IN THE COURT OF ADDITIONAL SESSIONS JUDGE-I/ MCTC, DADU

Before: Mr. Hassan Ali Kalwar.

Sessions Case No.310 of 2020

The State

Versus

Sikandar Chandio and others……Accused.

1. Sikandar Ali S/o Ali Hassan Chandio ***(in custody)***
2. Ali Gohar S/o Bakhtiar alias Yakhtiar Chandio ***(in custody)***
3. Sardar Ahmed Khan S/o Nawab Shabir Ahmed Khan Chandio ***(on bail)***
4. Burhan Khan S/o Nawab Shabir Ahmed Khan Chandio ***(on bail)***
5. Abdul Sattar S/o Muhammad Saffar Chandio ***(on bail)***
6. Zulfiquar S/o Ghulam Qadir @ Qadoo Chandio ***(in custody)***
7. Ghulam Murtaza S/o Muhammad Saffar Chandio ***(in custody)***
8. Abdul Kareem @ Kareem Bux S/o Allah Bux Chandio **(on bail)** ……Accused.
9. Ghulam Qadir alias Qadoo S/o Muhammad Paryal Chandio **……(expired)**

Crime No.20/2018. P.S A/Section Mehar

U/S. 302, 504, 109, 114, 148, 149 PPC

Mr. Abdul Razzak Nawal, learned ADPP for the State, assisted by Mr. Salahuddin Panhwar, learned advocate for informant.

Mr. Athar Abbas Solangi, learned advocate for accused Sardar Ahmed Khan, Ali Gohar.

Mr. Shahab Ali Sarki, learned advocate for accused Burhan Khan.

Mr. Iftikhar Ahmed Shah, learned advocate for accused Burhan Khan &

Abdul Kareem @ Kareem Bux Chandio.

Mr. Ayaz Hussain Tunio, learned advocate for accused Ghulam Murtaza Chandio.

Mr. Safdar Ali G. Bhutto, learned advocate for accused Zulifqar & Sikandar.

Mr. Sikandar Ali Soomro, learned advocate for accused Abdul Sattar Chandio.

Mr. Muhammad Usman Chandio, learned advocate for all accused on State expenses.

JUDGMENT.

30.03.2026.

The above-named accused persons were sent-up by SHO of Police Station A. Section Mehar to face their trial in the above-mentioned case and crime.

2. Brief facts of the prosecution case as per FIR are that on 18.01.2018 at about 0100 hours, informant Pervaiz Ahmed son of Karamullah Khan Chandio, lodged an FIR at Police Station "A" Section, Mehar, District Dadu, alleging therein that Mukhtiar Ahmed is his brother and Karamullah Khan Chandio is his father, who was Chairman of Union Council. Allegedly, since long time, Sardar Khan son of Shabir Ahmed Chandio used to send threats to his brother Mukhtiar Ahmed Khan, who was Tumandar, having allied other Tumandar's of Chandia community with him, was spreading revolt against him (Sardar Khan) and was requiring him to disband Tumandar Council, else he would see/check the Tumandar Council, and would also cause severe loss to him and his all family. It is also alleged that Sardar Khan had been sending such messages to Mukhtiar Ahmed at different times through different peoples. It is also alleged that in the morning time on 17.01.2018, the informant, his father Karamullah Khan son of Khasho Khan, aged about 65 years, his brother Mukhtiar Ahmed, aged about 45 years, his brother Qabil Hussain, aged about 28 years (Member District Council), his cousins Aijaz Ahmed and Manzoor Ahmed both sons of Gul Hassan Chandio were standing in front of their otaq, located on road leading from Police Station towards Faridabad. Meanwhile at about 9:00 a.m, two vehicles viz. one white corolla car bearing No. BFZ 428 and one white land cruiser stopped in front of their otaq. Out of the vehicles six-

armed person got down, who were identified as Ali Gohar's son of Bakhtiar Ali alias Yakhtiar Chandio armed with Kalashnikov, Ghulam Murtaza son of Muhammad Safar Chandio armed with repeater, Sikandar son of Ali Hassan Chandio armed with repeater, Zulfiquar son of Ghulam Qadir alias Qadoo Chandio armed with repeater, Ghulam Qadir alias Qadoo son of Parial Chandio armed with repeater and one accused Burhan son of Shabir Ahmed Chandio, who was sitting in the Land Cruiser. The accused Burhan, rolled down the door glass of Land Cruiser, wherefrom instigated his co-accused persons that they (informant party) have created revolt against Sardar Khan and despite restraint for many times, they are not desisting, therefore, deal with them in such a way that they become a sign of lesson for others and end them by committing their murder. On such instigation of accused Burhan Khan and per abetment of accused Sardar Khan, the other accused persons opened the mouth of their weapons and made indiscriminate firing, thereby spread terror in the general public. Accused Ghulam Qadir alias Qadoo with intention to commit murder made repeater fire upon father of informant , namely Karamullah, which fire hit him on abdomen and father of informant by grappling Ghulam Qadir alias Qadoo, tried to throw him down, meanwhile accused Ali Gohar with Kalashnikov and Ghulam Murtaza with repeater, made fires in order to rescue the accused Ghulam Qadir alias Qadoo, thereby one Kalashnikov fire hit to father of informant on right side of chest, while fires of Kalashnikov and repeater hit to accused Qadoo, who both fell down on the ground. The accused Murtaza made straight repeater fire shot upon Mukhtiar Ahmed Khan with intention to commit his murder, which fire shot hit him on above side of chest, accused Ali Gohar made Kalashnikov fires upon Mukhtiar, which hit him on face, who also fell down raising cry. Accused Sikandar with intention to commit qatl-i-amd made repeater fire upon Qabil Hussain (brother of informant), which fire hit him on right buttock, who also fell down raising cry. Thereafter, accused persons kept making indiscriminate firing, chanting slogans and saying that whoever try to spread revolt against Sardar Khan will face such consequences and by making fires went towards western side by boarding in said two vehicles. The informant party then found that Mukhtiar Ahmed had received firearm injuries on his face, above left side chest, Karamullah had received fire shots on abdomen and chest, while Qabil Hussain had received fire shot on right buttock, they were taken to Taluka Hospital

Mehar, where Karamullah and Mukhtiar Ahmed succumbed to their injuries, while Qabil Hussain was referred to Larkana, and sent there to. After completing proceedings of deceased Karamullah and Mukhtiar Ahmed at Taluka Hospital Mehar, their funeral rites were completed. In the evening time, the informant received information that Qabil Hussain had also been died at Larkana, later on whose corpse was brought and after getting his post-mortem conducted from Taluka Hospital Mehar, the informant appeared at P.S and registered FIR to the above effect, claiming that the shopkeepers have closed shops decamp therefrom.

3. After registration of FIR, Police started investigation and on completion of investigation presented final report U/s 173 Cr.P.C before Honourable Anti-Terrorism Court Naushehro Feroze, whereby the Investigation Officer recommended trial of accused Ali Gohar, Ghulam Murtaza, Sikandar Khan, Zulfiqar and Ghulam Qadir alias Qadoo while Sardar Ahmed Khan Chandio and Burhan Chandio were released and their names were placed in column No. 2 of the Challan. The Anti-Terrorism Court, Naushehro Feroze concurred with the recommendations of Investigation Officer and accepted the Challan vide order dated 24.02.2018.

4. The name of accused Abdul Sattar Chandio (owner of car used in crime) was also added in the subsequent report for allegedly committing offence U/s. 22-(I) Anti-Terrorism Act, 1997.

5. The informant challenged order dated 24.02.2018, passed by Anti-Terrorism Court, Naushehro Feroze on report U/S. 173 Cr.P.C, through Crl. Misc. Application No. D-179 of 2018 before the Honourable High Court of Sindh, Bench at Sukkur. The application was allowed and Sardar Ahmed Khan Chandio and Burhan Chandio, whose names were placed in column No. 2 of the Challan, were joined in the case, as accused.

6. Accused Sardar Ahmed Khan Chandio and Burhan Chandio were admitted to pre-arrest bail by the Anti-Terrorism Court, Naushehro Feroze vide order dated 24.02.2018, such order was also challenged by the informant before Honourable High Court of Sindh, Bench at Sukkur through Criminal Miscellaneous Application No. D-187 of 2018. The Honourable High Court vide order dated 29.06.2018 re-called the bail order granted to Burhan Chandio while maintained the

same to the extent of Sardar Ahmed Khan Chandio.

7. Accused Burhan Chandio and Sardar Ahmed Khan Chandio challenged the decision of the Honourable High Court of Sindh passed in Criminal Misc. Applications No. D-179/2018 and D-187 of 2018 before the August Supreme Court of Pakistan, which was decided vide order dated 13.9.2018, in the following terms:

> ***"After hearing the learned counsel for the parties, a consensus has been arrived at between the parties that the impugned orders of the learned High Court dated 29.06.2018 passed in Crl. Misc. Application No. D-187/2018 and order dated 27.06.2018 passed in Crl. Misc. Application No. D-179 of 2018 are set aside. Similarly, both the Orders dated 24.02.2018 passed by the learned Judge, Anti-Terrorism Court, Naushehro Feroze (one relating to report under Section 173, Cr.P.C. and the other relating to release of Burhan Chandio) are also set aside. The matter shall be deemed to be pending before learned Judge, ATC, to whom the case has been transferred who shall consider all matters pending before it as raised by the learned counsel for the parties and the State and decide the same without being influenced by any earlier observation made by the learned Judge, ATC or by the learned High Court by way of the impugned orders. Both the above cases are disposed of in the above terms."***

8. The case was transferred to the Honourable Anti-Terrorism Court-I, Sukkur. On 17.09.2019 copies of relevant documents as required U/s 265-C, Cr.P.C were supplied to the accused. Meanwhile an application U/s 23 of the Anti-Terrorism Act, 1997 was filed and the Anti-Terrorism Court-I, Sukkur after providing an opportunity of hearing to the parties passed order dated 13.11.2018 and thereby, invoking its jurisdiction under section 23 of the Anti-Terrorism Act, 1997 ordered the

transfer of the case to ordinary criminal court/Honourable Sessions Court, Dadu. The informant challenged the said order by way of filing criminal miscellaneous application No.D-998/2018 before Honourable High Court of Sindh, Bench at Sukkur which was allowed vide judgment dated 21.2.2019 and the order dated 13.11.2018 passed by the Anti-Terrorism Court-I Sukkur was set-aside. Accused Ali Gohar, Sikandar and Abdul Sattar challenged the judgment dated 21.02.2019 passed by the Honourable High Court of Sindh before August Supreme Court of Pakistan in Criminal Petition No. 230 of 2019 and Criminal Miscellaneous Application No.301 of 2019. The Honourable Supreme Court of Pakistan vide its judgment dated 30.06.2020 (since reported as PLD 2020 SC 427) pleased to set-aside the judgment dated 21.02.2019 passed by Honourable High Court of Sindh, Bench at Sukkur and restored order dated 13.11.2018 passed by Anti-Terrorism Court-I, Sukkur.

9. After receipt of R&Ps by the Honourable Sessions Court, Dadu, the case was assigned to this Court for its disposal in accordance with law.

10. On 26.09.2020, an application U/s 193 Cr.P.C was moved before this Court by the learned counsel for the accused praying therein to send the case to the Magistrate concerned for taking cognizance of offence, as the earlier orders passed by the Anti-Terrorism Court, Naushehro Feroze were set-aside and all matters were deemed to be pending for decision in the light of directions contained in order dated 13.09.2018 passed by the Honourable Supreme Court of Pakistan. After hearing the parties, the said application was dismissed by this Court vide order dated 17.10.2020 and such order was also challenged by the accused before Honourable High Court of Sindh, Circuit Court, Larkana through Criminal Revision Application No.S-56 of 2020, same stands dismissed by the Honourable High Court of Sindh, Circuit Court, Larkana vide order dated: 07.03.2022.

11. It is also matter of record that issue of placing the names of Sardar Khan and Burhan Khan in column No.2 of the challan/charge sheet and their release U/s 169 Cr.P.C and 497 Cr.P.C, was decided by this Court vide order dated **11.09.2021,** whereby both these accused were joined as accused in this case.

12. On 03.12.2022, It is also pertinent to point-out that by filing a criminal miscellaneous application under section 193 Cr.P.C the informant prays for joining proposed accused Abdul Kareem @ Kareem Bux Son of Allah Bux Chandio as accused in this case, however after issuance of notice and hearing the parties counsel and learned State Counsel, the said application was allowed vide order dated **10.01.2023,** whereby proposed accused Abdul Kareem @ Kareem Bux son of Allah Bux Chandio was joined as accused along with co-accused in the titled case/crime and N.B.W against him was ordered to be issued through S.H.O P.S Mehar. The said accused has now faced trial too.

13. After supplying necessary case papers to accused Zulifquar Chandio as required under Section 265-C Cr.PC through receipt at Ex. 20. The case papers are also supplied to the accused Ghulam Murtaza at Ex. 22. The Charge was framed against present accused at Ex.24, to which accused pleaded not guilty and claimed for trial. Their pleas were recorded at Ex.24/A to Ex. 24/G respectively.

14. The necessary case papers to accused Abdul Kareem @ Kareem Bux Chandio as required under Section 265-C Cr.PC through receipt at Ex. 25. The case papers are also supplied to the accused Ghulam Murtaza at Ex. 22. The Charge was framed against present accused at Ex.26, to which accused pleaded not guilty and claimed for trial. Their pleas were recorded at Ex.26/A to Ex. H/g respectively.

15. At the trial prosecution examined P.W-1 informant Pervez Ahmed at Ex.No 27, who produced FIR at Ex. No 27/A, receipt of receiving dead body of deceased Karamullah at Ex. No.27/B, receipt of receiving dead body of deceased Kaabil Khan at Ex. No.27/C, receipt of receiving dead body of deceased Mukhtiar Ahmed at Ex. No.27/D, photograph at Ex. No. 27/E. It is pertinent to mentioned here that at this stage during his evidence, the further statement U/S 161 Cr. P.C was supplied to the accused side vide receipt at Ex. 28.

16. PW-2 Aijaz Ali examined at Ex.No.29.

17. PW-3 Manzoor Ali examined at Ex.No.30.

18. PW-4 Medical Officer/Doctor Gul Muhammad Jhatial is examine at Ex.31, who produced police letter No.8 dated 17-1-2018 at

Ex. No. 31/A. Medical Certificate of Kaabil Khan Ex.No.31/B, police letter No.87 for conducting post mortem of deceased Karamullah and Mukhtiar Ahmed at Ex.No.31/C, police letter No.87 dated 17-1-2018 at Ex.No.31/D, Lash Chakas Form of Karamullah Ex.No.31/E, Lash Chakas Form Mukhtiar Ahmed Khan at Ex.No.31/F, post mortem of deceased Karamullah Ex.No.31/G, post mortem of deceased Mukhtiar Ahmed Khan at Ex.No.31/H, receipt of receiving last worn clothes of deceased Karamullah Khan and Mukhtiar Ahmed khan at Ex.No.31/I, receipt of post mortem report of dead body of deceased of Karamullah Khan along with three pallets at Ex. No.31/J, Lash Chakas form of accused/deceased Ghulam Qadir @ Qadoo at Ex.No.31/K, post mortem of Ghulam Qadir at Ex.No.31/L ,

19. PW-5 Medical Officer/Doctor Rasool Bux Shaikh at Ex.No.32, who produced police letter No.92 dated 17-1-2018 at Ex.No.32/A, Lash Chakas Form of deceased Kaabil Khan at Ex.No.32/B, post mortem of deceased Kaabil Khan at Ex.No.32/C, Chandka Medical College Hospital Larkana case sheet at Ex.No.32/D, receipt of clothes of dead body at Ex.No.32/E.

20. PW-6 Bakht Ali at Ex.No.34, who produced memo of injuries at Ex.34/A, memo of dead body of deceased Mukhtiar Ahmed Khan at Ex.34-B, Danishtnama at Ex.34-C, memo of inspection of dead body of deceased Karamullah Khan at Ex.34-D, Danistnama of deceased Karmaullah at Ex.34/E, memo of last worn clothes of deceased Mukhtiar Ahmed Khan at Ex.34/F, memo of last worn blood stained clothes of deceased Karamullah Khan at Ex,34/G, memo of inspection of dead body of deceased Kaabil Khan at Ex.34/H, Danishtnama of deceased Kabil Khan at Ex.34/I, memo of blood stained last worn clothes of deceased Kabil Khan at Ex.34/J, memo of place of incident at Ex.34/K, memo of recovery of GLI Car at Ex.34/L,

21. PW. No.7 Tapedar Nadeem Mahessor at Ex.35, who produced letter No.20/2018 dated: 01.02.2018 issued to Mukhtiarkar at Ex.35/A, and other letter dated 20/2018 dated: 19.02.2018 at Ex.35/C, Site sketch at Ex.35-D.

22. P.W No.8 SIP Manzoor Ali Mangi at Ex.36 who produced entry No.26 at Ex.36-A, entry No.35 at Ex.36/B, entry No.38 at Ex.36/C, entries No.39 and 42 on same page at Ex.36/D, entries No. 47

and 07 on same page at Ex.36/E, entry No.6 at Ex.36/F,

23. PW No. 09 Muhammad Awais at Ex.38, who produced mashirnama of Maqbozgi at Ex.38/A,

24. P.W 10 PC 2044 Asadullah at Ex.39, who produced mashirnama of arrest of accused Abdul Sattar Chandio at Ex.39-A, PW PC Zulfiquar Ali was given up at Ex.40,

25. P.W 11 SIP Asad Nawaz at Ex.41.

26. P.W 12 Talib Hussain at Ex.42, who produced letter of Meezan Bank at Ex.42/A.

27. P.W 13 Mashir Faiz Muhammad Godani at Ex.43, who produced mashirnama of arrest of accused Zulfiquar Ali and recovery of motorcycle at Ex.43/A.

28. P.W 14 Inspector Manzoor Ahmed Leghari at Ex.44, who produced mashirnama of arrest of accused Ghulam Murtaza along with motorcycle at Ex.44/A, prosecution given up witness DSP Faheem Ahmed at Ex.45. P.W 15 WHC Sukhio Khan at Ex.46. P.W No.16 Inspector Mushtaque Ahmed Almani at Ex.47, prosecution given up witness witnesses Mehran Ali, Hubdar, Awais Ahmed, and Amir Khan at Ex.48.

29. P.W 17 Muhammad Aijaz (retired SP) at Ex.49, who produced order transfer of investigation at Ex.49-A, letter fo r CDR reports at Ex.49/B, Letter to SDPO City Hyderabad for CDRs at Ex.49/C, CDR report of accused Sikandar Ali No.0302-3469126 (four leaves) Ex.49/D, CDR of accused Sikandar Phone No.0312-3103394 (three leaves) at Ex.49/D-1, CDR of Sardar Khan (seven leaves) at Ex.49/E, CDR of accused Sardar Khan (five leaves) at Ex.49/E-1, CDR of accused Aijaz Phone No.0300-3254020 (eleven leaves) at Ex.49-F, CDR of accused Saeed Ahmed Phone No.03003400531(five leaves) at Ex/49-G, CDR of accused Burhan Khan Phone No.0300-3400811 (six leaves) Ex.49/G-1, CDR of accused Ghulam Qadir Chandio No.0306-3258235 (three leaves) Ex.49/H, CDR report of accused Ghulam Murtaza @ Murtoo Phone NO.0302-3277082 (seven leaves) 49/I, memo of arrest of accused Sikandar Ali at Ex.49/J, entries No.13 and 14 on same page at Ex.49/K, memo of arrest of accused Ali Gohar at Ex.49/L,

entry NO. 20 at Ex.49/M, entry NO.20 at 1710 hours at Ex.49/N, entry No.23 at 1740 hours at Ex.49/O, copy of publication of news papers Ibrat dated 18.1.2018 at Ex.49/P, letter to Incharge forensic laboratory at Ex.49/Q, examiner report at Ex.49/R, inbox manual in mobile phone of accused Sardar Khan at Ex.49/S, memo of search of house of accused Ali Gohar at Ex.49/T, memo of house search of accused Sikandar Chandio at Ex.49/U, memo of search of otaque of accused Ali Gohar at Ex.49/V, memo of search of otaque of accused Sikandar Chandio and Murtaza Chandio at Ex.49/W, photographs of accused Burhan Khan at Ex.49/X to 49/X-1,x-2,X-3, Criminal record of accused Ghulam Qadir alias Qadroo at Ex.49/Y, criminal record of accused Ali Gohar at Ex.49/Z, criminal record of witness Manzoor Ahmed at Ex.49/AA, criminal record of deceased Karamullah at Ex.49-AB, report of chemical examiner regarding blood stained earth and clothes of deceased at Ex.49/AC, Report of Ballistic expert at Ex.49/AD, copy of letter No.3410 dated 30.5.2018 at Ex.49/AE, copy of letter to Manager Meezan Bank at Ex.49/AF, copy of letter to SHO PS Mehar dated 5.6.2018 at Ex.49/AG, copy of letter to Deputy Director Taxation and Narcotics Motor Registration dated 12.6.2018 at Ex.49/AH, copy of letter issued by Excise and taxation motors dated 21.6.2028 at Ex.49/AI, copy of management of vehicle at Ex.49/AI-1.

