammad Ahsan Raza (JFS/PW-7) did not depose in his statement that he secured any metallic rod/weapon of offence from the place of occurrence through sealed parcel or handed over any said iron rod to the Investigating Officer of the case, then detail mentioned in said recovery memo (Ex.PD) *qua* metallic rod is contrary to the statement of prosecution's own witness i.e. Muhammad Ahsan Raza (JFS/PW-7); furthermore, said recovery memo (Ex.PD) was neither signed by Muhammad Ahsan Raza (JFS/PW-7) nor by any other member of PFSA Crime Scene Team. It goes without saying that Muhammad Ahsan Raza (JFS/PW-7) stated about securing 01-pipe into sealed parcel and handing over the same to Muhammad Aslam Sabri, S.I. (Investigating Officer/ PW-1) from the crime scene and he did not mention that said pipe was

blood stained or he secured blood swab from the same whereas in the recovery memo (Ex.PD), it is not mentioned that pipe or any parcel of pipe was handed over by PFSA Crime Scene Team to Muhammad Aslam Sabri, S.I. (Investigating Officer/PW-1) rather it is mentioned therein that parcel of one iron rod was handed over to him by PFSA Crime Scene Team but even in said recovery memo (Ex.PD), it was not mentioned that said metallic rod was blood stained or any swabs from said metallic rod were prepared or handed over by PFSA Crime Scene Team to the Investigating Officer (PW-1) and in such circumstances, receiving of metallic rod in the office of Punjab Forensic Science Agency with swabs taken from the stained area of iron rod as well as swabs taken from unstained area of the iron rod is a mystery and question which has no answer on the record; therefore, recovery/taking into possession, safe custody as well as safe transmission/deposit of iron rod to the office of PFSA could not be proved by the prosecution. Furthermore, availability of any iron rod or taking the same from the place of occurrence into possession, is also not mentioned in the site plan (Ex.PK, copy whereof is available at Page No.74-75 of the paper book). Similarly, availability as well as use of any iron stand or iron sheet at the place of occurrence is not mentioned in the application (Ex.PJ) for registration of case, Crime Report (F.I.R./Ex.PL) and site plan (Ex.PK). Therefore, since recovery of the metallic rod, iron stands or iron sheet from the place of occurrence is doubtful thus it is of no help to the case of prosecution.

Furthermore, since as per own case of prosecution, appellant and deceased were working in the same factory i.e. place of occurrence, hence report of PFSA (Ex.PM) *qua* partial DNA profile obtained from the swabs secured from iron stand (item No.4), which is a mixture of at least three individuals including deceased and the appellant, is not a big deal and cannot be termed as incriminating material particularly when use of the

same is even not alleged in the statements of the complainant (PW-4) and cited eyewitness (PW-5).

Similarly, when recovery and safe custody of the metallic rod as well as swabs from the stained and unstained area of the same have not been established, then DNA report regarding swabs taken from stained section and unstained section of iron rod mentioned in the report of PFSA (Ex.PM), is of no avail to the case of prosecution.

So far as securing USB (flash drive/P-3) about video footage of the place of occurrence *vide* recovery memo (Ex.PG, copy whereof is available at Page No.65 of the paper book) during investigation of the case is concerned, it is relevant to mention here that it was not got prepared by the Investigating Officer on the day of occurrence rather same was produced by the complainant on 07.10.2022 to Muhammad Aslam Sabri, S.I. (Investigating Officer/PW-1). Perusal of said recovery memo (Ex.PG) reveals that it was a USB which was having video footage of the place of occurrence from cameras of CCTV. It is very much relevant to mention here that in the application (Ex.PJ) for registration of case, it was not mentioned that any CCTV camera was installed over there at the place of occurrence; similarly, in the site plan (Ex.PK) of the place of occurrence, it was neither mentioned in the notes nor in the drawings that any CCTV camera was installed/available there at the place of occurrence and relevant portion of statement of Mehmood Akbar Nizam (Draftsman/PW-6) is reproduced as under: -

“It is correct that no CCTV camera had been shown inside or outside the factory (place of occurrence). Had it been pointed out to me by the complainant, PWs, I.O and the persons present at time of taking the rough notes, I would have mentioned the same in my scaled site plan.”

Neither CCTV cameras nor any device (DVR, used for recording and storage of video footage captured by cameras of CCTV) nor original recording of the occurrence contained in recording device i.e. DVR of

CCTV, were secured during investigation of the case. Any official of the factory was not produced during trial of the case to prove that any CCTV camera was installed at the place of occurrence. So, installation of CCTV cameras at the place of occurrence has not been proved. And in such state of affairs, it cannot be said with certainty that USB (P-3) contained video recording of the place of occurrence of instant case prepared from CCTV camera because installation of CCTV camera at the place of occurrence has not been established.

It is also relevant to mention here that no one was produced by the prosecution who prepared USB (P-3) from the CCTV installed at the factory and relevant portion in this regard from the statement of Investigating Officer (PW-1) is hereby reproduced as under: -

“It is correct that USB P3 is not available before the court today. It is correct that complainant did not produce any person from whom he got prepared USB during my investigation.”