30. On the application of ADPP for state, summon was issued to SIP Asim Hussain, however he was given up by the advocate for informant vide his statement at Ex.50. Thereafter learned ADPP for the state filed statement at Ex.51, whereby he closed the side of prosecution.

31. The statements under section 342 Cr.P.C of present accused Sikandar at Ex. 52, wherein he professed his innocent. However, neither he examined him self on oath nor cited any witness in his defence to disprove the allegations.

32. The Statement under section 342 Cr. P.C of present accused Ali Gohar at Ex. 53, wherein he professed his innocent. He submitted separate written statement as required under section 265-F (5) Cr PC along with CDR and other documents. However, neither he examined him self on oath nor cited any witness in his defence to disprove the allegations.

33. The statement under section 342 Cr.P.C of present accused Sardar Ahmed was recorded at Ex.54, wherein he professed his innocent. He stated that he has never been involved in any kind of conspiracy or abatement for commission of any kind of offence including this one. He had never issued any threats to anyone including the deceased persons, informant and PWS. He had been restraining the deceased persons informant and P. Ws as being head of my tribe and member of parliament so also law-abiding citizen from business relative gambling and narcotics. He produced certain documents along with his statement. However, he neither examined himself on oath nor cited any witness in his defence to disprove the allegations.

34. The statement under section 342 Cr.P.C of present accused Burhan was recorded at Ex.55, wherein he professed his innocent. He has been falsely implicated by informant and PWs due to their grudge with his elder brother as his brother restrain them and deceased persons from the business of gambling and narcotics. He submitted separate written statement as required under section 265-F (5) Cr PC. He produced certain documents along with his statement. However, he did not examine himself on oath but intended to examine Haji Rasool Bux son of Haji Sobho Khan Chandio M.N.A, R/o Village Sobho Khan Chandio District Tando Muhammad Khan.

35. The statements under section 342 Cr.P.C of present accused Abdul Sattar, Zulfiquar, Ghulam Murtaza, and Abdul Karim alias Karim Bux were recorded at Ex.56 to Ex.59 wherein they professed their innocent. However, neither they examined themselves on oath nor cited any witness in their defence to disprove the allegations.

36. On the application of learned counsel for informant , Muhammad Ayoob khan Durani (retired SP) was examined at Ex.60 being court witness. He has produced call detail record at Ex.60-A, Ex.60-B and Ex.60-C.

37. The further statement under section 342 Cr.P.C of present accused Ghulam Murtaza was recorded at Ex.61, wherein he professed his innocence. However, neither he examined himself on oath nor cited any witness in his defence to disprove the allegations.

38. The further statement under section 342 Cr.P.C of present accused Kareem Bux was recorded at Ex.62, wherein he professed his innocence. He produced certain documents along with his statement. However, neither he examined himself on oath nor cited any witness in his defence to disprove the allegations.

39. Deposition of defence witness of accused Burhan Khan namely Mumtaz Ali was recorded at Ex.63. Deposition of defense witness of accused Burhan Khan namely Haji Rasool Bux was examined at Ex.64, he produced copy of letter issued to DIG Hyderabad dated 6.8.2025 at Ex.64-A, reply of letter dated 18.8.2025 at Ex.64/B, security arrangements plan at Ex.64-B-1.

40. Thereafter learned counsel for accused Burhan closed the defence side on behalf of accused Burhan Chandio.

41. I have heard learned ADPP for State, learned counsel for informant , learned counsel for accused and carefully perused the material available on record.

42. Arguments of all the defence counsels have been heard and Mr. Ayaz Hussain Tunio advocate on behalf of accused Ghulam Murtaza Chandio and Mr. Sikandar Ali Soomro advocate for accused Abdul Sattar Chandio have filed their written arguments.

43. The crux of their arguments revolves around the following points.

a) That the initial information supplied by informant does not depict name of any of present accused so also, he did not narrate the alleged facts at that time so also names of the accused while conveying information at the time of preparation of danistnama of each of the deceased. That the accused are not identified at the time of said initial information and thus FIR could only be treated as second version which is against law and dictates of the superior courts.

b) That FIR was delayed after several hours without reasonable explanation wherein names of present accused were disclosed after consultation and deliberation and such delay has doubted whole episode.

c) That accused who were let off had taken defence pleas at the very early stage and established the same through defence evidence and material collected by the I.O.

d) That defence plea could only then be considered when firstly prosecution has proved its case which according to them has miserably failed and even slightest doubt has to be legally revolved in favour of accused as a matter of right.

e) That for number of reasons the presence of PWs can be doubted, including informant being in the government service was supposed to have been on duty at relevant time and no proof as to his being on leave having been produced, PWs Aijaz and Manzoor are resident of distant village and no positive evidence having been given as to their presence at relevant time and that CDRs of the PW Manzoor does not show his presence there at and that PW Aijaz having been admitted to have been tutored.

f) That there is no evidence of either abatement against the accused Sardar Khan and that of instigation against accused Burhan nor there is material evidence in respect of motive brought on record.

g) That informant and PWs have dishonestly improved their versions at the trial making themselves unreliable witnesses and have lost credibility as such out of them no one is reliable.

h) That the natural witnesses being shop keepers have not been examined by prosecution so also the two police officials who had admittedly taken the dead bodies to the hospital have been given up as such adverse inference has to be drawn.

i) That the PWs/eye witnesses have not only contradicted their earlier version of police statements though they have never questioned the investigation of the either I.Os before any forum which fact has been admitted by the I.O therefore their evidence stands shattered.

j) That they also gave contradictory version to the site plans and also contradicted with each other on material points which has also made them unreliable witnesses and making their presence doubtful.

k) That none of these PWs sustained any scratch and remained unhurt which is against natural conduct when they have themselves alleged disclosure of accused of ending whole the family.

l) That the witnesses have not withstood test of cross-examination and have shattered the whole evidence and case

m) That medical evidence is only of supportive or corroborative in nature and cannot identify culprits.

n) That the evidence of ocular witnesses does not explain certain injuries and injuries on person of Qadan and Karamullah while grappling each other do not tally with version given at trial which could not have been sustained in such manner which is sufficient to doubt their claim and, in this manner, medical evidence materially contradict the ocular account.

o) That evidence of mashirs is self-contradictory and interested there being no independent witness having been associated.

44. Reliance to the above points has been placed on number of case laws. **2025 SCMR 45, 2025 SCMR 1408, 2025 YLR 116 (LHR), 2024 SCMR 51 SC, 2025 YLR 1702, 2025 P.Cr.L.J 605, 2015 P.Cr.L.J 1269 (Balochistan), 2025 SCMR 662 SC, 2019 YLR (N) 63**,

45. Advocate for informant in rebuttal the arguments advanced by counsel for accused, has submitted that information vide entry No.26 was at the most based on telephone message which does not conform to the requisites of section 154 Cr.P.C, therefore cannot be treated as first information. In this regard he has relied upon case law reported as (**1) (1994) 2 SC 685 (2) PLD 1952 Lahore 215 (3) PLJ 1984 SC 441 (4) PLD 1960 (W.P) Lahore 97 (5) PLJ 1977 Karachi 136 (6) AIR 1970 SC 1566 (7) AIR 1975 SC 1453**.

46. He further contended that contents of inquest report prepared under section 174 Cr.P.C are not substantive pieces of evidence and there is no legal requirement to give full details of whole occurrence therein. In this regard reliance has been placed on **(1) PLD 2006 Peshawar 5 (2) PLD 1996 WP 344 (3) 2004 SCMR 1703 (4) 1968 SCMR 1240 (5) 1982 P.Cr.L.J 396 (6) 1987 P.Cr.L.J 1773 (7) 1978 PLD 171.**

47. According to him, the delay of few hours in lodgment of FIR is well explained in last part of FIR because three persons of the informant were hit and informant remained busy in all proceedings till mid night time and after become free he went to lodge FIR. In this respect he relied upon case law reported as **1)2025 YLR 857 (2) 2023 YLR 2292 (3) 2011 SCMR 872 (4) 2023 SCMR 1724 (5) 1992 PLD SC 211.**

48. According to him all these documents viz: relevant entry, inquest report under section 174 Cr.P.C and FIR under section 154 Cr.P.C are not substantive piece of evidence, therefore the claim that at trial witnesses have made any dishonest improvements is not in accordance with law rather some explanations have come on record could not be turned as dishonest improvements.

49. According to him, both parties have relied upon the CDR reports and though it is up to the Court to see whether same are reliable, considerable or not yet in CDR reports of phone number of accused Abdul Karim @ Karim Bux shows that he was in contact with the number of accused when they were absconders and so also with accused Sardar Khan and such message has also been retrieved from mobile of Sardar Khan and that brother of accused Ghulam Murtaza namely Ghulam Mustafa remained kept approaching the accused party and then contacted Sardar Khan and some of the CDR reports did not depict certain calls of some relevant dates and for this they wanted to conduct cross examination of the I.O, yet the accused challenged such order and got stayed though prosecutor did not challenge the same.

50. He argued that the police machinery including SSP Dadu was working under influence of political persons of the area they have been questioning the act of police even up to Honourable Supreme Court, as such it cannot be said that they have never questioned the investigation processes.

51. According to him, it is never denied that deceased Mukthiar was Tumandar and that he has created Tumandar Council for uplifting of the community and that Sardar Khan was having grudge about such act of the deceased, therefore there were news items published as to such effect. He contended that other Tumandars had also filed petition before Honourable High court of Sindh seeking protection. He raids the said publications in the Court to support his

arguments as to motive and abetment so also submitted copy of such petition and order passed thereon.

52. According to him, the site plans do not bear signatures of the informant party, therefore cannot be made basis for contradicting of ocular account, given by the witnesses at the trial and further argued that in cities there is no legal need to prepare the same by virtue of rule 25.13 (viii) of Police Rules 1934, as such no much reliance could be given to such documents. According to him, even otherwise same are prepared merely for the purpose of getting the cause of death determined through police docket.

53. Learned counsel for informant submitted having read over relevant evidence of the witnesses on the ocular account which included informant and PWs Aijaz and Manzoor Ali, contended that ocular account furnished by them is fully established the charge against each of the accused with respect to the alleged abetment of accused SADAR Khan , facilitated with active role being present at place of incident by accused Burhan and role of firing assigned to each of the accused. He contended that their testimony are very much straightway trustworthy and reliable which could not substantial. It was brought day time incident and presence of witness being residence of locality is already established during cross examination make them natural witness and account of prosecution case given by them cannot be ignored. He contended that presence of P.Ws is yet established don record therefore their evidence enquire confidence. In support of his contention he has relied upon case laws ***(1) 2023 P Cr LJ note 5 (20 2025 YLR 1371 (3) 2023 SCMR 1568 (4) 2023 SCMR 1375 (5) 2022 SCMR 1931 (6) 2022 SCMR 1907 (7) 2023 SCMR 831 (8) 2023 SCMR 795 (9) 2023 SCMR 723 (10) 2025 PLD SC-425 (11) 2023 SCMR 487 (12) 2025 SCMR 1360 (13) 2023 SCMR 478 (14) 2023 P CR LJ 247 (15) 2024 P Cr LJ 982 (16) 2023 YLR 1813 (17) 2023 YLR 2471 (18) 2024 MLD 1217 (19) 2024 YLR 1939 and(20) 2023 SCMR 2292.***

54. He further contended that witnesses appeared in witness box after lapse of more than five years, therefore it was nothing but natural some over lapse may occur in their cross and lengthy cross examination was liable to be checked by Court though placed lengthy cross, yet no material contradictions could be brought on record by defence. According to him, minor discrepancy is liable to be ignored. In

support of his version, he relied upon **(1) 1976 PLD –SC-557 (2) 2023 SCMR 1568 (3) 2011 SCMR 492 (4) 2022 P Cr LJ 1102 (5) 2023 SCMR 831 (6) 2023 SCMR 487 (7) 2023 P Cr LJ Note 5.**

55. He contended that Court has to look at silent feature of evidence with regard to the material facts to the charge, time, place and manner of incident which each of the PWs have fully corroborated and supported each other and such worth of the evidence cannot be brushed assigned. In support of his contention, he has relied upon case laws reported ***(1)2022 SCMR 1907 (2) 1971 SCMR 462 (3) 2024 MLD 1217 (4) 1995 PLD SC 46***.

56. He then contended that though medical evidence is only corroborative or supportive in nature, as it does not identify the assailants which is assailed for the purpose of corroboration to the prosecution case with respect the nature, time and local and inspection of the injuries and the medical evidence brought on record by prosecution supports the version of witnesses on that account and corroborate their version. He has relied upon case law reported in **(1) 2023 SCMR 795 (2) 2025 SCMR 1360 (3) 2023 SCMR, 478.**

57. He contended that though in absence of recovery of weapons from accused, direct evidence cannot be discarded. He relied upon case law reported in **2024 YLR 1939**. In this regard, he contended that when ocular account is believed then mere recovery or non-recovery of weapons become inconsequential and even could not be ground for lesser penalty. In this regard he relied upon case law reported in (**1) 2023 SCMR 478 (2) 2023 SCMR 831 (3) 2024 MLD 1217 and (4) 2024 YLR 1939**.

58. With respect of such recovery, he submitted that corroboration by said aspect is rule of caution not a rule of Law. If recovery is available then same is to be considered and if it is not available the direct evidence of the ocular witnesses as held by Superior Court to be good enough to be considered and relied upon case laws reported in **(1) 2023 P.Cr.L.J 247 (2) 2004 PLD-SC-371 (3) 2004 PLD-SC-663 (4) 2024 P.Cr.L.J 982 (5) 2005 SCMR 1958 (6) 2003 SCMR 1678 (7) 2008 SCMR 784 (8) 2011 SCMR 492.**

59. He contended that it is settled principle of law that the witnesses specially informant will not proceed to substitute real culprit of the murder of his dear one with someone not being real culprit as per law substitute is rare phenomenon and for that it was for defence to have brought such account of ample evidence to substantiate such a plea. Since no such account of defence has been rendered therefore direct evidence of prosecution witnesses against present accused being real culprits is to be given corroboration. In this regard he relied upon case law reported in **(1) 2023 P.Cr.L.J Note 5 (2)2025 YLR 1371 (3) 2023 SCMR 1568 (4) 2023 SCMR 795(5) 2023 SCMR 725 (6) 2025 PLD SC-425 (7)2023 SCMR 487 (8) 2022 SCMR 690 (9) PLD 2022 SC-52 (10)2024 P.Cr.L.J 982(11)2005 SCMR 1958 (12)2008 SCMR 784 (13)2000 SCMR 383 (14) 2021 SCMR 2009 (15) 2007 SCMR 1519.**

60. He contended that defence side was questioning the verbatim of PWs on the ground that it being hearsay as to conveyed of the messages of Sardar Khan through Ghulam Mustafa the brother of accused Ghulam Murtaza and submitted that since it was heard by them, therefore it can not be treated as hearsay within meaning of section 17 (1) and relied upon case law **1996 P.Cr.L.J 1076.**

61. He submitted that the said statement of deceased Mukhtiar conveyed to PW which have deposed by them in Court could count dying declaration which ought to have been necessarily recorded but even could be oral one and cannot be discarded merely that during life time he has not made any complaint about such messages or complaint. He next contended that certain parts of the evidence of PWs deposed in examination in chief as to making of calls, messages and role of the facilitator accused and abettor accused is not challenged ruing cross examination at all therefore in view of article 132 (2) (QSO 1984) same would be taken to have been admitted in this regard he has relied upon case law reported in **(1) 1996 PCRLJ 1076 (2) 1994 PCRLJ 2102 (3) 2007 PCRLJ 1669 (4) 1993 PCRLJ 1632 (5) 1996 PCRLJ 1076 AND (6) 1994 PCRLJ 2102.**

62. He then argued that defence counsel while referring article 129 (g) of QSO 1984, then number of case laws relied at stated that the witness from public shop keepers and police official have not been examined by prosecution therefore adverse inference be taken but according to him the production is not bound to examined each and

every witness and it is prerogative of the prosecution whom to examine and not to examine. In this regard he has relied upon case law reported in **(1) 2000 SCMR 383 (2) 1998 SCMR 1814 and (3) 2007 SCMR 1519.**

63. Learned counsel for informant after going through statement of accused Sardar Khan submitted that he did not explain the incident narrated by informant party against him nor denied the motive rather gave vague version as to registration of case against him by the informant party merely on the basis of some narcotics, which were old one and informant is not expected to involve a person merely on such ground pertaining to the three murders of his close relatives. He also read out the statements of remaining accused including Abdul Karim @ Karim Bux and he facilitated continuously to the accused and that his plea that he was in the Larkana Court on fateful date by producing such diary, which otherwise does not show the time of his arrival/appearance or leaving the Court. He also argued that remaining accused have not explained as to why they were implicated in case and have not denied the occurrence and that they have not substantiated their claim being falsely implicated. After reading over the statement of the accused Burhan Khan and defence witnesses, he submitted that all the call data records were managed one, one phone number is in the name of Saeed and other is in the name of Majeed Chandio, while the I.O did not collected the CDRs of the numbers which was actually registered in name of accused Burhan and managed same part of record though he had called report through letter dated 24.1.2018, and further contended that withhold of those CDRs report regarding number in question and for that purpose they needed to cross examine the I.O, which though application was allowed by this Court but accused party challenged same and got the order suspended, therefore they have not been able to opportunity to get said evidence clarified in their favour from mouth of I.O. He also contended that though accused Buhran Khan by referring the evidence of I.O that when he claimed that accused Burhan after obtaining interim bail, joined investigation on 31.1.2018 then how the I.O become aware about his phone number on 24.1.2018 at time of issuance of such letter. Respecting defence witnesses after reading their evidence, contended that DW Mumtaz has given changed information such residence in Qasimabad and passing of night by accused Burhan. He even did not produce any documentary proof as to having title of such house and he also argued that defence witness Rasool Bux exaggerated

his version from that of police statement and has not produced the record of that time either before police or before Court and documents produced by him are substantial managed in the year 2025. He therefore contended that said DWs are interested and their evidence is after though therefore unreliable.

64. I have considered the submissions of respective parties and perused the evidence available on the record.

65. Now the points for determination would arise as under:

POINTS FOR DETERMINATION

Point No.1. Whether deceased died unnaturally due to receiving firearm injuries?

Point No.2. Whether accused Sardar Khan under the motive of formation of Tumendar council conspired to get three deceased killed and then instigated/abetted causing of such murders?

Point No.3. Whether the accused Buhran Khan having come along with remaining accused in land cruiser having rolled down door glass of his vehicle, instigated the remaining accused to commit the murders of said three deceased having caused revolt against Sardar Khan.?

Point No.4. Whether accused Abdul Sattar abetted/facilitated co-accused by giving his car bears reg no BFZ-428 to be used for coming to the place of incident and going therefrom?

Point No.5 Whether accused Karim Bux conspired/felicitated and thereby abetted co-accused?

Point No.6. Whether on fateful date time and place the accused namely Ali Gohar, Ghulam Murtaza, Sikandar and Zulifqar besides Ghulam Qadir @ Qadoo (since deceased) caused murders of three deceased, Karamullah, Mukhtiar and Qabil by making fire shots of respecting weapons with their common object as charged/alleged by prosecution?

Point No.7. What should the judgment be?

66. My findings on the above points along with reasons are as under:-

FINDINGS

Point No.1……Affirmative.

Point No.2 to 6……As under

Point No.7……Accused are acquitted U/S. 265-H(1)Cr.P.C.

REASONS

POINT NO: 1

67. In order to prove this point, prosecution examined two Medical Officers viz: PW-04 Dr. Gul Muhammad (Ex.31) and PW-05 Dr. Rasool Bux (Ex.32). The evidence of PW-04 Dr. Gul Muhammad shows that on 17.01.2018 he was posted as Senior Medical Officer at Taluka Hospital Mehar, where he firstly examined injured Qabil Khan S/o Karamullah Khan Chandio in injured condition at about 9:30 a.m on receipt of police letter No.86 dated 17.01.2018 Ex.31/A for examination, treatment and certificate. The Medical Officer found the following injuries on his person:

INJURIES.

1***. Firearm wounds (09) nine in numbers on right thigh and gluteal region.***

68. PW-04 Dr. Gul Muhammad had produced provisional MLC of injured Qabil Khan at Ex.31/B. On the same day, he also conducted post-mortem examination of deceased Karamullah S/o Khasho Khan Chandio, Mukhtiar Ahmed S/o Karamullah Khan Chandio and Ghulam Qadir @ Qado S/o Parial Chandio on receipt of police letter No.87 dated 17.01.2018 Ex.31/C along with lash chakas forms Ex.31/E and Ex.31/F.

69. As per evidence of PW-04 Dr. Gul Muhammad, he conducted post-mortem of deceased Karamullah and found following injuries:

INJURIES.

1. Firearm punctured type of wound 1 c.m in diameter in front of

right chest upper part (wound of entrance).

2. Firearm lacerated wound 3 c.m x 2 c.m on right scapular region (wound of exit injury No.1).

3. Fire gutter shaped wound 6 c.m x 6 c.m left lumber region of abdomen near to umbilicus (wound of entrance).

70. He opined that injuries were antemortem in nature, caused by firearm and death occurred due to excessive hemorrhage and damage to vital organs i.e. lung and intestine including abdominal aorta, which resulted in instantaneous death. He produced post-mortem report at Ex.31/G.