Neither said USB was sent to Punjab Forensic Science Agency for forensic analysis in order to examine the genuineness of its contents as well as element of any editing in the same nor photographs/controlled video recordings of Amjad Ali (deceased), Muhammad Farhan (appellant), Shoaib Ali (complainant/PW-4) and Muhammad Ashraf (cited eyewitness/PW-5) as well as place of occurrence were sent over there for comparison with the contents of said USB in order to analyze that whether contents of USB were carrying detail about exact place of occurrence of this case as well as presence and identification of the appellant/assailant(s), deceased, complainant and cited eyewitness or any other person and for these reasons also, USB (P-3) is of no legal worth and cannot be relied; in this regard, case of **“ISHTIAQ AHMED MIRZA and 2 others versus FEDERATION OF PAKISTAN and others”** (PLD 2019 Supreme Court 675) can be advantageously referred and its relevant portion from paragraph No.11 is hereby reproduced below: -

“11. The precedent cases mentioned above show that in the matter of proving an audio tape or video before a court of law the following requirements are insisted upon:

- * No audio tape or video can be relied upon by a court until the same is proved to be genuine and not tampered with or doctored.*
- * A forensic report prepared by an analyst of the Punjab Forensic Science Agency in respect of an audio tape or video is per se admissible in evidence in view of the provisions of section 9(3) of the Punjab Forensic Science Agency Act, 2007.*
- * Under Article 164 of the Qanun-e-Shahadat Order, 1984 it lies in the discretion of a court to allow any evidence becoming available through an audio tape or video to be produced.*
- * Even where a court allows an audio tape or video to be produced in evidence such audio tape or video has to be proved in accordance with the law of evidence.*
- * Accuracy of the recording must be proved and satisfactory evidence, direct or circumstantial, has to be produced so as to rule out any possibility of tampering with the record.*
- * An audio tape or video sought to be produced in evidence must be the actual record of the conversation as and when it was made or of the event as and when it took place.*
- * The person recording the conversation or event has to be produced.*
- * The person recording the conversation or event must produce the audio tape or video himself.*
- * The audio tape or video must be played in the court.*
- * An audio tape or video produced before a court as evidence ought to be clearly audible or viewable.*
- * The person recording the conversation or event must identify the voice of the person speaking or the person seen or the voice or person seen may be identified by any other person who recognizes such voice or person.*
- * Any other person present at the time of making of the conversation or taking place of the event may also testify in support of the conversation heard in the audio tape or the event shown in the video.*
- * The voices recorded or the persons shown must be properly identified.*
- * The evidence sought to be produced through an audio tape or video has to be relevant to the controversy and otherwise admissible.*
- * Safe custody of the audio tape or video after its preparation till production before the court must be proved.*

- * *The transcript of the audio tape or video must have been prepared under independent supervision and control.*
- * *The person recording an audio tape or video may be a person whose part of routine duties is recording of an audio tape or video and he should not be a person who has recorded the audio tape or video for the purpose of laying a trap to procure evidence.*
- * *The source of an audio tape or video becoming available has to be disclosed.*
- * *The date of acquiring the audio tape or video by the person producing it before the court ought to be disclosed by such person.*
- * *An audio tape or video produced at a late stage of a judicial proceeding may be looked at with suspicion.*
- * *A formal application has to be filed before the court by the person desiring an audio tape or video to be brought on the record of the case as evidence.”*

It is also relevant to mention here that when installation of CCTV cameras at the place of occurrence could not be established by the prosecution, then even now sending USB for obtaining its forensic analysis would be of no help to the case of prosecution. Therefore, USB (flash drive/P-3) is of no avail to the case of prosecution.

It is well established principle of law that single circumstance/doubt in case of prosecution is sufficient for acquittal; in this regard, cases of **“MUHAMMAD BILAL versus The STATE” (2025 SCMR 1580)** and **“MUHAMMAD ASGHAR versus The STATE” (2025 SCMR 1616)** can be safely referred.

8. Nutshell of the above discussion is that prosecution has been failed to prove its case against the appellant; therefore, there is no need to discuss defence version.

9. In view of, what has been discussed above, **Criminal Appeal No.40490-J/2023** filed by Muhammad Farhan (appellant), is **allowed**; conviction recorded and sentence awarded to the appellant through impugned judgment dated: 30.03.2023 passed in aforementioned subject

case, are hereby set aside. Appellant is acquitted of the charge, he shall be released from the jail forthwith, if not required in any other case.

10. Resultantly, death sentence awarded to Muhammad Farhan (appellant) is NOT CONFIRMED and Murder Reference (M. R. No.111 of 2023) is answered in NEGATIVE.

(Amir Ajam Malik)
Judge

(Farooq Haider)
Judge

APPROVED FOR REPORTING.

(Amir Ajam Malik)
Judge

(Farooq Haider)
Judge

This judgment has been dictated and pronounced
on 10.09.2026 whereas after preparation/
completion, signed on 11.09.2026.

Kashif