71. PW-04 Dr. Gul Muhammad further deposed that he conducted post-mortem of deceased Mukhtiar Ahmed and found following injuries:

INJURIES.

1. **Firearm punctured type of wound 1 c.m in diameter below right ear (wound of entrance).**

2. Firearm lacerated type of wound 3 c.m x 2 c.m on left mandible region (wound of exit injury No.1).

3. Firearm lacerated type of wound 3 c.m x 2 c.m on left cheek (wound of entrance and exit).

4. Firearm puncture type of wound (07) seven in number each measuring 1 c.m in diameter in front left side of chest (wound of entrance).

5. Firearm lacerated types of wounds (07) seven in number each measuring 1 c.m x 1 c.m on back of

chest (wound of exit injury No.4).

6. Firearm lacerated type of wound in 4 c.m x 2 c.m on left forearm laterally, fracture visible.

72. He opined that all injuries were antemortem in nature, caused by firearm and death occurred due to damage to vital organs i.e. heart and lung, resulting instantaneous death. He produced post-mortem report at Ex.31/H.

73. PW-04 also conducted post-mortem of deceased **Ghulam Qadir @ Qado** and found following injuries:

INJURIES.

1. **Firearm puncture type of wound 1 c.m in diameter, below chin (wound of entrance).**

2. Firearm lacerated type of wound 6 c.m x 4 c.m on occipital region (wound of exit injury No.1).

3. Firearm puncture type of wound 1 c.m in diameter on right side of chest (wound of entrance).

4. Firearm lacerated type of wound 3 c.m x 2 c.m on back of right chest (wound of exit, injury No.3).

5. Firearm gutter type of wound 6 c.m x 6 c.m above umbilicus (wound of entrance)

6. Firearm lacerated type of wound 8 c.m x 8 c.m on left lumber region (wound of exit No.5).

7. Firearm gutter type of wound 5 c.m x 5 c.m on left elbow posteriorly (wound of entrance).

8. Firearm lacerated wound 7 c.m x 5 c.m on left forearm interiorly fracture visible (wound of exit No.7).

9. Firearm lacerated wound 4 c.m x 3 c.m on left wrist (wound of entrance and exit fracture visible).

10. Firearm lacerated wound 4 c.m x 2 c.m on right wrist (wound of entrance and exit fracture visible).

74. He opined that all injuries were antemortem in nature, caused by firearm and death occurred due to damage to vital organs i.e. brain, lung and liver, which resulted instantaneous death. He produced post-mortem report at Ex.31/L.

75. Thereafter, as per evidence of PW-05 Dr. Rasool Bux, on 17.01.2018 he received dead body of injured Qabil Khan, who later succumbed to injuries, along with police letter No.92 dated 17.01.2018 Ex.32/A and lash chakas form Ex.32/B. He conducted post-mortem examination and found following injuries:

INJURIES.

1. Multiple firearm punctured type of wounds measuring about 1 c.m in diameter (9) nine in numbers at right side of Gluetal region with antiseptic measures have been done.

2. Surgical stitching wounds about 24 c.m x 1 c.m at mid abdomen with antiseptic measures have been done.

76. The Medical Officer opined that all injuries were antemortem in nature, caused by firearm. He further opined that laparotomy had been performed at CMCH Larkana and death occurred due to excessive hemorrhage leading to hypovolemic shock. He produced post-mortem report at Ex.32/C.

77. Therefore, from the medical evidence of both Medical Officers, it stands proved that all the deceased persons received multiple firearm injuries which were antemortem in nature and sufficient to cause death in ordinary course of nature. The deaths were caused due to excessive hemorrhage and damage to vital organs.

78. Thus, the point under discussion is not controversial to the extent of unnatural deaths of deceased persons. Accordingly, this point is answered in the **affirmative**.

Point No.2 to 6

(i) MOTIVE

79. Per law absence of ***motive*** or non-establishment of same through evidence does not materially affect the core part of incident. ***(see 2024 SCMR 1608).*** Yet it is also established law that when some ***motive*** is set-up then it has to be proven and in case of failure, it adversely reflects upon the claim of the prosecution. In this regard reliance can be placed on ***2025 SCMR KHIZAR HAYAT Versus The STATE***, wherein it has been held as under:

> "6. It is also noteworthy that the High Court had categorically found that the motive set up by the prosecution had not been proved by it. It is by now settled that the prosecution though is not obliged to prove the motive in each and every case, however, once the motive is set up then it must be established and in case of failure to prove the same, then prosecution must suffer its consequences and not the defence."

80. In this matter the ***motive*** advanced by the informant party is revolving around the formation of some Tumandar council by deceased Mukhtiar Ahmed, claimed to be one of the Tumandar of Mir-Rani clan of Chandio tribe. It is in evidence that Chandio tribe is being headed by present accused Sardar Khan and the Tumndars of the community perform tribal functions under his command. It is however claimed by informant party that selection of Mukthair Ahmed as Tumandar was not accepted or constituted by Sardar Khan since after 2011. Though there appears reasonable material on record that said deceased Mukhtiar was performing as Tumendar or at least claiming to be so but for that no material has been produced in evidence to show that accused Sardar Khan was against such selection or allowing him to act as such. According to accused, some other person was Tumandar of this clan. However, in this case the appointment of Tumandar does not appears to be issue, but formation of Tumandar council appears to have been shown an issue as per FIR. It was recorded in FIR that due to formation of Tumandar council, accused Sardar Khan has been declaring it to have been formed for initiation of revolt against him and his chieftainship was going to be challenged, therefore wanted same to be abandoned. In this respect, it is further recorded in the FIR that accused Sardar Khan had been sending message to the said Mukthiar Ahmed to abandon the Tumandar council though apparently an unregistered body. The FIR however does not show as to why he wanted to be abandoned, except that it was intended as causing revolt against him. Question arises as to for what purpose, it was formed so that he may feel it to be intended at causing revolt against him. The purpose or its aim is not shown in the FIR but in the Examination-in-Chief informant Parvaiz Ahmed shown that same was constituted for social and economic issues of Chandio tribes on which accused Sardar Khan had severally objected. Now the question arises was this purpose sufficient or enough to create grudge in mind of accused Sardar Khan to get it abandoned. He himself is shown to have been elected public office holder in which capacity, he was to serve the nation as whole or general public and persons of his area including his own community/tribe for their uplift either on social side or economic side, therefore the claim that it was due to said purpose, he would be having objection on its formation does not appear to be digestible. In such scenario as to why merely the Tumandar council have been established for the purpose of social and economic betterment of

Chandio tribe. In such back drop, to object over constitution of Tumandar Council for such purpose is not acceptable. However, when we go through further Examination-in-chief of informant Parvaiz, it is further disclosed by him that in some news clips dated: 20.12.2017 Daily Awami Awaz, said Mukhtiar Ahmed had disclosed next month they will call conference of Tumandar council and would ***show strength*** of such Tumandars. If the purpose was social and economic uplifting of Chandio Community then why there was need to ***show strength*** to general public. It raises eye brows. Even clip of this newspapers was not brought on record through evidence nor during cross-examination. However, during proceedings, an application attaching therewith the copy of news article, was made for calling the reporter of newspaper but through order dated **31.05.2025**, it was pointed out that said person has since been died therefore application was turned on with the directions that during arguments same may be submitted. During arguments such copy was also placed on record. Besides, it some other clippings of newspapers have also been placed on record by advocate for informant for the purpose of looking into such claim of informant. As to why his brother Mukhtiar Ahmed wanted to **show strength** any conference, I have looked into the details of said newspapers though not part of the evidence. The contents of news clipping Awami Awaz dated 20.12.2017, appears to be just an analysis based on the information of the one Pawail Junejo (since deceased) that too apparently based on one side story given by said Mukthiar Ahmed and hence does not stand on the lines of journalistic ethics, according to which a journalist have to obtain the view/explanation from other side also and then to publish the same. Be that it may, since in the evidence as stated above, it was claimed that Mukthair Ahmed wanted to ***show strength*** to the general public of their tribe through such platform but as to why the informant did not utter any word further in this regard during his Examination-in-chief being reproduced as under:

> "----------My brother Mukhtiar Ahmed had also disclosed such apprehension in his interview which was published in daily Awami Awaz Hyderabad dated 20.12.2017 about one

month prior to this incident. In that interview Mukhtiar Ahmed had also disclosed that in the first month of next year he would call conference of Tamandar Council and would show the strength of general public of their tribe on such platform. ----------.”

81. There is no other matter but to look at it this clipping of newspapers for the purpose. When we go through said publication, it rather appears that behind formation thereof, there were certain political designs also. It is recorded therein that said Mukhtiar Ahmed having been elected a chairman of Tumandar council was also authorized to politically affiliate with any other political personality/group except the accused Sardar Khan and then it come to fore in article that he had affiliated with the other political leader of the area namely Nadir Khan Magsi. This act of leaving political platform of accused Sardar Khan and switching to other political group of same party (ruling party) was apparent politically motivated design and for that purpose this ***strength*** was going to be ***shown***. This possibly have been the sustainable reason behind said objection of accused Sardar Khan over formation of Tumandar council, which could have served a better purpose for such motive but again whole of the evidence of informant remained silent in this regard. The purpose is understandable, if the informant party would have claimed such a purpose/design behind such formation of the council then the said deceased or the informant party would have put themselves in same boat, being politically motivated. This appears to have been therefore withheld. The said clipping though also carry the other purpose about formation of such Tumandar council was the social and economic wellbeing of the tribe The informant party appears to have chosen to introduced the later purpose at the time of evidence. As stated above, that at the time of registration of FIR, the either purpose was not disclosed and after passage of huge time, it has been given for the first-time during Examination-in-chief. After incident the general public started supporting cause of informant party as appears from the other news items of clippings placed on record by the advocate for informant. Therefore, introduction of said later purpose during the evidence perhaps

was intended by them to bring the public much closer to them. Therefore, introducing this purpose before court was likely to bring sympathy of public with them. In case of putting forth the other purpose as to ***showing strength*** for politics designs as mainly appear in said article, would have again landed them in the arena of same high politically influenced persons. It was very likely that general public having realized such fact that they also wanted to become political high hands of the area then might not have given such support to them as so been given. Therefore, perhaps they thought it better not to put forth such part of the purpose of formation of counsel before court in their evidence. Choosing of either of the two purposes about formation was decided by them at the stage of trial. By then the informant party was being supported by general public at large as appear from the press clippings produced. It was therefore best suited them to take this purpose for formation of the Tumandar council as to social and economic uplifting to their community and abandoning other one based on political designs. To leave one group and to join other group which had landed them in same boat and there was every possibility that said public on such score would not have sided with them and that may not have been able to gain sympathy of the public. It would have remained mysterious, if the counsel for informant had not placed on record the news clip of Awami Awaz newspapers. Such article is being reproduced as under:

Note: The CFMS (DC)
doest not support
any image viz: newspaper
Awami Awaz dated: 20.12.2017.

82. When we go through such news article, it is become transparently clear enough that the said alleged **strength** was actually meant to show political force, as it is clearly stated that deceased had joined other political group and wanted to show such ***strength***. Then further question arose as to why the informant abstained or stopped himself deposing such fact in his such part of evidence or in cross-examination. We should keep in mind that nothing any of said purposes about formation of Tumandar council was disclosed by informant in FIR or in his subsequent statements given to the I.O at different times during

those days. For the first time, he had introduced the social purpose of the council in the evidence but avoided to depose about the political purpose thereof as both depict in the said newspaper clipping. As to why the political purpose was withheld by informant, the answer perhaps lies in the fact that by the time evidence was being given that informant party had found that general public was supporting their cause, because of the said purpose of formation of the council being economic and social welfare of the tribe. And that if the political purpose of the council was to be put forth, same would have been landed them on the same pedestal. This might have taken away such support from them. We know that there are number of people of this Chandio community having joined different political parties and nationalist parties and serving at the helm thereof. If this could have been the situation under such intention of accused Sardar Khan, then the said persons of different political parties or nationalist parties would have been also prime target. But there does not appear any such thing hence the motive even that in light of such press clipping does not appear to be valid enough, especially when the article itself bears the news that said deceased Mukhtiar had himself disclosed that they were not assembling against anyone. In the circumstances the only purpose of the formation council might have been to remove the accused Sardar from chieftainship but again this purpose has never been asserted nor could be gathered in attending circumstances. This purpose could have been the strongest one, if at all the accused Sardar wanted them to be removed from his path, but this has never been case of informant party. In the circumstances motive does not appear to have been sufficient enough. It is now established law that even if motive is proved no conviction can be recorded, if the ocular account is disbelieved on the strength of other evidence because motive itself is double edged weapon and thereby if it provides the reason to kill, it equally furnishes a reason for false implication. Reliance in this regard is placed upon case law reported as **2026 SCMR 182 Re- AZHAR IQBAL and 3 others Versus The STATE through P.G Punjab, Lahore and others,** wherein it has been held as under:

> "10. After disbelieving the prosecution evidence qua the ocular account, recovery of weapons of offence and the medical

evidence, the petitioners cannot be convicted and sentenced merely on the basis of motive alleged against them. Even otherwise, the motive is a double-edged weapon, which can be a reason for the commission of offence and at the same time it may be a reason of false involvement of an accused in a case."

(ii) DELAY IN FIR.

83. In the light of case laws relied upon by learned counsel for informant, the law only recognized the first information report to be the document whereby the an information relating to commission of cognizable offence is given to a incharge of police station, which shall be reduced in writing on the prescribed book and read over to informant, be signed by him, within the mandates of section 154 Cr.P.C. In this regard the reference was made to number of case laws including ***PLD 1984 SC 441 , PLD 1952 LHR 215*** *and* ***PLD 1960 (W.P.) Lhr 97,*** wherein it has been held as under:

"14. Exhibit P. O./1 is an unsigned telephonic message. It is, therefore, not a first information report within the meaning of section 154 of the Code of Criminal Procedure which reads as follows:

"Every information relating to the commission of a cognizable offence, if given

orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Local Government may prescribe in this behalf."

Only information complying with the provisions of this section constitutes what is known as the first information report. The entry in the roznamcha Exh. P. O./1 does not conform to the pro visions of this section. Head Constable Sardar Khan, who obtain ed the information, was not in charge of the police station. The record of the information in the roznamcha does not show that it was read over to Major Hamid. It was not signed by Majo Hamid. Moreover, it was not entered in the book

prescribed by the Provincial Government for the purpose of recording first information reports. In Ahman v. Emperor (A I R 1938 Lah. 787) it was held that an entry made by a Sub¿¿¿Inspector in the daily diary of the police station is not a first information report. The question whether an unsign ed telegram and telephonic message are first information reports, within the meaning of section 154 of the Code of Criminal Proce dure, was considered by a Division Bench of the Lahore High Court in Crown v. Faiz Muhammad (P L D 1952 Lah. 215), and their Lordships observed :

"Unsigned telegrams and telephonic messages are not Firs Information Reports within the meaning of section 154, Criminal Procedure Code, and if after the receipt of a telegram or telephonic message the police proceeded to the spot and take down the information from the complainant or the complainant and get it signed by him, the signed statement would be the

First Information Report and not the telegram or the telephonic message".

In the present case, Sub¿¿¿Inspector Siraj¿¿¿ul¿¿¿Haq went to the Mayo Hospital and recorded Abdul Ghani's statement Exh. P. E. which, in our opinion, is the first information report in the case.

84. Somewhat same view has been taken in the case law reported as ***PLJ 1977 Karachi136 (DB).*** No doubt the initial information of the incident was conveyed to the police through phone call soon after incident to ASI Manzoor Mangi. His such words from Examination-in-chief are being reproduced as under:

"On 17.01.2018 I was posted at P.S Mehar A. Section and was present as duty Inchrage. In the morning at about 9:10 a.m, I received information through phone call that upon them the Qadoo party had attacked, wherein his father Karamullah, brother Mukhtiar and brother Qabil have sustained injuries, whom they were taking to Hospital, where we should also reach and complete necessary Karwai.----------"

85. It appears that telephonic message was conveyed as such same cannot be termed as first information report within the

meaning of section 154 Cr.P.C, in view of above dictums. This entry was neither referred by him in his examination in chief nor produced in examination in chief. However during cross examination, he disclosed that he had kept entry No. 6 and deposed as under:

> "----------
> I had recorded entry No.6 pertaining to the information conveyed by complainant Pervaiz and received by me at P.S. I had kept such entry No.6. By virtue of such entry I had received information about sustaining injuries of three persons. I am concerned with such entry. I can produce such entry.----------."

86. Same was produced by him at Ex. 36-F. We should keep in mind that in said entry as well as inquest reports, the informant only specifically named deceased Ghulam Qadir alias Qadoo to have committed such murders without naming others or disclosing any motive behind such murders. Though such suggestion was denied by informant during his evidence about conveying information in such a manner but this fact is otherwise admitted by ASI Manzoor Mangi in his above reproduced Examination-in-chief. In light of case laws relied upon by advocate for informant that these documents cannot be substantive pieces of evidence, therefore are not required to give details.

87. It was also argued by advocate for informant that first information report is not substantial piece of evidence by relying upon case law relied above on the points and therefore informant need not to necessarily give minutes details therein at the time of registration of FIR. It is correct but it is also established law that it is not substantive piece of evidence only for the purpose of conviction, but at the same time per settled principle of law, same is to be used for the purpose of corroboration by its maker and for the purpose of contradictions through cross-examination from the mouth through its maker. In this regard

reliance is placed on case law reported in ***2025 SCMR 762 Re-MUHAMMAD RAMZAN Versus The STATE***, wherein it has been held as under:

> “12---------- t is settled law that FIR by itself is not a substantive piece of evidence unless its contents are affirmed on oath in the witness box by its maker and its maker is subjected to the test of cross-examination. In view of Articles 140 and 153 of the QSO, FIR being a previous statement can only be used for contradicting its maker but unless the same is not (Sic) proved through its maker, cannot be used as a substantive piece of evidence in favour of the prosecution's case. In this regard we would refer to the judgment of the Supreme Court of India in "Nasar Ali's case (AIR 1957 SC 366), wherein it has been held that:-
>
> "A first information report is not a substantive piece of evidence and can only be used to corroborate the statement of the maker under section

157 of the Evidence Act or to contradict it under section 145 of that Act. It cannot be used as evidence against the maker at the trial if he himself becomes an accused nor it corroborate or contradict other witnesses. It is a cardinal principle of criminal jurisprudence that the innocence of an accused person is presumed till otherwise proved. It is the duty of the prosecution to prove the guilt of the accused subject to any statutory exception."

As stated earlier, FIR is not a substantive piece of evidence unless proved by its maker by deposing on oath in the witness box in support thereof except recorded on the report of a person who is near to die.----------."

88. Even, in the case law relied upon the advocate for informant reported as ***PLD 1966 (W.P) Lahore 344 Re- HAJI MUHAMMAD¿¿¿---Appellant versus THE STATE,*** it was held as under:

"7.---------- It is accepted principle of law that the first information report is not a substantive evidence, nor a statement made to the police under

section 161, Criminal Procedure Code, or a statement of a witness examined in the inquest report under section 174 of the Code of Criminal Procedure, can be treated as a substantive evidence. In fact, a police officer under section 174, Criminal Procedure Code, has to make an investigation and to draw up a report, to find out the cause of death, in the presence of two or more responsible inhabitants of the neighborhood. The statements of

the witnesses incorporated in the inquest report are not to be signed by the witnesses, it is only the report which is to be signed by such a police officer and others who concur therein.

Therefore, a statement which forms part of the inquest report is a statement recorded by a police officer, in the course of an investigation and cannot be utilised as substantive evidence. The statement in the inquest report or under section 161, Criminal Procedure Code at the most can be utilised under

section 162, Criminal Procedure Code to contradict such witnesses in the manner provided by section 145 of the Evidence Act.----------

8.----------

9. For the reasons given above, we accept the appeal, set aside the conviction and sentence of the appellant and acquit him. His sentence, of death is not confirmed. He is ordered to be released forthwith if his custody is not required in any other."

89. However, the question here is whether first information report within the meaning of 154 Cr.P.C was promptly made

against accused or was unreasonably delayed. For this, we have to go through the evidence of the prosecution witnesses to find out either way. The incident is said to have taken place at 9.00 a.m on 17.0 1.2018, while the FIR is stated to have been registered after about 16 hours during night hours at about 0100 hours dated 18.01.2018. According to accused party, the delay has not been reasonably explained on the ground that there were number of opportunities available with informant party to have lodged FIR by giving such information against them, if at all they were the real perpetrators of the crime. Against this claim, the advocate for informant while relying upon the case law referred in his arguments above on this point, has stated that said delay is well explained and FIR was lodged at first opportunity, then became available to them and prior thereto, they were busy in taking the injured to hospitals and were busy in funeral proceedings, therefore, it cannot be said that said delay is not explained at all. In this respect though both parties have referred the number of case laws, wherein it can be found that our Superior Courts, for cause of delay in lodgment of FIR, taking injured to hospital, getting medical treatments, making preparation and completing funeral and burial rituals have recognized as good/plausible explanation therefor. But at the same time, there are number of authorities especially relied upon by counsel for the accused that these explanations cannot be accepted for delay on the ground that the verbatim recorded the earliest opportunity remains unpolluted and stand on higher pedestal, while every movement of delay brings adverse effect in the case as non-ruling out consultation and deliberation and even if being got recorded after conduct of postmortem report is meant to keep the details of FIR in line with medical evidence, so as to secure conviction. However, in recently pronounced verdict of Honourable Supreme Court concerning such kind of delays, the Honourable Supreme Court has laid down some criteria for the Court to look in to the evidence of the parties to see whether there was delay on the part of informant or it was due to negligent act of police. It has been elaborately held in the such judgment passed **in CRIMINAL PETITION NO.1021 OF 2021 Muhammad Bux alias Shahzaib Versus The State through Prosecutor General Sindh order dated: 11.12.2025** as under:

> “7. We have heard the learned counsel for the petitioner as

well as the counsel for the State on merits of the case. The record depicts that there was a delay in registration of F.I.R; the date and time of occurrence is 10:20 pm on 10th August, 2017, whereas the time of registration of F.I.R is 04:30 pm on 11th August, 2017, this depicts considerable delay in a case of a murder. **However, the prime concern of the court shall be that whether the complainant delayed the registration of the F.I.R or it was on the part of the Police.** The Roznamcha (Daily Diary) entry No.33, Exh.13/C shows that the informant promptly reported the matter to the police within 30 minutes with the same version against the present petitioner, however, it was the police who caused

the delay in this case and failed to register the FIR. It is important to note that the informant immediately approached the police regarding the incident."

8. In regards to the delay, which is usually associated with the conduct of the informant or complainant , as to what was his manner after the particular incident, the basic principle is enshrined in Article 21 of the Qanun-e-Shahadat Order 1984 (Order 1984), which is reproduced as under:

21. Motive, preparation and previous or subsequent conduct.

(1) Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

(2) The conduct of any party, or of any

agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto."

Consequently, the victim cannot be made to suffer on account of the delay occasioned by the conduct, omission or negligence of the police officials. The informant, in the present case, acted with due promptitude in reporting the occurrence, as is borne out from the contemporaneous entry made in the

Roznamcha. **It is well settled that while examining the effect of delay, the Courts are required to consider whether such delay is attributable to the informant in reporting the crime, and not the delay occasioned by the failure of the police to discharge their statutory obligation of promptly registering the F.I.R.**

To hold otherwise would frustrate the very object and spirit of the relevant provision of law, as it would permit the entire prosecution to fail on account of the omission, inefficiency or neglect of a police officer, over which the informant or the victim has no control.

The explanation advanced by the police officials in their earlier reports

submitted before this Court that the informant party remained engaged in funeral processions cannot be accepted as a lawful or plausible justification. Once information relating to the commission of a cognizable offence is conveyed to the police through any source whatsoever, it is their bounden statutory duty to take immediate steps to ascertain the facts and to ensure the prompt registration of the F.I.R. The police are not legally justified in waiting for the heirs of the deceased to approach them after the completion of funeral rites, nor can such conduct be countenanced in law."

(Bold & underlined by me for emphasis)

90. Though in the above dictum, it has been observed that once the information is received by police, then duty is casted upon them to ensure prompt registration of FIR and are not legally justified to wait for the legal heirs of deceased to come after completing funeral rituals, which are not otherwise lawful or plausible justification, yet at the same time, it has also been laid down ***"that while examining the effect of delay, the Courts are required to consider whether such delay is attributable to the informant in reporting the crime, and not the delay occasioned by the failure of the police to discharge their statutory obligation of promptly registering the F.I.R.".*** before going further, we should keep in mind that when go through para No. 7 of the judgment reproduced above it is clearly observed by Honourable Supreme Court that the information conveyed to the police through roznimacha entry bore same information against the accused, which was then got incorporated in the FIR registered after several hours. However, in present case none of the present accused was named in said entry No.6 dated 17.01.2018 at Ex.36/F nor any verbatim as depict in the FIR was specifically given. In this regard the words of ASI Manzoor (at Ex. 36) from his cross-examination (conducted by counsels for accused) are being reproduced as under:

"----------
----This entry was the first information of present incident. It is correct that in such entry names of Sardar Khan, Burhan Khan and Ali Gohar Chandio are not mentioned. As per entry No.6 one of the police party was sent to the place of incident, while I along with subordinate staff proceeded towards hospital.----------

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-

----------It is correct that in first information the name of none of the present accused was disclosed.----------
----------."

91. Since the such telephonic message as discussed above is not legally recognized as first information report yet in view of the observations recorded in Para No. 7 of the above judgment of Honourable Supreme Court, a clear distinction has been made, by observing that the said information reported through telephone carried the name of the accused therein so also, the same verbatim against him, which does not appear to be case herein. Therefore, in light of said dictum, we have to look at the evidence of informant party to see whether the delay in lodgment of FIR could be ascribed to the informant or it was solely neglect of the police. If it is found that such delay could be attributed to the informant and was having reasonable opportunity to get registered FIR and still, he failed, then same is to adversely reflect upon his conduct and would lead to show that FIR has been lodged with such delay after consultation and deliberation. The incident is stated to have taken place at 9:00 am and within next 10 minutes the injured were in Mehar hospital, where two were pronounced dead and third one being in injured condition, was referred to Larkana Hospital after apparently first aid treatment. The informant Parvaiz as per his own evidence did not go with his brother Qabil to Larkana and remained in Mehar Hospital, where ASI Manzoor Mangi remained present with him all along there at. It is also admitted position and evidence that PS was just only 200 meters away from place of incident, so also very close to the said Hospital. Even the said ASI Manzoor Mangi was present with him during course of conduct of postmortem of two deceased for couple of hours. The informant Parvaiz being not a injured person, was just standing freely because performing postmortems was job of medical officials, while police party and informant had nothing to do with it. These several hours gave enough time to informant to get his immediate and unpolluted

verbatim recorded, but he did not. The informant himself admitted such facts during cross examination (conducted by different learned counsel for accused) being reproduced as under:

> "----------
> I did not go to the P.S for FIR soon after conduct of post-mortems of Karamullah and Mukhtiar. I am not affirm whether SHO himself arrived at hospital or not. ASI Manzoor Mangi was there. It is correct to suggest that said ASI is Manzoor Mangi is first I.O in this case. I did not get my statement recorded before ASI Manzoor Mangi at hospital. I do not remember the time spent by ASI Manzoor Mangi in the hospital.---------- ---------- It is correct to suggest that I did not personally go to Larkana for getting dead body of Qabil Hussain. I was available at Taluka Hospital Mehar when the dead body of Qabil Hussain arrived there. I

arrived at Taluka Hospital Mehar at about 8:45 p.m (night time). The body arrived there at about 9:00 or 9:05 p.m. I did not go to P.S A. Section Mehar during this intervening period of 15 / 20 minutes. ASI Manzoor Mangi was also available at Taluka Hospital Mehar at that time. It is correct to suggest that neither I gave any statement nor disclosed name of any accused including Sardar Khan and Ali Gohar before ASI Manzoor Mangi at Hospital during said time. It is not correct to suggest that at the said time I had given the name of only one accused Ghulam Qadir @ Qadoo Chandio to ASI Manzoor Mangi.----------.”

---------- I arrived at about 09:07/ 09:08 a.m at

Taluka Hospital Mehar. Many persons from public as well as our relatives also arrived at Taluka Hospital Mehar. I do not remember names of such public persons and other relatives. ASI Manzoor Mangi with his team remained at Taluka Hospital Mehar for couple of hours with me. My nephew Sada Hussain and cousin Hubdar also arrived at hospital. It is correct to suggest that my nephew Sada Hussain is working in police department.----------

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."----------

------- The building of P.S A. Section and B. Section Mehar is situated about 200/250 meters away from our otaq. DSP Office Mehar is also situated within the same courtyard having distance of about 50 feet from P.S A. Section. The

incident lasted for about 02 or 02.5 minutes.----------.”

92. It also appears that one of his nephew Sadam Hussain son of said Mukhtiar Ahmed was also present in hospital, who was serving in police department, therefore it can be said that informant had sufficient assistance of his nephew, (a police official having knowledge of such law) to get his immediate verbatim recorded, but they did not. Again, it comes to fore from the evidence of police official ASI Manzoor Mangi that he had offered him to come to P.S and to lodge FIR, but according to him neither informant nor anyone else among them, was prepared for the purpose. His words from cross examination are reproduced as under.

“----------It is correct that there is delay of 16 hours in registration of FIR of this incident. If the complainant in hospital requested for taking his statement under section 154 Cr.P.C, how I could have refused the same. It is correct that names of Sardar Khan, Burhan Khan, Murtaza, Ali Gohar, Sikandar and Zulfiqar surfaced after sixteen hours for the first time in the contents of FIR. It is correct that in

the FIR neither accused Karim Bux nor Abdul Sattar were nominated by name.----------The complainant remained with me in hospital in all for about 06/07 hours. During said 06/07 hours complainant had not disclosed name of any other accused except accused Qadoo Chandio.----------.----------The distance between P.S and place of incident would be just about one furlong. The place of incident is situated in Gul Colony Mehar.---------- In all 06/07 hours were consumed in such proceedings. During those 06/07 hours I was asking complainant to accompany me to P.S for registration of FIR, but he was

saying that he will come back to register FIR after burial of dead bodies.----------.”

93. When we look at the above dictates laid down by the Honourable Supreme court, it can even be found that in light of said evidence, when informant had ample opportunity to get FIR registered at least during course of postmortem of two deceased at Mehar hospital or in evening after their burial, yet they had not made any efforts, therefore delay of such long hours of 16 hours have become material adversely reflecting upon his conduct and delay does not appears to have been reasonably explained. And on other hand it cannot be ruled out that lodgment of delayed FIR was with due consultation and deliberation in order to concoct story as per their own wishes. Reliance in this regard can be placed upon case law reported as ***2025 SCMR 1616 Re-MUHAMMAD ASGHAR Versus The STATE*** , wherein it has been held as under:

“12. Furthermore, the record reflects that in the FIR supra, it was alleged that on 19.07.2012 at about 1:15 p.m. the petitioner initiated his assault on the Deceased and subsequently assaulted the complainant and her daughter. Admittedly though, the FIR was lodged on 20.07.2012 at 2:40 a.m. - an alarming thirteen hours and

twenty-five minutes after the occurrence. The complainant had sought to explain the delay by arguing that she was preoccupied rushing her injured husband from hospital to hospital; however, it was also acknowledged that he was taken by ambulance to RHC Begowala shortly after the occurrence. From RHC Begowala, the Deceased was referred to Civil Hospital, Sambrial, where he arrived at 11:45 p.m. on 19.07.2012 and was administered first aid. **Whilst we are mindful that the foremost priority of the family members, as complainant s, would be to secure treatment for their relative and attending to them - during the time between the occurrence and the administration of**

first aid, the Deceased was only shifted from one hospital to the other. After the arrival at the second hospital a further three hours elapsed before the FIR was ultimately lodged. **Clearly then, there was ample opportunity to submit the report before the actual time of registration. Despite this fact, no plausible explanation for the delay has been provided by the complainant ."**

ALLEGATION OF CONSPIRACY AGAINST ACCUSED SARDAR KHAN

94. Admittedly the presence of accused Sardar Khan is not claimed at place of incident at that time. In FIR it is only alleged that he had been sending messages through different persons for abandoning the Tumandar council without naming any. It is also matter of record that during lifetime deceased never lodged any complaint about threats before any legal forum viz. Police or Courts. It may be kept in mind that FIR does not disclose that such messages were given to the their father deceased Karamullah or anyone else of their family also. Even though FIR was heavily delayed in which consultation could not be ruled out in view of above discussions, yet as stated above, said informant Parvaiz had not disclosed the names of said persons who had been bringing such messages to deceased Mukhtiar nor the date, time of said messages. The informant Parvaiz during his own Examination-in-

chief has while producing FIR, admitted the contents thereof to be same and correct by uttering"---***I produce FIR at Ex. 27/A which is same, correct and bears my signature***. ---", but during cross examination only disputed the same to the extent of some other aspect. ASI Manzoor Mangi (the lodging officer) also disclosed during cross examination that contents of FIR were recorded word to word per disclosure of informant, duly read over to him and signed the same without raising any objection or getting any addition there to. His words from cross examination in this regard are being reproduced as under:

"----------I had got recorded the contents of FIR word to word per disclosure of complainant without making any addition or omission, therein or therefrom. Contents of FIR were duly read over to the complainant in Sindhi who admitted each word thereof to be correct without raising any objection thereon and signed the same. All the mashirnamas/documents were duly read over to the mashirs in Sindhi who admitted each word thereof to be correct without raising any objection thereon and signed the same.----------

----------"

95. The aspect of FIR, which the informant Parvaiz during cross-examination disputed was only with respect to availability of police officials at place of incident at that time or firing from police side and shifting of injured on police mobile to hospital or police mobile with accused, by voluntarily saying that he has disclosed such information to police but was not mentioned in FIR. His words appearing in cross examination in this regard are being reproduced as under:

"----------It is correct to suggest that in the FIR and statements dated 05.06.2018 and 23.01.2023 I have not stated the availability of police mobile with two policemen, firing from police side and shifting of injured Karamullah and Mukhtiar Ahmed on police mobile to Taluka Hospital Mehar. It is correct to suggest that in my statement dated 23.01.2018 I have not mentioned the number of policemen with police mobile and factum of their firing so also factum of shifting the said two injured by them on police van. It is correct to suggest

that in my statement dated 23.01.2018 I have stated that one police mobile was with the accused persons. I knew that police mobile was with accused persons on the day of incident. It is correct to suggest that such fact is not mentioned in the FIR. Voluntarily say, I had such fact before police but police deliberately did not mention such fact in the FIR. It is correct to suggest that I had signed the FIR. The police had read over me the contents of FIR. It is correct to suggest that when police read over me the contents of FIR, my such statement was not mentioned therein. It is correct to suggest that I did not file any application before Ex-Officio Justice of Peace for non-mentioning such fact in the FIR nor did I file any C.P nor did I

file any such application before trial court.----------."

96. The informant, while appearing in Court in his evidence (Examination-in-chief) for the first time introduced the names of accused Ali Gohar and Ghulam Murtaza being the persons, who used to bring such threatening messages of accused Sardar Khan and went on to claim that this was told to him by his deceased brother Mukhtiar. It would be appropriate to reproduced his such words from his Examination-in-chief as under:

I am complainant in this case. Mukhtiar Ahmed and Qabil Hussain Chandio were my brothers. Mukhtiar Ahmed was chairman of Tamandar Council. Qabil Hussain was member of District Council Dadu. Karamullah Khan Chandio was my father, who was Chairman of U.C Baledai. Since long, the accused Sardar Ahmed Chandio used to send threats to my brother Mukhtiar Ahmed that he is getting other Tamandars with him against the chair of Sardar Ahmed,

which is a tribal sedition and that if he did not discontinue such practice, he and the other Tamandar Council would face the consequences and that he and his all family members would be murdered. In the year 2011 my brother Mukhtiar Ahmed was elected as Tamandar of Mir-Rani tribe, and such thing was not liked by Sardar Khan Chandio. In the year 2017 my brother Mukhtiar Ahmed constituted a Tamandar Council for social and economic affairs of Chandia tribe, on which accused Sardar Khan had sever objection. He used to send the threats for dissolution of Council and for his murder with entire family in case of otherwise. My brother Mukhtiar Ahmed used to inform us about such threats that accused

Sardar Khan **used to send him such threats through accused Ali Gohar and Ghulam Murtaza** being messengers of such threats and that such Tamandar Council shall be dissolved otherwise bed results would be surfaced----------.”

(**Bold and underlined for emphasis**)

97. It may be kept in mind that informant Parvaiz did not even give date time and place of their coming with such messages in his above verbatim. In Examination-in-chief respecting such messages, he has however gone on to further introduce a new story that in morning of 16.01.2018 one day before incident at about 8.00 a.m when he along with said deceased brothers and father were sitting at otaque, where one Ghulam Mustafa the brother of present accused Ghulam Murtaza came, who also required them to dissolve Tumandar council because this message was being sent by accused Sardar Khan and should not be got registered. Further in this regard, he has again introduce a further new story by deposing that in the early morning of the day of incident at 8.00 am said Ghulam Mustafa came to them at Otaque and directed them not to hold conference on platform of Tumandar council otherwise bad results would come even on that day too. His such verbatim is again reproduced as under:

“----------

On 16.01.2018 at about 8:30 a.m

(morning time) I, my both brothers Qabil Hussain and Mukhtiar Ahmed and my father Karamaullah Khan were sitting at our otaq. The elder brother of accused Ghulam Murtaza, namely Ghulam Mustafa came there and told us that Nawab Sardar Khan had sent us various messages for dissolution of Tamandar Council and accused Ali Gohar and Ghulam Murtaza had also visited us in that regard but such thing was not understood by us and that he has come again to us that we should dissolve Tamandar Council and should not get it registered. Then on 17.01.2018 at about 8:00 a.m (morning time), I, my said both brothers and my father were again sitting at our otaq where same Ghulam Mustafa

again came to us by disclosing that he has come with message that we are going to hold a conference on platform of Tamandar Council and that we should not hold such conference otherwise bad results would be surfaced and such bad results would come on that day even.----------.”

98. During cross-examination, the informant has admitted that said details were not given by him at the time of registration of FIR, which are reproduced as under:

“----------It is correct to suggest that in the FIR I have not given the details of date, time, place and the persons at whose hands my brother received alleged threats from accused Sardar Khan Chandio. It is correct to suggest that I have not given the names and details of different persons and different dates and time in the FIR.----------.”

99. Admittedly the above, verbatim as to date, time, place and the so named persons were not part of FIR, as admitted by informant himself and for the first time deposed with such minute details in his examination in chief. Now it is claim of accused party that since the informant was having no direct evidence against accused Sardar Khan, therefore this improvement was dishonestly made in order to strength their alleged claim against this accused, therefore the very contents of FIR were materially contradicted by the maker himself and that these contradictions have rendered the evidence of informant party untrustworthy. According to them, the informant admitted in cross examination that these words were only of Ghulam Mustafa and that informant had never heard same from mouth of Sardar Khan. These facts were admitted by informant during cross examination and that he had admitted that there is no evidence with him accused Sardar Khan and Burhan were involved in conspiracy with co-accused for such murders. The words of informant in this regard are being reproduced as under :

> "The threats came from the mouth of Ghulam Mustafa on 16.01.2018 in my presence. I never heard such threats from mouth of Sardar Khan. I do not know if my brother Mukhtiar Ahmed had registered any FIR regarding receipt of threats of his murder as well as his entire family members from accused Sardar Khan. It is correct to suggest that in my FIR so also subsequent statements before police, it is not mentioned that on 17.01.2018 at about 8:00 a.m (morning time) I, my said both brothers and my father were again sitting at

our otaq where same Ghulam Mustafa again came to us by disclosing that he has come with message that we are going to hold a conference on platform of Tamandar Council and that we should not hold such conference otherwise bad results would be surfaced and such bad results would come on that day even.---------- It is correct to suggest that no person has been produced before I.O during investigation to prove the conspiracy hatched by Karim Bux with Sardar Khan for commission of this incident.

100. Conversely, it is claim of advocate for informant that it is not necessary to give every minute detail in FIR, which is not substantial piece of evidence and details are in shape of explanations, therefore same were given in accordance with law and Court had sift grain chaff. He has relied upon the case law reported **1993 P Cr LJ 1632 Re- MUHAMMAD and others Versus THE STATE,** in this regard wherein it has been held as under.

"----------The contradictions, omissions and improvements pointed out by learned defence counsel are not material. The question whether

these eye witnesses had taken tea together at said hotel is not the moot point of this matter. The crucial point is of their witnessing the incident. Where the improvement is simply an embroidery to the main facts this by itself would not be enough to disbelieve a witness. Honourable Supreme Court has in a number of cases, having regard to the social conditions obtaining in the country, ruled that the principle of "falsus uno falsus in omni bus" cannot be made applicable to the administration of criminal justice and the Courts are under a duty to sift "grain from the chaff."--------
"

101. Same view was reiterated in case law reported as ***1994 P.Cr.L.J 2102.*** In the lights of claims of both the parties, we are now to see whether this introduction of minute details amount to dishonest improvements or same were simple omissions later introduced as of just embroidery in nature. In this respect, I am helped out by the reliance submitted by the advocate for informant through case law reported ***1971 P.Cr.L.J 275 Re- EKABBAR ALI AND 10 OTHERS***

versus THE STATE, wherein it has been held as under:

"Attempts have also been made by the defence to take contradictions from the witnesses, by referring to omissions in. the statements made to the police during the investigation. The statements recorded under section 161, Cr. P. C. are not evidence. Strictly speaking an omission from the statement recorded by police does not amount to a contradiction. An omission of a fact from the statement is only of value if it is of such importance that the witness would have almost certainly made it and the police officer would have certainly recorded it, had it been made. The practice of proving such omissions of statements is generally to be discouraged."

(Underlined by me for emphasis)

102. Then what constitutes material aspect one can referred to the latest judgment of Honourable Supreme Court in the case reported as ***2026 SCMR 182 Re-AZHAR IQBAL and 3 others --- Petitioners Versus The STATE through P.G Punjab, Lahore and others,*** wherein it has been held as under:

> "----------
> Similar statements were made by the remaining prosecution eye-witnesses. They were duly confronted with their previous statements and the dishonest improvements made by them qua the role of Zafar Iqbal petitioner, were brought on the record.----------."

103. It means that when a witness makes a material deviation from his previous statements, he can validly be said to have made a dishonest improvement. So also, in case law relied upon by advocate for informant ***2023 SCMR 831 Re- AQIL Versus The STATE,*** the Honourable Supreme Court made distinction between minor discrepancies/omissions viz a viz material contradiction. Though Honourable Supreme Court has held that parrots like statements are discredited by the Courts and while describing minor discrepancies or variance in evidence, it has been required that in order to ascertain whether as discrepancies pointed was minor or amount to contradictions, regard is required to be made to the circumstances of the case keeping

in the view social status of the witness and the environment in which witnesses were making statement. And then it was also held that normal discrepancies may appear due to number of reasons including errors of observation, memory loss and mental disposition. At the same time the Honourable Supreme Court also observed that material discrepancies are those which are not normal and not expected from a normal person being reproduced as under:

> "-----------------------------------There are always normal discrepancies, howsoever, honest and truthful a witness may be. Such discrepancies are due to normal errors of observation, memory due to lapse of time and mental disposition such as shock and horror at the time of occurrence. Material discrepancies are those which are not normal and not expected of a normal person.-----------------------------------."

104. Keeping such claims in mind, we need to see whether these assertions introduced at trial were minor deviations from FIR or otherwise. The informant appears to be normal person and the contents of FIR were got recorded by him after more than 16 hours and therefore he had every opportunity to disclose the names of accused Ali Gohar, Ghulam Murtaza having brought such messages earlier or even to have

disclosed the name of Ghulam Mustafa having visited not only one day earlier and even just one hour before the incident. In the light of the fact that there was no direct evidence in respect of Sardar Khan and informant never heard same from his mouth then such facts now introduced were of such importance that the informant would have almost certainly made it and the police officer would have certainly recorded it, had it been so as now claimed by him after several years of the incident. It was not expected from him to have not disclose or avoid to disclose the same, had those persons being bringing such messages being very important relevant facts in the light of dictates of case law referred above **1971 P.Cr.L.J 275**. Not only this, if FIR and statements of informant were not being recorded as per his verbatim to that extent there were no bar to point out such facts during examination in chief or during cross examination, rather he has gone to make admissions about having not made such disclosures in the FIR and subsequent statements before Police. As disclosed above, he has only disputed the contents of FIR with respect to availability of police mobile with accused and disputed the contents of FIR to that effect that he had disclosed such facts to police but was not recorded. However, he has never claimed that his such words were not then recorded exactly as per his verbatim. Thus, in view of such available evidence the introduction of such minute details appears to be dishonest improvements amounting to contradiction of earlier version in order to strengthen the allegations against accused Sardar Khan otherwise as admitted by him reproduced above he has no direct evidence against Sardar Khan nor per his admission supplied any evidence about hatching of conspiracy by this accused Sardar Khan. Reliance in this regard can be placed upon case law reported as **2010 SCMR 1706 Re- MUHAMMAD ASGHAR alias NANNAH and another Versus THE STATE,** wherein it has been held as under:

> "18. After scrutinizing the evidence available on record, we are of the considered view that the ocular evidence is insufficient to convict the appellants. We also find that the investigation has not been conducted

honestly, **false improvements have been made in order to involve the accused and with the particular object the evidence was manipulated so as to strengthen the prosecution case.** Therefore, we are not convinced with the evidence of recovery of weapons from the possession of the appellants.

19. In the light of what has been discussed above, the prosecution case is highly doubtful and has not been proved beyond a reasonable doubt. Hence, the appellants are entitled to the benefit of doubt, which was accordingly given to them, while passing the short order of even date that reads as under:--

"For reasons to be recorded later, this appeal is allowed. The conviction and sentences of the appellants are set aside. The appellants are acquitted of the charges framed against them and they shall be set at liberty if

not required in any other cause."

105. Astonishingly said Ghulam Mustafa, the brother of Ghulam Murtaza was not nominated as accused nor even made witness. He was the only the person to have uttered the words that he was actually sent by Sardar Khan. Since he was not made accused, it means the informant party have no any ill will in their mind against him as both parties appear to be in blood relationship also and would therefore be landed him in the capacity of witness and his non examination, on one hand failed to corroborate the claims of informant party and on the other hand rendered their verbatim nearly hearsay. Thus, adverse inference within meaning of article 129 (g) QSO-1984 can validly be taken. With respect to accused Ali Gohar and Ghulam Murtaza, the informant Parvaiz had nominated them of having come their at the time of incident and assigned role of firing to them. However, if they were messengers also, he could have given their names too in this regard and his earlier failure and subsequent introduction of their names raises numbers of questions over the veracity of informant party. As stated above, the informant though gave names of accused Ali Gohar and Ghulam Murtaza at trial as messengers but even then, did not disclose dates and times or places of bringing such messages. It appears that in order to overcome such material discrepancy through witnesses Aijaz and Manzoor brought the same on record from their mouth. According to PW Aijaz, it was on 16.01.2018 both of them had come and conveyed such messages to the Mukhtiar Ahmed to whom the Mukthiar Ahmed informed that they used to come earlier also. The learned counsel for informant had stated that this could be treated as dying declaration but to me, for purpose of dying declaration the person making statement must be under the immediate condition of losing life, which was not the case, therefore these words cannot be termed as dying declaration because at that time Mukhtiar Ahmed was in good senses and it is part of evidence that he had not made any complaint before any forum. This date and time given by these PWs viz: 01.01.2018 at 12.00 noon appears to have been concocted only after such admissions of informant during his cross examination of having not given the same. PW Aijaz has admitted during cross examination conducted by Mr. Safdar Ali Bhutto advocate that in his statement U/s 161 Cr.P.C it is not mentioned that on 01.01.2018 they had gone to the otaque of Mukthiar Ahmed nor it is disclosed that it was

about 12:00 noon time, nor that Ali Gohar and Murtaza came at Otaque and gave message of accused Sardar Khan. He has tried to get rid of same by claiming that he had deposed the same to I.O but he had not recorded the same, yet he thought that he would be disclosing the same before Court. This witness during cross examination has denied the suggestion *"It is incorrect to suggest that I did not inform complainant Pervaiz regarding issuance of threats to Mukhtiar by Ali Gohar and Murtaza at the otaq in our presence on 01.01.2018 at 12:00 (noon). I had informed the Pervaiz on same date i.e. 01.01.2018."* If these words are correct it means that informant was already informed/aware or otherwise same tend to show that such cock and bull story has been fabricated at the start of trial realizing that they had no any direct evidence in this regard. It is well known saying that falsehood always leave its footprints. Again, witness Manzoor Ali admitted that he did not state before I.O/DSP Aijaz that on 01.01.2018 he and Aijaz were sitting at otaque of cousin Mukhtiar, where accused Ali Gohar and Ghulam Murtaza came. He appears to have also given varying statements during his cross examination about his arrival on such date at otaque, as on one hand he was saying that Mukhtiar and Aijaz Ali were already standing at otaque, when he reached there and during same cross examination, he claimed that he did not remember whom of them arrived outside otauqe of Mukhtiar Ahmed. At one point, he claimed that he and his brother Aijaz were standing outside the otaque and again has said that both of them weren't standing outside the otaque. Since there was no direct evidence nor any other evidence then they perhaps at trial chose to introduced such circumstances. However as discussed above, the links between such chains are visibly missing. This brings their claim against accused Sardar Khan, just under probabilities and based on presumption that the alleged messages were actually sent by accused Sardar Khan.

106. Now coming to the arrival of the accused party on scene of occurrence in respect of alleged claim against accused Sardar Khan that it was accused Buhran Khan, who having rolled down the glass of vehicle/land cruiser had disclosed that the deceased were raising revolt against accused Sardar Khan therefore, should be murdered. For the sake of discussion, if the presence of accused Buhran Khan is admitted thereat and is claimed to have uttered such words but it nowhere in his evidence that it was all being done under the directions and command of accused Sardar Khan. He being brother might have taken such step, on

his own. Thus, if we take these words on its own face value, they do not implicate accused Sardar Khan in any manner that it was being done under his directions so as to hold him responsible within the meaning of offence under section 109 PPC r/w 107 PPC & 108 PPC.

107. There can be allegations against accused Sardar Khan of having instigated to accused Buhran Khan, to instigate remaining co-accused to commit murder of said deceased as given under explanation as illustrated under explanation No.4 to given U/s 108 PPC be reproduced as under:

108. Abettor: A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same Intention or knowledge as that of the abettor.

Explanations No. 01-03----------

Explanation 4: The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Illustration

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder; and as

A instigated B to commit the offence, A is also liable to the same punishment.

108. However, as discussed above, no such kind of evidence is available with the prosecution either direct or circumstantial in nature linking every chain. The other charge could be in respect of such offence with respect to the allegation of conspiracy as given U/s 107 PPC under the heading *secondly,* being reproduced as under:

"107. Abetment of a thing:

A person abets the doing of a thing, who:

Firstly:-

Secondly: Engages with one or more other person or, persons in any

conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspira

cy, And in order to the doing of that

thing; or"

Thirdly:-

(Bold by me)

109. The law as now developed on the definition of conspiracy is that it does not consist merely on intention of two or more persons but most important ingredient of such offence of conspiracy is meeting of the minds of such person to do an illegal act. In this regard too neither direct nor any circumstantial evidence linking every chain has been brought on record. Reliance in this regard is placed upon case law reported as ***2021 SCMR 873 Re- The STATE through P.G. Sindh and others Versus AHMED OMAR SHEIKH and others***, wherein it has been held as under:

“8. The definition of criminal conspiracy under

ection 120-A, P.P.C. clearly indicates that two or more persons, if

agree to do or cause to be done an illegal act or act which is not

legal by illegal means, such an agreement is designated as

criminal conspiracy. The punishment for conspiracy is give

nunder section 120-B of the Pakistan Penal Code. So it is to be

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fence two or more persons shall be entered into an agreement for

committing an unlawful offence. As already discussed, the est

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nce of a conspiracy by the accused. To constitute a conspiracy

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r the Court to believe that at two or more persons are member of the

conspiracy and conspiracy consists not merely in the intentio

n of two or more persons but in an agreement of two or more persons

onstodoanunlawfulact.”

110. Summing up whole of above discussion with respect to accused Sardar Khan based on the information of informant party at trial, the news clippings being referred by advocate for informant specially Awami Awaz dated 20.12.2017 bring the case against accused Sardar Khan under probabilities or even high probabilities that the murder were commanded or directed by him due to alleged formation of Tumandar council being merely some analysis of a journalist. It is established law that probabilities howsoever strong cannot be made basis for conviction. The reliance in this regard can be placed upon case law reported as ***PLD 2021 S.C 600 Re-NAVEED ASGHAR and 2 others Versus The STATE,*** wherein it has been held as under:

“33. It is a well-established principle of administration of justice

in criminal cases that finding of guilt against an accused person cannot be based merely on the high probabilities that may be inferred from evidence in a given case. The finding as regards his guilt should be rested surely and firmly on the evidenc

e produced in the case and the plain inferences of guilt that may irresistibly be drawn from that evidence. Mere conjectures and probabilities cannot take the place of proof. If a case is decided merely on high probabilities regarding the existence or non existence of a

fact to prove the guilt of a person, the golden rule of giving "benefit of doubt" to an accused person, which has been a dominant feature of the administration of criminal justice in this country with the consistent approval of the Constitutional Courts, will be reduced to a

naught.

33 The prosecution is under obligation to prove its case against the accused person at the standard of proof required in criminal cases, namely, beyond reasonable doubt standard, and cannot be said to have discharged this obligation by producing evidenc

e that merely meets the prepond erance of probabili ty standar d applied in civil cases. If the prosecut ion fails to discharg e its said obligatio n and there remains a reasona ble doubt, not an imaginar y or artificial doubt, as to the guilt of the accused

person, the benefit of that doubt is to be given to the accused person as of right, not as of concession.[34] The rule of giving benefit of doubt to accused person is essentially a rule of caution and prudence, and is deep rooted in our jurisprudence for safe administration of

criminal justice.----------.”

111. In view of above discussion, the prosecution case lacking sufficient evidence against accused Sardar for abetment/conspiracy for causing murder of deceased persons.

ALLEGATIONS AGAINST THE ACCUSED BURHAN KHAN

112. Now coming to the allegations against accused Burhan Khan. As per the contents of the FIR, this accused had come along with the remaining co-accused, except Sardar Khan, to the place of incident boarding in a Land Cruiser, and after stopping the same there, he rolled down the door glass of the Land Cruiser and then instigated the remaining accused not to spare the informant party, as they have revolted against accused Sardar Khan. The informant party at trial has also deposed to such effect. In this regard relevant verbatim of informant Parviaz Ali is reproduced from his examination in chief as under:

“----------On 17.01.2018 in the morning time, I, my father Karamullah Khan, aged about 65 years, brother Mukhtiar Ahmed, aged about 45 years, brother Qabil Hussain, aged about 28 years, and my two cousins namely Aijaz Ali and Manzoor Ahmed both sons of Gul Hassan Chandio were standing outside our otaq. At about 9:00 a.m (morning time) two vehicles, one of them was white color corolla car bearing No.BFZ-428 and other was white color Land

Cruiser, the number whereof could not be noted, came there and were parked. Five accused persons having weapons alighted from the car. **One accused was Burhan Khan s/o Shabir Ahmed Chandio who was sitting on the front seat of Land Cruiser**. We saw and identified the accused persons having alighted from the car with weapons to be Ali Gohar S/o Bakhtiar @ Yakhtiar Chandio having Kalashnikov in hand, 2. Ghulam Murtaza S/o Muhammad Safar Chandio having repeater in hand, 3. Sikandar S/o Ali Hassan Chandio having repeater in hand, 4. Zulfiquar S/o Ghulam Qadir @ Qadoo Chandio having repeater in hand, 5. Ghulam Qadir S/o Muhammad Parial Chandio having repeater in hand. **Accused Burhan Khan rolled down the glass of Land Cruiser door instigated the above said accused that Mukhtiar Chandio and others have created sedition against Sardar Khan and they have been restrained repeatedly but they are**

not obeying, therefore, today they should be treated in an exemplary manner so that it would be a lesson for others and that they should commit their murders and end them----------."

(Underlined and bold by me for emphasis)

113. The informant party claimed the presence of this accused at spot with remaining co-accused named in his statement/deposition reproduced herein above. Whereas it is the claim of accused Buhran Khan that on relevant date, time and place he was away from such place in District Tando Muhammad Khan having proceeded from his native place one day before incident, while passing from Indus Highway Road Mehar town, having passed night at Hyderabad and then having proceeded therefrom next participated in such event at the premises of Rais Rasool Bux Chandio MNA, where political dignitaries had come. In this regard, the accused Buhran has relied upon call data record of his mobile phones about his location at relevant times and has also produced two defence witnesses namely Haji Rasool Bux Chandio MNA and Mumtaz Ali Chandio MPA, so also he produced written statements duly verified on oath within the meaning of section 265-F (5) Cr.PC. He has also produced number of photographs showing his presence in some event at Tando Muhammad Khan area at premises/location of defence witness M.N.A Haji Rasool Bux Chandio. The police investigation duly supported defence of this accused concluded that he was not present at place of incident at relevant time at all. In this regard words of I.O DSP Muhammad Aijaz Bhatti (Ex.49) are being reproduced as under:

(Examination-in-Chief)

"---------------------On 20.02.2018 on the basis of CDR reports and statements of P.Ws the names of accused Sardar Khan and Burhan Khan were placed in column No.2 of challan-------------------------,

(cross examination)

“---------------------It is correct that I having recorded statements of accused Burhan Khan, all the persons named by him in his such statement, after comparing the phone numbers and his locations with CDR reports and after looking at such press clippings and photographs regarding his said location, placed the name of accused Burhan Khan in column No.2 of the challan finding him as an innocent.---------------------------.”

114. Both the parties have heavily relied upon call data record allegedly collected by this I.O. In this regard advocates have also referred number of phone calls on the relevant date and time by retain in of such call data record and also learned counsel for informant referred to some deleted messages pertaining to the number of accused Sardar Khan and claimed that these were deliberately deleted to conceal the evidence from being coming to the record, which could have been of

their favour. During his arguments, it also transpired that in such call data record (CDR) (Ph# 03023277082) of accused Ghulam Murtaza @ Murtoo available at Ex 49/I (3rd leaf) produced in the evidence of I.O DSP Muhammad Aijaz Bhatti shows that this accused at the very time of incident was receiving phone call from number (0303-3510656) for about 21 seconds, 09:00 a.m, again received another incoming call from same number at 09:01 a.m, for 21 seconds. This time was shown by informant party to be the time of incident and alleged firing including this accused, which according to them lasted for about just a few minutes. In case, we accept such call data record, it heavily doubts the very manner of occurrence or participation of this accused as whether he was making firing or talking on phone with someone else. However, in a recent judgment Honourable Supreme Court has held that the call data record which are not obtained from the concerned company, then same cannot be relied upon. Same is the case here. Relevant portion of judgment of **2025 SCMR 1599 Re-KHAIR MUHAMMAD and another Versus The STATE** is reproduced as under:

> "16. Importantly, the instant CDR is in the form of a standard computerized document which, according to PW-4's own admission can be printed and prepared with the help of any computer. Thus, it is also of foremost importance that the Call Data Record (CDR) must bear the endorsement/authentication of the cellular / telecom company which has issued it. A bare document such as the CDR without any signature of the concerned officer of the cellular / telecom company issuing the CDR cannot be considered for the purposes

of trial and relied upon until and unless it bears the company's seal or a letter of its authentication. This Court's judgment rendered in the case of Asmat Ullah Khan v. The State (PLD 2024 SUPREME COURT 1119) crystallizes the legal position with respect to CDRs and is reproduced below:

"We have carefully examined the said CDR and found that it neither bears the name nor the signature of any authorized officer, nor does it carry the seal of the issuing company. Moreover, the witness (PW 1) acknowledged that the CDR was not sealed and was not accompanied by any covering letter even from the RPO's office. Thus, it cannot be safely relied upon in any manner. It can be doubted that the I.O. has himself generated such CDR or the same has been issued by the Company concerned. It is further noted with considerable importance that neither were the relevant entries indicated in the data, nor were the voice

record transcripts produced, which, if available, could have substantiated the point of the prosecution. No doubt, the mere production of CDR, without transcripts of the calls or complete audio recordings, cannot be deemed reliable evidence. In addition to call transcripts, it must also be established on record that the individuals at both ends of the call are the same as those whose call data is produced as evidence. The Courts must exercise heightened caution when evaluating such evidence, as advancements in science and technology have greatly facilitated the editing and alteration of recordings to suit one's preferences. Reference in this regard may be made to the cases of Azeem Khan and another v. Mujahid Khan and others (2016 SCMR 274) and Mian Khalid Perviz v. The State through Special Prosecutor ANF and another (2021 SCMR 522). Being so, the CDR is of no help to the prosecution in supporting its allegations against the

petitioners." [underlining is ours]

115. Even otherwise accused were only to show that mobiles were in their use on relevant date and time and the call data record was just to show their respective locations. Whereas for the purpose of claim of advocate for informant party that at relevant time, the police were under influence of political personnels of the area including sitting MNA Rafique Ahmed Jamali so also, there were numbers of contacts between accused, police and political persons of the area. As held in the above case law mere availability of CDR report would not be legally enough but what was legally required to establish the claim of informant party, there ought to have been duly certified voice recording transcripts to be produced and that it be established that the individuals on both sides were the same. It was so laid down *"It is further noted with considerable importance that neither were the relevant entries indicated in the data, nor were the voice record transcripts produced, which, if available, could have substantiated the point of the prosecution. No doubt, the mere production of CDR, without transcripts of the calls or complete audio recordings, cannot be deemed reliable evidence. In addition to call transcripts, it must also be established on record that the individuals at both ends of the call are the same as those whose call data is produced as evidence. The Courts must exercise heightened caution when evaluating such evidence, as advancements in science and technology have greatly facilitated the editing and alteration of recordings to suit one's preferences."* It would be immaterial claim that there were continuous contacts either between accused and local police officials or local political persons, but for the purpose of establishing their claim, it was necessary to be proved, what actually divulged between these personalities through such contacts which material is not available with prosecution to support the claim of informant. In absence of such material, how could we admit/presume that through such contacts were for the purpose of destroying the case of informant or that they had any motive against informant party. Relying upon the dictates of Honourable Supreme Court these call data record (CDRs) could not conform to the requisites given by Honourable Supreme Court as such cannot be relied upon either side.

116. It is also established law that before discussing defence evidence the prosecution evidence has to be weighed firstly in order to see whether the prosecution has established its case and it is only then the defence evidence has to be looked in to, as was held in case law reported as **PLD 2020 SC 201 Re- ALI AHMAD and another Versus The STATE and others,** as under:

> "23. We consider it appropriate to recapitulate and summarise key principles of law discussed in this judgment, regarding Article 121, QSO and section 342, Cr.P.C., for convenience, which are stated as under:
>
> **i**. The burden, in a criminal case, to prove the guilt of the accused is always on the prosecution. Therefore, the court, in the first instance, is to discuss and assess the prosecution evidence, in order to arrive at the conclusion as to whether or not the prosecution has succeeded in proving the charge against the accused on the basis of its evidence.

ii. In a case where the accused has not taken any specific plea (e.g. self defence, grave and sudden provocation etc.) or has not produced any evidence in his defence, the court should decide the question of success or failure of the prosecution in proving the charge against the accused on the basis of the prosecution evidence alone.

iii. In a case where the accused has taken a specific plea or has produced evidence in his defence, the court should appraise the prosecution case and the defense version in juxtaposition, in order to arrive at a just conclusion. Even in such situation the burden remains on the prosecution to prove the necessary ingredients of the offence charged against the accused,

and it does not shift upon the accused merely by taking a defence plea or producing evidence in his defence.

iv. The burden shifts upon the accused under Article 121 of the QSO to prove his defense plea, only when a prima facie case is made out against him by the prosecution on the basis of its evidence. If the prosecution fails to prove its case against the accused, the question of shifting of burden on the accused does not arise.

v. The primary purpose of section 342 Cr.P.C. is to enable the accused to know and to explain and respond to the evidence brought against him by the prosecution. A direct dialogue is established between the Court and the accused by putting every important

incriminating piece of evidence to the accused and granting him an opportunity to answer and explain.

vi. If the prosecution fails to prove its case against the accused, the court can take into consideration the statement of the accused under section 342 Cr.P.C. whether in favour of or against the accused; but it must take into consideration that statement in its entirety and cannot select and place reliance on the inculpatory part of the statement only.

vii. In the last mentioned circumstance, the facts narrated by the accused in his statement under section 342 Cr.P.C. are to be accepted without requiring their proof. The court, however, should examine the

said facts in order to give due effect to them under the law. The object of such examination is to determine whether or not the facts narrated by the accused constitute an offence under the law or fit into any exception of the offence provided under the law.

viii. An admission or confession made in statement under section 342 Cr.P.C., which is improbable or unbelievable, or is not consistent with the overall facts and circumstances of a case do not have any probative value and thus it cannot be relied upon by the court for reaching a conclusion."

117. The perusal of above dictum of Supreme Court shows that even if accused take the defense plea, the burden still remains on prosecution to firstly establish its charge against the accused, when we refered to (iii & iv) of paragraph No. 23 reproduced above. It was also held that "*If the prosecution fails to prove its case against the accused, the question of shifting of burden on the accused does not arise."*

118. In the light of above dictates, we come to the evidence of the informant side. During cross-examination, the informant Parvaiz Ahmed, himself admitted that except informant and said two PWs Aijaz

and Manzoor, none other witness had shown /claimed arrival of accused Burhan Khan at spot. In this regard, the words of informant from the cross examination are being reproduced as under:

> "It is correct to suggest that the name of accused Burhan Khan Chandio does not transpire in the statements of other persons than of P.Ws Manzoor, Aijaz and mine. It is not correct to suggest that the accused Burhan Khan Chandio was not present at the spot at the time of incident."

119. It is matter of record that such place was busy place surrounded by shops and some shop keepers were also shown to present. The FIR also depict presence of shop keepers with the claim that due to indiscriminate firing by accused party, they threw down shutters of their shops. Later on, they were also named by informant party to be also present. However, till putting down shutter, they would have certainly witnessed at least arrival of the accused party including Buhran Khan, seen by them and it cannot be said that they will not name them, if having seen them/him there. Being independent persons, the I.O DSP Muhammad Aijaz Bhatti has also admitted during cross that these witnesses have not named this accused Buhran Khan to have come there. His words of cross examination (conducted by Mr. Shahab Sarki, learned counsel for accused Burhan Chandio). are being reproduced as under:

> "----------It is correct that at the time of my investigation, I had recorded statements under section 161 Cr.P.C of Abdul Hafeez, Ashfaque Ali,

Ahmed Ali and Ali Sher being shopkeepers and eye witnesses of the incident. It is correct that these shopkeepers had not disclosed the name of Burhan Khan to be present there at the time of incident.----------."

120. Though without disclosing names, the presence of shopkeepers was very much shown in the FIR. In this regard, the informant has also stated during cross examination (conducted by the Mr. Athar Abbas Solangi) as under:

"----------It is correct to suggest that in the ending lines of FIR I have stated that due to such indiscriminate firing and fear shopkeepers closed the shops and ran away. The shopkeepers only closed the shutters and did not run. There would be 10/12 shops in front of place of incident. It is correct to suggest that a street towards Gul colony is adjacent to place of incident shown by me in FIR. It is not correct to suggest that motorcycle shop of Muhammad Chandio is located just in front of said street. It is correct to suggest that there was motorcycle shop of

Muhammad Chandio and tailor shop of Ashfaque Jatoi opposite to place of incident. It is correct to suggest that shop of Ashfaque Jatoi was in the eastern side of shop of Muhammad Chandio. It is not correct to suggest that shop of Abdul Hafeez Bughio was in the eastern side of shop of Ashfaque. It is not correct to suggest that in the eastern side of shop of Abdul Hafeez there was a saloon of Zulfiquar Chaki Memon. It is not correct to suggest that in the western side of shop of Muhammad Chandio there was scrap shop of Abdul Sattar. It is not correct to suggest that in the western side of shop of Abdul Sattar there was shop of Allah Warayo Depar. It is correct to suggest that kiryana shop of Ali Sher so also tea hotel of Ahmed Ali Memon were also situated in opposite to place of incident. It is not correct to suggest that there was no general store in those days in said 10/12 shops. I do not remember the name or caste of general store keeper. I do not remember

the names of shopkeepers in left and right or east and west side of said general store. It is correct to suggest that I did not disclose in my any subsequent statement about situation of said general store.----------"

121. The prosecution has not bothered to examine those independent persons being shopkeepers who were natural and independent witnesses. Non-examination of those witnesses had created an adverse reflection about the correctness of these allegations and veracity of the claim of the informant party. In this regard, learned defence counsel has referred the number of case laws and reliance can be placed upon **2025 SCMR 1024 Re- MANZAR ABBAS and another Versus The STATE,** wherein it has been held as under:

"12. Yet there is another aspect of the prosecution's case which also makes the presence of the alleged eye-witnesses highly doubtful. One Muhammad Banaras is also named as an eye-witness of the occurrence in the FIR. He is maternal uncle of Mst. Musarrat Jabeen. According to Mst. Musarrat Jabeen, there had never been any quarrel or dispute between them and Muhammad Banaras rather Banaras was considering and treating them like his

own children. Haider Abbas SI (PW.14) in cross-examination has categorically stated that according to PW Muhammad Banaras the occurrence was initiated by two unknown culprits and the accused charged in the FIR were not the real culprits. Relevant part of his statement is reproduced below:-

"It is correct that Muhammad Banaras, the alleged eye-witness named in the FIR appeared before me and joined investigation. On 28.10.2009, Muhammad Banaras above named produced before me affidavit Exh.DA which is thumb marked as well as signed by Muhammad Banaras and as a counter check, copy of his NIC was also taken which is annexed with Exh.DA. It is correct that Muhammad Banaras stated before me as well as in his affidavit that occurrence was committed in fact by two unknown persons who came on motorcycle in his presence and none from the accused named in the

FIR was there."

PW Muhammad Banaras has been abandoned by the prosecution as such an adverse inference within the meaning of Article 129(g) of the Qanun-e-Shahadat Order, 1984 would be drawn that had he been produced in the witness box he would not have supported the prosecution's version. Reliance is placed on the case of "Mst. Saima Noreen v. The State" (2004 SCMR 1310). Further reliance may also be placed on cases reported as (PLD 2011 SC 554, 2020 SCMR 1493, 2021 SCMR 387).

122. The said admission of informant as reproduced above that except him and said two PWs Aijaz and Munwar, none else had implicated accused Buhran to be present there, coupled with the conclusion of the I.O and ultimate non-examinations of those independent witnesses (shopkeepers) has created a big room of doubt about presence of present accused at spot at relevant time.

123. The accused Abdul Kareem alias Karim Bux in his statement U/s 342 Cr.P.C has produced one news clipping of daily Kawish (page No.05) published on the following day of incident dated 18.01.2018. Usually, newspapers are printed around same times when the FIR was this incident was being registered or bit before being at about mid night time. It is noteworthy that thought the informant party has submitted newsclips with their applications U/s 21 QSO 1984 for being taken on record of Awami Awaz dated 20.12.2017, 17.02.2018 of Daily

Kawish, Daily Sobh dated 15.10.2014, daily Sobh dated 10.02.2018, Daily Kawish dated: 19.01.2018, Daily Kawish dated 20.01.2018, daily Shaam dated 20.01.2018, Daily Sobh 20.01.2018, but did not choose to produce any newspapers clipping pertaining to dated: 18.01.2018. When we go through such newsclips of Daily Kawish dated 18.01.2018 submitted by the accused Abdul Kareem alias Kareem Bux, it become undoubtedly clearly that there was disclosure of arrival of only one car carrying some accused pertaining such incident. There is no disclosure about arrival of any land cruiser at all therein. Had it been so, the news clip would have carried such information about arrival of any Landcruiser thereat also besides such said car. Such news clipping being reproduced as under:

Note: The CFMS (DC)

doest not support

any image viz: newspaper

Daily Kawish **dated:** 18.01.2018

124. Though it has been held by Honourable Supreme Court in the case law reported as ***2021 SCMR 873 Re- The STATE through P.G. Sindh and others Versus AHMED OMAR SHEIKH and others*** that news items should be approached with cautious, yet it appear that informant party with hold the same perhaps for such reason, such news items was not carrying the version they got recorded in the FIR and that it is not being independently taken into the account but only being considered viz a viz prosecution evidence as discussed above. The press clippings pertaining to dated: 19.01.2018 submitted by the advocate for informant with said application carry information after registration of FIR and denial of accused Sardar Khan and his brother Buhran Khan about being involved in such incident in any manner.

125. It is now established law that any single reasonable doubt is appearing in prosecution case, has to be resolved in favour of accused and in view of my above discussions, a reasonable doubt as to arrival of accused Burhan Khan on land cruiser, rolling down glass and giving any instigation have become doubtful.

ALLEGATIONS AGAINST THE ACCUSED ABDUL SATTAR ACCUSED

126. Allegations against this accused is to the effect that his car bearing reg: No BFZ-428 was used by accused for coming to place of incident and then was used for the decamping therefrom, thereby facilitated the co-accused. This car is therefore made as case property. It is now established law that use of any vehicle merely for coming to place of incident or going therefrom would not make it a case property. There is nothing in FIR that during course of alleged firing car was hit or damaged. The car was not recovered from such place. The car was recovered from bank of a canal. However, at the time of recovery such car was found to be damaged having certain bullet holes in the doors so also one broken window glass as appear from mashiranma of its recovery Ex 34/L. However, the recovery officer ASI Manzoor Mangi did not utter any word in this regard in his Examination-in-chief, which is being reproduced as under:

> "----------In the morning of same date vide entry No.47 at 6:30 a.m. I left P.S for effecting recovery of vehicle used in such crime. At about 0700 hours on the embankment of Raj Waah, I saw a car parked nearby the soil dunes of such embankment. I prepared mashirnama of recovery of such car at 0700 hours in presence of same mashirs and obtained their signatures, who admitted the same to be correct. The car was chained with the official mobile van and brought at P.S and reached at P.S vide entry No.7 at 0900 hours.----------."

127. During cross examination he has also admitted that there was no disclosure about the car having been damaged during course of such incident. His words from cross examination are being reproduced as under:

"----------It is correct that the complainant at the time of registration of FIR has not disclosed about any car having sustained any bullet fire shot.----------."

128. So also, mashir Bakhat did not disclose in examination in chief that at the time of recovery, the car had any kind of damages so appearing thereon. As discussed above, there was no such allegations in FIR or statements of PWs that such car sustained any fire shot or was damaged, therefore fabrication of such evidence can well be imagine/presumed or at least would amount to concealment of such fact by informant party. This would further show that incident had taken place in manner as has been deposed by these PWs. Though in the FIR presence of this accused was never claimed by informant nor by PWs Aijaz and Manzoor in their statements, but this accused was got subsequently joined as per evidence of informant. He had deposed in this regard as under:

"----------

Then on same date 18.01.2018 at about 1:30 a.m (midnight time) I, ASI Manzoor Ali Mangi, mashirs Bakht Ali Chandio, Riaz Ahmed Chandio wen to place of incident and I showed the crime scene to

ASI and the white color corolla car No.BFZ-428 used in commission of this crime was of Abdul Sattar Chandio who is brother of accused Ghulam Murtaza. The accused Abdul Sattar has facilitated the commission of offence by letting his car, which was later on recovered by the police on 18.01.2018 at about 7:00 a.m (morning time)."

129. This verbatim however, creates suspicion as to whether said car was actual recovered from the bank of the canal or was actually parked at place of incident at the time of visit of ASI Manzoor Mangi. During cross examination the informant in this regard replied following questions.

"----------I was not aware about the name of owner of Corolla Car No.BFZ-428 till 18.01.2018 -1:30 a.m. It is correct to suggest that I have not mentioned in my subsequent statements dated 23.01.2018 and 23.01.2023 that accused Abdul Sattar had facilitated the commission of offence by letting his car.---------- ---------- It is correct to suggest that I have not mentioned in my subsequent statements dated 23.01.2018 and

23.01.2023 that accused Abdul Sattar had facilitated the commission of offence by letting his car.----------.”

130. Admittedly this accused was not nominated in FIR but appears to have been involved by making some application but months after incident. With respect to his joining in the case the I.O DSP Muhammad Aijaz Bhatti during his Examination-in-chief has deposed as under:

“----------On 02.06.2018 I received an order dated 30.05.2018 through SSP Hyderabad regarding conduct of further investigation of the case and therewith an application was attached filed by complainant Pervaiz Chandio disclosing that the car used in such offence is owned by accused Abdul Sattar the real brother of accused Ghulam Murtaza and thereby he has facilitated the said co-accused in commission of such offence by use of such car.----------.”

131. However, neither the informant nor I.O DSP Muhammad Aijaz Bhatti appear to have produced the application on the basis of which this accused got joined and has been withheld. If the prosecution allegations against this accused was that car was used for such crime and he thereby he facilitated those accused thereby

committed offence of abetment within the meaning section 118 PPC, 119 PPC or for sake of discussion section 120 PPC, then it was bounden duty of prosecution to have proved such specific/exclusive knowledge of this accused that his car was being taken away by his brother accused Ghulam Murtaza for such purpose and that too he kept concealing such fact. The prosecution evidence is totally lacking specific knowledge of this accused. Merely on the whims of the prosecution witnesses no adverse inference could be taken against accused. Accordingly, the allegations against this accused as stated above cannot hold ground. Generally, this is usually held in narcotic cases but such principle is now established that active knowledge of the owner has to be proved by leading such evidence before trial Court. Reliance in this regard can be placed upon case law reported as **2019 P.Cr.L.J 1341 Re- BADSHAH ZADA Versus The STATE and others,** wherein it has been held as under:

> 08.---------- Not only that an innocent owner of the vehicle is entitled to the return of the vehicle **but the burden has been placed on the prosecution to establish that the owner had the knowledge of his vehicle being used in the crime. As far as the question of knowledge is concerned, undisputedly it is required to be proved by leading evidence and the learned trial Court can form such opinion after having taken into, consideration the facts of the case.** Reliance is placed on "Allah Ditta v. The State" (2010 SCMR 1181).

(Bold and underlined by me)

ALLEGATIONS AGAINST THE ACCUSED ABDUL KARIM ALIAS KARIM BUX.

132. The allegations against this accused are to the effect that he remained in contact with accused Ghulam Murtaza before and after incident, when accused Ghuam Murtaza was absconder and thereby was facilitated by this accused by taking him to different places and also sent a thanking message to Sardar Khan for his posting at PS Faridabad and has also gone on to exaggerate the story by deposing, the alleged hatching of conspiracy by him with remaining co-accused without disclosing any date time and place manner thereof. In this regard informant in his examination in chief has deposed as under:

"---------Then during investigation, when the call data record of accused Sardar Khan Chandio, Burhan Chandio, Sikandar Chandio and Ghulam Murtaza Chandio was obtained by the investigation officer, the number of SHO Karim Bux Chandio became surfaced that the said SHO remained in their continuous contact before and after this incident. My such statement was recorded by the I.O on 23.01.2023. My another subsequent statement was also recorded on 23.01.2018 so also another subsequent statement was also recorded on 05.06.2018.---------- ------ SHO Karim Bux

Chandio in collusion with other co-accused persons including accused Sardar Chandio and accused Burhan Chandio was involved in conspiracy for commission of murders of my father and my two brothers. SHO Karim Bux Chandio while misusing his powers of police authority and using official police mobile as well as personal car in getting the co-accused Ghulam Murtaza and other accused persons escaped away from arrest and he used to shift them from one place to other places. When we came to know such position, we moved applications before DIG Police Hyderabad for conduct of enquiry which was entrusted to Muhammad Ayoub Durani SDPO City Hyderabad, who submitted enquiry report mentioning therein that SHO Karim Bux Chandio is involved in shifting of accused Ghulam Murtaza and others from one place to other places. Such details are also mentioned in police papers. On the date of incident SHO Karim Bux Chandio had also sent

a text message to accused Sardar Khan Chandio thanking him for the post of SHO P.S Faridabad.----------.”

133. However, during cross examination the informant has admitted of having not disclosed such fact to the IO during repeated statements got recorded by him in the year 2018. His such words from cross examination are being reproduced as under:

“----------It is correct to suggest that I have not stated in my subsequent statements dated 23.01.2018 and 05.06.2018 that when the call data record of accused Sardar Khan Chandio, Burhan Chandio, Sikandar Chandio and Ghulam Murtaza Chandio was obtained by the I.O, the number of SHO Karim Bux Chandio became surfaced that the said SHO remained in continuous contact before and after this incident and that he in collusion with other co-accused persons including accused Sardar Chandio and accused Burhan Chandio was involved in conspiracy for commission of murders of my father and my two brothers.----------.”

134. He himself admitted that he had not stated in his subsequent statements that SHO Karim Bux remained in continuous contact with accused Ghulam Murtaza. It is stated that this accused has been joined as accused, after several years of the incident by making application before the Court under section 193 Cr.P.C, which was allowed. When we look at his above verbatim, it appears that there are three separate allegations; first one being of facilitation/abetment prior to incident on the allegations of having remained in contact with accused Ghulam Murtaza. This would attract sections 118 PPC, 119 PPC or for the sake of discussion section 120 PPC. In this regard the only claim of the informant to above affect was solely based on the CDR reports obtained by the I.O, which showed that they were in contact. However, as discussed above in the light of dictates of Honourable Supreme Court in the case law reported as **2025 SCMR 1599 Re-KHAIR MUHAMMAD and another Versus The STATE**, that such CDR reports are not admissible documents having not been obtained through concerned telecom company or authenticated by it. So also, even if there were contacts between them, it was to be proved that what was being discussed between them and that during such contacts these were same individuals having contact each other. It is usual phenomenon that mobile phones are usually taken by some other persons for making phone calls. It was for this reason the above dictum it was held *"No doubt, the mere production of CDR, without transcripts of the calls or complete audio recordings, cannot be deemed reliable evidence. In addition to call transcripts, it must also be established on record that the individuals at both ends of the call are the same as those whose call data is produced as evidence. The Courts must exercise heightened caution when evaluating such evidence, as advancements in science and technology have greatly facilitated the editing and alteration of recordings to suit one's preferences.*" It is hard to take adverse inference merely on the basis of one thanking message to present accused Sardar Khan by the accused one day before when no one knew that next day the incident would be taken place except Almighty Allah. His posting was not at the PS within jurisdiction of which incident took place but was at different police station, though statedly native place of the both sides were situated in such jurisdiction, which message based on same CDR report. These aspects the present in prosecution case is lacking. As such allegations of such abatement prior to the incident has not been

established in respect of this accused through any reliable material beyond the shadow of doubt.

135. The other allegations against him about facilitating of said accused is to affect that he remained at continuous contact with said accused Ghulam Murtaza after incident being absconder. Again, in view of above dictum said CDR reports are not reliable evidence in this regard. Even otherwise the offence of abatement could only be committed within meaning of section 107 PPC to 120 PPC prior to incident and not subsequent thereto. The subsequent contacts, if any, at the most may attract offence of harboring an offender. It is also matter of record that in respect of similar allegations against him, he has faced prosecution through Crime No. 37/2018 of P.S Husri, District Hyderabad. In this regard, the through concerned court, the R&Ps were summoned from which such CDR reports were got produced, through DSP Muhammad Ayoub Durani, who had conducted administrative enquiry against this accused, and has also been examined namely DSP Muhammad Ayoub Durani. He has deposed in Examination-in-chief as under:

"----------I found that such FIR registered by SIP Amanullah Jamali at PS Hosri and due to involvement of police officer in the FIR the investigation was conducted by DSP Dost Muhammad Mangrio and challan thereof was also submitted by said DSP before the concerned Magistrate being Court of Civil Judge and J.M-X Hyderabad. During this departmental enquiry I checked such record of case and documents available therein collected

by said DSP. In such documents some CDR reports were also available which were showing that there were frequent contacts (numbering 54 times) between SIP Kareem Bux Chandio and the principal accused of the Case registered in Dadu District namely Ghulam Murtaza Chandio before registration of District Dadu crime No. 20/2018 PS A/Section Mehar and 6 times after such crime. I then called SIP Kareem Bux Chandio to appear in enquiry, who in his statement disclosed that in Cr No. 37/2018 PS Hosri he has been acquitted by the said Court.----------

"

136. The perusal of above evidence clearly shows that on similar allegations, facts and evidence he had been charged and has since been acquitted much prior to making of such application and this prima facie appears to be causing double jeopardy to the accused within the meaning of article 13 of Constitution of Republic of Pakistan 1973 and section 403 Cr.P.C. Even otherwise CDR reports in light of my discussion herein above cannot be legally termed as reliable evidence for the purpose. There is no eye witness of such facilitating by this accused to the absconding co-accused Ghulam Murtaza either prior or subsequent to the incident.

137. The third allegation, which has been introduced by informant by making dishonest improvement is with regard to hatching of

conspiracy with the remaining co-accused. The informant has admitted the fact that even in the said application U/s 193 Cr.P.C, he had not leveled any allegation of conspiracy against him. His words from cross examination are being reproduced as under:

> "----------It is correct to suggest that I have filed a Crl. miscellaneous applications No.179/2018 and 187/2018 before Honourable High Court, Sukkur Bench, challenging the orders of trial court regarding letting of the accused and admitting them to bail. It is correct to suggest that the accused persons filed criminal appeal No.382/2018 and criminal petition No.738/2018 before Honourable Supreme Court against the order of Honourable High Court passed on our said applications. It is correct to suggest that the said appeal and petition were disposed of by the Honourable Supreme Court vide order dated 13.09.2018 with the consent of parties' counsel. It is correct to suggest that I had also filed Cr.M.A No.998/2018 before Honourable High Court against the order of learned trial court whereby the

sections of ATA were deleted. It is correct to suggest that the accused persons filed appeal before Honourable Supreme Court against the order of Honourable High Court. I had filed two transfer applications in this case i.e. 54/2018 praying for transfer of the case from ATC Naushahro Feroz which was disposed of by consent and the case was transferred to ATC Sukkur. It is correct to suggest that I had also filed transfer application No.49/2019 praying for transfer of the case from ATC Sukkur and then the case was transferred to ATC Ghotki @ Mirpur Mathelo. I had also filed a human right application before Honourable Supreme Court. **It is correct to suggest that in all said miscellaneous and transfer applications before Honourable Court, as well as Human Right petition before Honourable Supreme Court there is no mention of SHO Karim Bux**. It is correct to suggest that in those applications I never

prayed for change of investigation or re-investigation. It is correct to suggest that on 13.12.2022 I moved application under section 193 Cr.P.C for the first time against accused SHO Karim Bux. It is correct to suggest that I had signed the said application after perusal of its contents. It is correct to suggest that in my examination-in-chief I have deposed that CDR of accused Burhan Chandio reflected that the accused SHO Karim Bux remained in his contact prior to and after incident. It is correct to suggest that my such disclosure is not mentioned in my application under section 193 Cr.P.C. **It is correct to suggest that there is no word "conspiracy" used in my application under section 193 Cr.P.C. It is correct to suggest that in my examination-in-chief I have deposed "SHO Karim Bux Chandio in collusion with other co-accused persons including accused Sardar Chandio and accused Burhan Chandio was involved in conspiracy for**

commission of murders of my father and my two brothers." It is correct to suggest that such words are not mentioned in my application under section 193 Cr.P.C. It is correct to suggest that in my examination-in-chief I have deposed "SHO Karim Bux Chandio while misusing his powers of police authority and using official police mobile as well as personal car in getting the co-accused Ghulam Murtaza and other accused persons escaped away from arrest and he used to shift them from one place to other places." It is correct to suggest that in my application under section 193 Cr.P.C the allegation of using police mobile is not leveled against accused Karim Bux. It is correct to suggest that in my application under section 193 Cr.P.C I have not specifically stated that I had also moved an application before DIG Police Hyderabad for conduct of enquiry against accused Karim Bux."

138. The application U/s 193 Cr.P.C was filed before Court with their conscious application of mind with independent advised yet

informant proceeded to depart therefrom by making dishonest improvement, thereby lost his credence. In such situation, it appears that this accused has been get arrayed with motivated designed otherwise had nothing to do with occurrence or the parties.

MANNER OF OCCURRENCE/ALLEGATIONS AGAINST REMAINING ACCUSED WHO ALIGHTED FROM CAR AND ALLEGEDLY MADE FIRING

139. Per FIR (at Ex. 27/A) story in respect of the manner of occurrence the informant Parvaiz claims that he along with PWs Aijaz and Manzoor were present outside of otaque, besides said three deceased, where they saw arrival of two vehicles, one car and one land Cruiser. According to him, the persons who having alighted from the car were instigated by accused Burhan Khan that informant party have revolted against Sardar Khan, therefore be murdered and on such instigation, it is specifically alleged that those accused holding weapons opened the mouths of barrels and made indiscriminate firing for creating fear. It is also alleged therein that then one of their companion, since deceased Ghulam Qadir @ Qadoo made fire shot from his repeater at his father Karamullah, which hit him on his abdomen on which his father grappled said Ghulam Qadir @ Qadoo to throw him down. According to him, then two accused Ali Gohar and Ghulam Murtaza made fires to rescue Ghulam Qadir @ Qadoo, out of which one K.K fire shot hit his father Karamullah on right side of chest and other K.K and repeater fires went to hit Ghulam Qadir @ Qadoo but without disclosing specific locale on his person and both of them fell down on the ground. He has also deposed that then accused Ghulam Murtaza made direct repeater fires at his brother Mukhtiar Ahmed Khan, which hit him on left side of chest, accused Ali Gohar made K.K fire upon Mukhtiar Ahmed, which hit him on face, who also fell down on the ground by raising cry. He has alleged then in the FIR that accused Sikander made direct fire from his repeater at his brother Qabil Hussain, which hit him at right side of buttock area. He has also alleged in the FIR, thereafter, all accused kept making indiscriminate firings while also raising slogans then went away by making such firing.

140. In FIR the informant has disclosed alighting of six persons from car but then named only five persons namely Ali Gohar, Ghulam Murtaza, Sikandar, Zulfiqar and Ghulam Qadir @ Qadoo and further disclosed that accused Burhan remained sitting in the Land Cruiser. In examination in chief, he has however, deposed that five persons had actually alighted from the car and named to be these accused. However, informant has named five persons to have made firing not only in FIR but also at trial therefore the disclosure of six persons in FIR and then disclosure of five persons having alighted from car at trial cannot be termed as material or important aspect and appears to be explanatory in nature. This aspect is not crucial in nature but what crucial is to see whether the words of informant party with respect to manner of such incident are based on the natural events inspiring confidence and straightforward statements, therefore to be accepted without any other corroboration. In this regard the learned counsel for informant relied upon the case law report as ***PLD 2025 SC 425, 2025 SCMR 1360, 2023 SCMR 723, 795, 831, 487, 478,*** with respect to ocular account besides number of case laws propounding the same principles that when presence of witnesses is plausibly established and they give straightforward and natural account of the incident, which is otherwise materially supported by medical evidence and substitution cannot be imagined then this such type of evidence has to been given preference over medical evidence if there appears any minor discrepancy. It may be noted that in most of these case laws there was evidence of injured witnesses. It would be better to re-produced the observations of Honourable Supreme Court from the dictum reported as ***PLD 2025 SC 425, Re- MUHAMMAD KHAN alias MITHU Versus The STATE and others***, wherein it has been held as under:

> "----------Both the eye-witnesses have been subjected to lengthy and taxing cross-examination by the defence but nothing favourable to the appellant or adverse to the prosecution could be extracted from them except minor discrepancies of trivial nature.

Both have given all crucial details of the incident such as the day, date, time and place of occurrence, **mode and manner of occurrence**, kind of weapon used by the appellant in the occurrence, **the locale of injuries on the person of the three deceased** and the motive behind the occurrence. **Both have remained consistent on each and every material point inasmuch as they made deposition exactly according to the circumstances happened in this case**, **therefore, it can safely be concluded that the ocular account furnished them is reliable, straightforward and confidence inspiring.** The eye-witnesses had no enmity or ill-will against the appellant to falsely involve him in the case. Even otherwise, it does not appeal to a prudent mind that complainant who lost his wife, minor daughter and brother in the incident, would spare and let off the real culprit(s) and will charge his innocent brother-in-law. No reason and circumstance has been brought on record by the defence so as to remotely suggest substitution and false implication of the appellant. Admittedly, substitution of real culprit charged directly and singularly in a murder charge is a rare phenomenon in the system of

criminal justice as held by this court in case, "Allah Ditta v. The State" (PLD 2002 Supreme Court 52) and case titled, "Muhammad Iqbal v. The State" (PLD 2001 Supreme Court 222). **Both the eye-witnesses have plausibly explained their presence with the deceased at the spot at the time of occurrence.** Presence of complainant Saif Ullah with the three deceased out of whom Feroze was his brother, Mst. Kausar Bibi and Mst. Fazila was his wife and daughter, respectively, is quite natural and appealable as in villages such close relatives do associate and accompany each other to market/Bazaar for purchase of house hold articles. Substitution of real culprits especially in cases where the eye-witnesses lost their kith and kin before their own eyes is a rare phenomenon. Reliance may be placed on "Asfandiyar v. The State and other" (2021 SCMR 2009) and "Muhammad Abbas and another v. The State" (2023 SCMR 487).

14. One of the arguments of learned counsel for the appellant was that the ocular account in this case has been furnished by related and interested witnesses, **however, he could not controvert that the law has been well-settled by now that**

an interested witness is one who is interested in the conviction of an accused for some ulterior motive, but in this case, the defence could not bring on record any ulterior motive of the complainant or PW Laiqat to falsely implicate the appellant. Reliance in this regard may be placed on the cases titled as "Azhar Hussain and another v. The State and others" (2022 SCMR 1907) and "Shamsher Ahmad and another v. The State and others" (2022 SCMR 1931). We are of the unanimous view that due to close relation of complainant and **PW Liaqat with the deceased persons, they were in fact not likely to let off the actual perpetrator of the offence by falsely implicating the appellant, against whom they admittedly had no previous malice, ill-will animosity or grudge. In absence of any ulterior motive/animus for false implication of an accused**, the confidence inspiring testimony of an eye-witness, whose presence with the deceased at the time and place of occurrence is established, cannot be discarded merely due to his relationship with the deceased as held by this Court in case "Aman Ullah v. The State" (2023 SCMR 723) and

"Imran Mehmood v. The State" (2023 SCMR 795). Learned counsel for the appellant could not point out any reason as to why the complainant has falsely involved the appellant in the present case and let off the real culprit, who has murdered his wife, daughter and brother. He also could not point out any major contradiction or discrepancy in the statement of the witnesses, which could shatter the basic fabric of the prosecution case in its entirety.

15. Medical evidence available on the record supports the ocular account so far as the nature, time**, locale and impact of the injuries on the persons of the deceased is concerned.** The argument of learned counsel for the appellant that postmortem report on the dead bodies of the deceased has been conducted on the next day of occurrence creates serious doubt in the prosecution's case, particularly, about the presence of the eye witnesses, is not tenable, as by now it is well settled law that where ocular evidence is found trustworthy and confidence inspiring, the same is given preference over medical evidence and the same alone is sufficient to sustain conviction of an accused. Reference in this regard may be made to the judgments of this

court in cases titled, Muhammad Iqbal v. The State (1996 SCMR 908), Naeem Akhtar v. The State (PLD 2003 SC 396), Faisal Mehmood v. The State (2010 SCMR 1025) and Muhammad Ilyas v. The State (2011 SCMR 460).

(Bold and underlined by me for emphasis)

141. On the above touchstone, we have to look into the evidence of the informant party to see whether they have given straightforward and consistent statements and whether their presence is plausible established and that whether medical evidence supports their versions specifically as to locale and the impact of injuries or there are only just minor discrepancies therein and that PWs were disinterested witnesses therefore, their version should be relied upon without any other independent corroboration. The learned counsel for informant has also relied upon case law reported as **PLD 1977 SC 557 Re- ROSHAN AND 4 OTHERS versus THE STATE,** wherein it has been held as under:

"----------As to the contradictions in the statements of the eye-witnesses on which the defence has placed so much reliance, I may point out that some counsel devote all their energies to create such contradictions and to this end lengthy cross-examination is conducted for hours and days which is intended to confuse, even an intelligent person, and is not calculated to elicit any useful information. This exercise is undertaken because Courts give undue importance to

contradictions found in the statements of the prosecution witnesses. **To my mind, the primary consideration in appraising the evidence given by a witness is to determine, firstly, why has he offered to testify? Has he seen the occurrence? If so, has the witness a motive to implicate a person who has not among the culprits or to exaggerate the part played by any of them ? If a witness satisfies these two tests, then the Courts should watch the general demeanour of the witness in order to judge the quality of his perception and his faculty to recall the past incidents**. A witness may make contradictory statements on some of the details of the incident in respect of which he is deposing in Court. The variation may be due to mere lapse of memory or the confusion caused in his mind by b relentless cross-examiner. Very often a witness gives an incorrect statement because he must answer every question regardless of the fact whether be knows the answer to it or not. It is not uncommon that the cross-examine) puts words in the mouth of witnesses and the presiding officer is not vigilant enough to check it. I: is also common experience that, without any

particular intent, even educated people exaggerate when describing an event. Some witnesses may be prone to it more than others. **Mere contradictions, therefore, do not lead to the result that whatever the witness has said on the salient features of the case and which conforms to the other evidence on the record is to be thrown overboard** .----------

(Bold and underlined by me for emphasis)

142. In view of above dictum also the Court has to conduct said tests in first instance from the evidence of the prosecution why the witnesses offered to give evidence? *secondly* had they seen the incident? and *thirdly* whether they have any motive to implicate? On the touchstones of above case laws referred by learned counsel for informant, we have to scan evidence of informant party to reach just conclusion to answer above questions. The question is whether they had seen the incident needs to answered in first instance. When we peruse cross examination of informant, it appears that he has claimed presence of accused party closer to them, they being in their firing range by uttering ***"It is not correct to suggest that I was not in the firing range of accused at the place of incident. I was available at the place of incident at the distance of about 05/06 feet from accused persons."*** It is thus expected from them to have seen the manner of occurrence **especially with respect to the mode and impact of the injuries** sustained by the said three deceased or the companion of the accused. In this regard the first fire shot is alleged against the accused Ghulam Qadir alias Qadoo (since deceased), which hit on the abdomen of deceased Karamulalh. The M.O Dr. Gul Muhammad had recoded ***injury No.3*** to have been sustained by deceased Karamullah at left lumber region near to umbilicus and has shown it to be wound of entrance being

reproduced as under:

"**3. Fire gutter shaped wound 6 c.m x 6 c.m left lumber region of abdomen near to umbilicus (wound of entrance).**"

143. It may be noted that he had not recorded or found any exit injury thereof. Likewise, almost from same distance, said deceased Karamullah & Ghulam Qadir alias Qadoo during course of alleged grappling sustained fireshots at the hands of accused Ali Gohar and Ghulam Murtaza. The injury No. 01 sustained by deceased Karamullah recorded by said MLO shows that it has gone through and through vide injury No. 2. So also, the injuries sustained by Ghulam Qadir alias Qadoo has also been recorded by said MLO to have gone through and through. It is noticed that injury No.5 on the person of deceased Ghulam Qadir alias Qadoo is shown to have been sustained just above umbilicus viz: almost same area that of deceased Karamullah but strangely its exit has been shown at left lumber region through injury No.6 being reproduced as under:

5. Firearm gutter type of wound 6 c.m x 6 c.m above umbilicus (wound of entrance)

6. Firearm lacerated type of wound 8 c.m

x 8 c.m on left lumber region (wound of exit No.5).

144. Such injury No.3 of deceased Karamullah is also shown to be gutter shape injury and injury No.5 of Ghulam Qadir alias Qadoo is also shown to be gutter type injury meaning thereby almost same type of weapon(s) have been used. However strangely enough said fire sustained by Ghulam Qadir alias Qadoo had gone through and through while the fire sustained by Karamunllah didn't from same distance and with apparently same type of weapon. It can therefore be reasonably stated that first injury sustained by deceased Karamullah was distant fire shot which could not cross his body. The MLO in respect of such injuries, has admitted that deceased Karamullah had two entrance wounds on the front part of body and out of them only one was with exit wound, while third injury was having no exit, as such it was a longer distance fire. He described smaller range as distance of about 10 to 30 feet and longer range as more than 50 feet. His words from cross examination are being reproduced as under:

"----------
Deceased Karamullah had in all two entrance wounds which were on front of his body. Deceased Karamullah had only one exit wound corresponding to his chest injury. There could be exit injury also in respect of cartridge injury. It is correct that in respect of injury No.3 of deceased

Karamullah the exit thereof had not occurred due to the reason that the fire was made from a longer distance. The smaller range is characterized as if the fire is made from the distance of about ten feet up to thirty feet. The longer range is characterized as if the fire is made from the distance of more than fifty feet up to hundred feet."

145. In this regard learned defence counsel has relied upon case law reported as ***2014 SCMR 1669, 2007 SCMR 108, 2020 YLR 2286*** and ***2005 P.Cr.L.J 1459 Re- AKBAR KHAN and another Versus THE STATE and another.*** In this last case law it has been held as under:

"6. ----------. No doubt both the P.Ws. stated that the complainant was fired at from a distance of 6/7 paces but strangely enough no exit wound was found on his person by the Doctor. It is unbelievable that a person is fired at from such a close

distance with a kalashnikov or pistol and yet neither an exit is found nor the bullet is recovered from its entry wound. It, therefore, follows that the complainant was either injured by a stray bullet or that he was fired at from a distance of more than 100 and 150 paces and as such the occurrence cannot be said to have taken place in the manner described by the prosecution."

146. Almost from same distance then injured later deceased Kabil was targeted and the said MLO has found 09 firearm wounds on his right thigh gluteal region without showing any exit. Being reproduced as under:

1. Firearm wounds (09) nine in numbers on right thigh and gluteal region.

147. This too appears to be a distant shot in light of above reliance. It may be relevant to state here that in site plans presence of this deceased was shown to be at longer distance from the accused where he was hit. Though informant party claimed that they were not confronted with such documents which was requirement of law in the light of reliance made by advocate for informant on the point, therefore

such documents cannot be referred to besides being not substantive pieces of evidence. However, the evidence of Tapedar so also ASI Manzoor Mangi, who are also prosecution witnesses clearly depict that such site plans were prepared on the pointation of informant and the points were recorded as were pointed out by him. The prosecution never declared these PWs as hostile especially Tapedar who has claimed that such site plans were prepared exactly per disclosure of informant. Even the informant party had filed application for allowing them to conduct cross examination of DSP Muhammad Aijaz Bhatti but no such kind of application was filed in respect of Tapedar with respect to such claim. The site plans show different positions of the accused party, informant party and the said three deceased. In this regard the counsel for both parties have referred to the case laws concerning their contents which support their respective contentions also. However, leaving it there, I again come to the ocular account viz a viz medical evidence.

148. Almost from same distance accused Ghulam Murtaza is alleged to have targeted deceased Mukhtiar Ahmed, which hit him and all his injuries had exit wounds except one injury No.6, on left forearm having fractured the same therefore it might not be possible for MLO to see which side was exit as the fracture was found visible. Thus, availability of exit wounds in respect of majority of injuries of said persons and non-availability of exit wounds in respect of some of their injuries as discussed above make it abundantly clear that the positions of all the deceased while sustaining such injuries from the position of the accused party, were not same. This is against the claim of PWs/prosecution. Again, accused Ghulam Murtaza was claimed to have made repeater fire shots from a distance of about 6/7 feet landing on the chest of deceased Mukhtiar Ahmed. If it was so, then the pattern of injuries from the point of view as developed in medical jurisprudence, ought to have been in the manner viz: one central aperture surrounded by multiple shots. Reference in this regard can be made to case law reported as ***2020 P Cr LJ 45 Re-SHABBIR AHMAD and others Versus The STATE and others***, wherein it has been held as under:

The pattern of injury caused through .12 bore gun from various distances was dilated in detail by Dr. S. Siddiq Husain in "A TEXT BOOK OF FORENSIC MEDICINE AND TOXICOLOGY" and opined as under:

"In these, cartridges, with lead shots are fired. Effects produced will vary according to the distance from which fired.

1. If muzzle within a few inches of body-whole charge of shot, enters as one mass, followed by wad and highly compressed gases. Area around wound, clothing and skin is burnt, hair singed also blackening and tattooing of skin around the wound, which parchmentizes after death. If there is thick clothing on the body, then the skin around may not be blackened and tattooed. The deeper tissues are extensively lacerated and shattered. If weapon is pressed tightly against skin above signs outside may be absent.

2. At about one foot---the shot will enter in one mass, but the gases will no longer follow. The wounds will correspond to the bore of the gun, the blackening, scorching and tattooing will be apparent.

3. If distance one yard-The mass of shot begins to spread. The wound is about

one inch or slightly more and around the main wound, there may be a few scattered punctures by shot that have separated from the mass. Some blackening and tattooing may be present.

4. At two yards-The central aperture is surrounded by separate openings, in an area of about 2' diameter, by the pellets that have separated from the main mass. Skin is not blackened but is tattooed to some extent.

5. At four yards-the charge beings to disperse more. The wound is about 5'- 8" in diameter. No blackening or burning.

15. We have also given a considered thought to the multiple pellet wounds on the body of deceased highlighted by Dr. Muhammad Ahmad (PW.9) under head of injuries Nos.6 and 7. These pellets, besides entering into the abdominal cavity of Safarish Ali (deceased) also ruptured left lung,

heart and other internal organs. From this aspect, it can inevitably be held that injuries of Safarish Ali (deceased) were outcome of two independent shots, out of whom one was fired from a long distance and the other relatively from close margin. Otherwise, all the firearm injuries on the body of Safarish Ali (deceased) should have been of alike nature and kind.----------."

149. Now, there appears another material aspect as to the claim of informant party about grappling of deceased Karamullah with deceased Ghulam Qadir alias Qadoo. It has been deposed by them that after first fire of Ghulam Qadir alias Qadoo hitting abdomen of Karamullah, said Karamullah grappled Ghulam Qadir alias Qadoo to let him down and in meanwhile accused Ali Gohar with K.K and Ghulam Murtaza with his repeater made fires at his father Karamullah, out of which one KK fire of Ali Gohar went to hit his father Karamullah at right side his chest, while other KK fires of Ali Gohar and repeater fires of Ghulam Murtaza went to hit accused Ghulam Qadir alias Qadoo on which both fell down on receiving such injuries. It may be noted that the PWs though noted the sustaining injuries by Karamullah with exactitude but they failed to notice the same when it comes to sustaining of injuries by said accused Ghulam Qadir alias Qadoo because while deposing so about his having sustained such fire shots was uttered without disclosing the locale of his injuries on his person. However, when two persons are said to be grappling each other than naturally their chests, abdomen or frontal parts of body would be fixed against each other not opened to another person to be targeted. Therefore, if they were grappling each other and at that time the fires were made by these two accused same ought to have landed on the backside bodies of both of them or either on

the back of one having crossed his body to enter almost in the same area of the other grappling person or at the most on their right or left parts of their body sides. By no stretch of imagination, it could be said that they could sustain any single fire shot on their front part of body including chest and abdomen during stated grappling. When we look at the medical evidence, we find that the injury No.1 of deceased Karamullah was sustained allegedly assigned to accused Ali Gohar on right side of chest, which went out from scapular region as shown in injury No.2, which are being reproduced as under:

“

1.

Firearmpunctured type of wound 1 c. min di

a m et er in fr o nt of ri g ht c h e st u p p er p ar t (w o u n d of e nt ra n c e) .

2.

Firearm lacerated wound 3cm x 2cm on right scapular regi

on (wound of exit injury No. 1).”

150. Again, when we look at the injuries of deceased Ghulam Qadir alias Qadoo, we see that there is injury No.3 shown to have been sustained at right side of his chest having exit through injury No.4 at the back and right side chest and that injury No.5 above umbilicus with exit through injury No.6 on left lumber region which are being reproduced as under:

3.

Firearm punctu

retype of wound 1 c. mindiameter on right side of chest (wound

of entrance).

4.

Firearm lacerated type of wound 3c.mx2c.mo

n b a c k of ri g ht c h e st (w o u n d of e xi t, in ju ry N o. 3) .

5.

Fi re ar m g

ut te r ty p e of w o u n d 6 c. m x 6 c. m a b o v e u m bi li c u s (w o u n d of

entrance)

6.

Firearm laceratedtypeofwound8c.mx8c.monle

ft lu m b er re gi o n (w o u n d of e xi t N o. 5) .

151. Their chests and abdomen in course of grappling ought to have been fixed against each other than how the words of informant party could be said to be true enough that both of them sustained these injuries during course of such grappling. These words utter by informant party in this regard does not appear to be natural and based on confidence inspiring evidence, rather appears to be artificial claim not fitting in the probabilities. Reliance in this regard can be placed upon case law reported as ***1995 SCMR 1627 Re-HAROON alias HAROONI versus THE STATE and another,*** wherein it has been held as under:

"9.----------

Mere fact that a witness is

neither related to the complainant nor inimical towards the accused does not stamp his testimony necessarily with truth. Acid test of the veracity of a witness is inherent merit of his own statement. Since the facts of the two cases seldom coincide, therefore, no hard and fast rule for the appreciation of evidence can be laid down. **The general rule, however, is that the statement of a witness must be in consonance with the probabilities, fitting in the circumstance**

s of the case and also inspire confidence in the mind of a reasonable prudent man. If these elements are present, then the statement of worst enemy of an accused may be accepted and relied upon without corroboration, but if these elements are missing, then statement of a pious man may be rejected without second thought."

(Bold and underlined by me).

152. Further reliance can be placed upon case law reported as **2006 SCMR 1846 Re-Lal Khan VS State**, wherein it has been held as under:

"7.----------

-------The mere fact that a witness is closely related to the accused or deceased or he is not related to either party, is not a sole criteria to judge his independence or to accept or reject his testimony rather the **true test is whether the evidence of a witness is probable and consistent with the circumstances of the case or not.** In the present case no other reliable evidence was brought on record in support of the allegation of murder against the accused except **the solitary statement of Mst. Noor Bibi which being mudded with exaggeration and doubts would not be considered of the standard to be given much credence and being not confidence-inspiring would not be blindly relied upon to hold the accused guilty of**

the charge of murder

.----------

---."

(Bold and underlined by me)

153. Even injury No.1 of deceased Ghulam Qadir alias Qadoo is shown to have been sustained by him below chin with exit on occipital region and in this regard, MLO admitted that such injury No.1 on the person of injured Ghulam Qadir alias Qadoo was inflicted by a person from very close range, even very close to the body of deceased having directed the weapon from down words to upwards position. His words in this regard are being reproduced as under:

"----------

--I see post-mortem of deceased Ghulam Qadir @ Qadoo Chandio and say that injury No.1 recorded by me is below chin and exit of said injury is from occipital region of head, as such its direction is upwards. It is correct that injury No.1 on the person of deceased Ghulam Qadir @ Qadoo Chandio was inflicted by a person from a very close range or very close to the body of deceased, having directed

weapon from downward to upward position.----------”

154. The informant party have not uttered any words in respect of such injury and manner and mode of sustaining such an injury. Now informant Parvaiz deposed that accused Ghulam Murtaza had also fired at deceased Mukhtiar Ahmed which hit him on upper side of chest, accused Ali Gohar also made fire from K.K upon Mukhtiar Ahmed which hit on his face and left arm. We could keep in mind that informant Parvaiz claimed that all the accused were standing almost together at one side but description of injuries of Mukhtiar Ahmed shows that some of injuries were sustained by him at right side of his body and some were sustained by him at left side body, meaning thereby that accused were standing on two different sides of his body from him. This is against such contentions of informant party, when we look at his injuries reproduced in Point No. 1 above. The MLO has also admitted such fact during cross examination, being reproduced as under:

“----------I see post-mortem report of deceased Mukhitar and say that it is correct to suggest that injury No.1 and 3 on the person of deceased Mukhtiar are from two different directions i.e. injury No.1 from the right side and injury No.3 from the left side. It is correct that in respect of injury No.6 of deceased Mukhtiar, it is not recorded by me in

the post-mortem report whether such injury was entry wound or exit wound. It is correct that in respect of injury No.6 it is also not recorded therein that injury No.6 is both entry and exit wound. The injury No.4 and 5 were outcome of pellets fire on the deceased, for the reason that it were circular shaped entry wounds.----------."

155. Though one can say that due to fear or on sustaining any blow, the human body starts acting on its own to save itself and change positions therefore, it is likely that he might have changed positions. But again this verbatim also ought to have come from the mouth of these witnesses, when they kept given minute details in their whole evidence but nothing of that such sort was uttered by them. The learned counsel for informant had relied upon number of case laws including ***PLD 2025 SC 425, 2025 SCMR 752, 2023 SCMR 831***. ***If we go through the case laws it would come to fore that the evidence should not only be straightforward/consistent but should also be confidence inspiring***. It is generally said that confidence inspiring evidence in under criminal law is described as it is so natural, reliable and trustworthy so as to convince a person of ordinary prudence about the guilt of the accused beyond reasonable doubt and it should go beyond mere testimony, implying that evidence is believable and must fit within the probabilities of case. In short in essence this kind of evidence should leave the Court with no doubt about its truthfulness and should rings true. Again, in this regard I would like to referred to the case law relied upon by learned counsel for informant **2025 YLR 1371 Re-HAZRAT NOOR and another Versus The STATE and 2 others,**

wherein it has been held as under:

"13.----------In the circumstances, we are clear in our minds that the ocular account is natural, straightforward, reliable, and instills confidence.

156. The above, reliance clearly shows that the ocular account should not only be straightforward but also be natural and should inspire confidence. The testimony of witnesses would only be accepted if it appears to be natural and rings true. Reliance in this regard can be placed upon case law reported as **2025 YLR 2101 Re- SHABBIR HUSSAIN Versus The STATE and another**, wherein it has been held as under:

"11. ----------There is no cavil with the proposition that the statement of a close relative can be taken into consideration provided it rings true and provided it inspires confident.----------."

157. It is contented that when direct evidence is constituted straightforward then any minor conflict coming from medical

evidence has to be ignored. However as discussed above, the evidence of informant party, neither conform to be natural manner nor appeal to the reason, then how it could be termed as natural or confidence inspiring though may be consistent but at least it could be validly said that same does not rings true. Thus, on one hand, the direct evidence does not stand up to the bench marks as per settled principle of law referred herein above therefore, they can not be solely given effect without independent corroboration as was held. Reliance in this regard can be placed upon case law reported as **2025 YLR 532 GHULAM ALI and another Versus The STATE**

"16.----------There can be no denial to the legally established principle of law that it is always direct evidence that is material to decide the fact and to prove the charge. Insufficient, contradictory, discrepant direct evidence is deemed adequate to hold a criminal charge as not proved but where direct evidence remains in the field with that of its being natural and confidence-inspiring then the requirement of independent corroboration is only a rule of abundant caution and not a mandatory rule to be applied invariably in each case. Reliance may be placed upon the case of Muhammad Ihsan v. The State (2006 SCMR 1857) wherein the Apex Court has held that:

"5. It be noted that this Court has time and again held that the rule of corroboration is rule of abundant caution and not a mandatory rule to be applied invariably in each case rather this is settled principle that if the Court is satisfied about the truthfulness of direct evidence, the requirement of corroborative evidence would not be of much significance in that, as it may as in the present case eye-witness account which is unimpeachable and confidence-inspiring character and is corroborated by medical evidence."

158. Even above dictum of Honourable Supreme Court corroboration by medical evidence is asserted. When we look at above discussion, we find that there are material conflicts between ocular account and the medical evidence also. When the evidence brings such kind of conflict and contradictions then per law, the very presence of witnesses is doubted. Reliance in this regard is placed upon case law reported **2025 SCMR 1053 Re- MUHAMMAD NAWAZ Versus The STATE**, wherein it has been held as under:

"5.----------The abovementioned conflict between the ocular account and the medical evidence shows that in-fact the prosecution eye-witnesses were not present at

the spot at the relevant time because, had they been present at the time of occurrence then they should have given the correct number of injuries sustained by Mst. Azran Bibi (deceased). In the cases reported as "Muhammad Ali v. The State" (2015 SCMR 137) and "Usman alias Kaloo v. The State" (2017 SCMR 622), the evidence of eye-witnesses was disbelieved and the benefit of doubt was extended to the accused persons of the said cases, on the ground of conflict between ocular account and medical evidence regarding number of injuries sustained by the deceased."

159. Further reliance in this regard can be placed upon the case law reported as **2024 S C M R 51 Re-MUHAMMAD RIAZ Versus KHURRAM SHEHZAD and another**, wherein it has been held as under:

"6. Heard the arguments. The foremost rationale of the administration of criminal justice is to penalize and reproach the offender or perpetrator so as to maintain law and order in the populace and society and deter such crimes. Hence it is the onerous duty of the State to punish offenders under the laws of the land, which includes penal laws. In the administration of criminal justice, the evidence considered may be ocular or circumstantial and may

be classified as direct or indirect evidence. In all indictments, it is the arduous duty of the prosecution to prove the guilt of the accused beyond any reasonable doubt as where such doubt exists, the Court may extend the benefit thereof to the accused and exonerate him from the charge. The probative worth and value of evidence hinges, by and large, on the facts of each case. **The Courts are duty-bound to gauge the trustworthiness of witnesses, identify and resolve any evidentiary inconsistencies and/or contradictions, contemplate the medical evidence vis- -vis the ocular testimony as corroborative piece of evidence, and then reach a conclusion.** The term 'beyond reasonable doubt' is a legal fiction whereby a hefty burden of proof is required to be discharged to award or maintain a sentence or verdict of guilt in a criminal case. Id est, it connotes that the prosecution is obligated to satisfy the Court with regard to the actuality of reasonable grounds, beyond any shadow of doubt, in order to secure a verdict of guilt. **Indubitably, the standard of proof required in a criminal trial is considerably greater than the benchmark adopted in the trial**

of civil cases i.e. on a balance of probabilities."

(Bold and underlined by me)

160. Informant Parvaiz got recorded in the FIR that on arrival, those accused who alighted from the car, had opened the mouths of barrels and made indiscriminate firing without specifically disclosing it to be aerial one or otherwise. So also, in the same FIR, he has disclosed that accused after successfully hitting said deceased also kept making firing without uttering whether it was indiscriminate or aerial but only further disclosed that while leaving, they were making aerial firing also. However, while it came to trial, he has twisted/changed such version. His examination in chief shows that he has not uttered any word about making of any indiscriminate firing after alighting from the car and or thereafter but only claimed that they had made aerial firing. Words of informant from Examination-in-chief are being reproduced as under:

"---------- Five accused persons having weapons alighted from the car. One accused was Burhan Khan s/o Shabir Ahmed Chandio who was sitting on the front seat of Land Cruiser. We saw and identified the accused persons having alighted from the car with weapons to be Ali Gohar S/o Bakhtiar @ Yakhtiar Chandio having Kalashnikov in hand, 2. Ghulam Murtaza S/o Muhammad Safar Chandio having repeater in hand, 3. Sikandar S/o Ali Hassan Chandio having repeater in hand, 4. Zulfiquar S/o

Ghulam Qadir @ Qadoo Chandio having repeater in hand, 5. Ghulam Qadir S/o Muhammad Parial Chandio having repeater in hand. Accused Burhan Khan rolled down the glass of Land Cruiser door instigated the above said accused that Mukhtiar Chandio and others have created sedition against Sardar Khan and they have been restrained repeatedly but they are not obeying, therefore, today they should be treated in an exemplary manner so that it would be a lesson for others and that they should commit their murders and end them. On instigation of accused Burhan Khan and on the abetment of accused Sardar Khan, the accused persons Ghulam Qadir @ Qadoo Chandio made straight fire with intention to commit murder upon my father Karamullah Khan which hit him in his abdomen.----------

Then all accused while making firing and raising slogans that any person would make sedition against Sardar Khan, would face the same

consequences. Then remaining accused persons went away towards western side on the vehicles.----------.”

161. The Examination-in-chiefs of Aijaz and Manzoor also shows same kind of twisting of evidence respect to such earlier claim of indiscriminate firings by opening mouths of the barrels by concealing the same. In this regard following words of the informant would be relevant for the purpose of consideration and appreciation:

“----------It is correct to suggest that in the FIR I have stated that the accused persons made indiscriminate firing by opening the barrels of their weapons. All accused had made such indiscriminate firing. I do not remember the number of fires made by the accused persons during such indiscriminate firing. They might have made in all 20 to 30 fires during such indiscriminate firing prior to hitting the deceased persons. It is correct to suggest that in the FIR I have stated that after hitting the deceased persons the accused had also made indiscriminate firing. The subsequent indiscriminate firing was made for 01 or 02 seconds. All four accused persons having weapons have made such subsequent indiscriminate firing. I am unable to state which accused had made what number of fires

after main incident. I am also unable to state that all the four accused persons had made what number of fires collectively during subsequent indiscriminate firing. ----------It is not correct to suggest that none of accused persons having weapons had made any aerial firing over me and both P.Ws. It is correct to suggest that that in my FIR and in any of my subsequent statements I have not stated that accused persons made aerial firing over me. It is correct to suggest that none of accused persons having weapons had abused me and my P.Ws, nor caused any butt blow, nor any kick or fist blow. It is not correct to suggest that in my FIR and subsequent statements I have not stated that the accused persons made aerial firing against us. It is correct to suggest that such statement is not mentioned in my FIR and subsequent statements. It is correct to suggest that in the ending lines of FIR I have stated that due to such indiscriminate firing and fear shopkeepers closed the shops and ran away.----------."

162. So also, the mashirnama of place of incident do show marks of firing in the surroundings walls and doors at place of incident, which means the firing was not in the air but much lower and direct one. So also, recoveries of number of empties of different weapons

were also shown therein. On one hand, it appears that such twisting of evidence was apparently intended by informant party, in order to bring their evidence in line with the other circumstantial evidence/collection of empties of the case by showing same to be part of aerial firing because except those deceased none else received any scratch and then at the same time concealed the alleged claims of indiscriminate firings, therefore, appear to have introduced the plea of aerial firings only. This again appears to be material omission leading to dishonest improvement at trial to bring the evidence in line with others circumstances to secure conviction. Reliance in this regard can be placed upon case law reported as **1995 SCMR 1793 Re- ZAKIR KHAN and others versus THE STATE** , relied upon by the advocate for informant. wherein it has been held as under:

> "13.---------- A contradiction, unlike an omission, is an inconsistency between the earlier version of a witness and his subsequent version before the Court. The rule is now well established that only material contradictions are to be taken into consideration by the Court while minor discrepancies found in the evidence of witnesses, which generally occur, are to be overlooked. There is also a tendency on the part of witnesses in this country to overstate a fact or to make improvements in their depositions before the Court. But a mere omission by witness to disclose a certain fact to the Investigating Officer would

not render his testimony unreliable unless the improvement made by the witness while giving evidence before the Court has sufficient probative force to bring home the guilt to the accused."

163. As stated above, in the FIR there was allegation of making indiscriminate firing by accused after alighting from car and then after successfully hitting those deceased also, which fact have also been admitted by the informant during cross examination though concealed by him during examination-in-chief. Yet admittedly not a single scratch was caused to any person including these PWs. We should keep in mind that allegations of successful fires are not made part of such indiscriminate firing by these PWs either in the FIR or evidence. However, I am concerned only with the fact that when they claim an indiscriminate firing that too twice, which is factually distinguished from an aerial firing and each of them remained unhurt though they were within the same firing range raises huge question about their presence. In this regard learned counsel for informant while relying upon case law reported in **2005 SCMR 1958 Re-NOOR MUHAMMAD Versus THE STATE and another** had contended that it is not necessary that every person among a mob should sustain injury, it was held as under:

"9. Relative to the contention that presence of two eye-witnesses namely Niaz Muhammad and Pervez Khan is highly doubtful as in spite of indiscriminate firing by the petitioner and two absconding accused they did not receive any injury is without any substance. It is not the first case of its kind wherein some of the

persons who were under attack by the opposite party did not receive any fire-arm injury whereas others received one or more than one fire-arm injuries. There cannot be a presumption or rule that all the persons who were under attack from fire-arms ought to have received injuries and the mere fact that some of them c did not receive injuries would not make their presence at the place and time of incident doubtful. This contention is also devoid of force and is repelled. In support of the above proposition judgment in the case of Mehboob Sultan and 2 others v. The State 2001 SCMR 163 is referred."

164. If we go through the above dictates, it would clearly appear that in that case there was no allegation of any enmity going on between parties. In this regard relevant paragraph No. 8 clearly depict so being reproduced as under:-

"8. With regard to the contention that both the eye-witnesses i.e. complainant/P.W.2 Niaz Muhammad and P.W.3 Pervez Khan are interested witnesses. It is to be observed that it is a well-settled principle that mere

relationship or close association of prosecution witnesses with the deceased in the absence of established hostility, animosity or any other motive to depose falsely would not be sufficient to hold them to be interested witnesses and their testimony would not be discarded on this ground. From the material on record it has been established that no previous enmity, hostility or grudge existed between the complainant party and the accused persons. ----------.”

165. However, in present case the informant himself has deposed in Examination-in-chief that they were threatened about desolation of council otherwise said Mukhtiar with entire family would be murdered and also denied the suggestions during cross examination that there was no enmity between him and accused persons. His words in this regard are reproduced as under:

“----------It is not correct to suggest that there was no enmity between me and accused persons----------.”

166. So also, when we go through, the evidence of these PWs, it would come to fore that though they have been given hands of girls to each other being relative *inter se* but now and then were also allegedly causing murders of each other and conducting private settlements. It also depicts from their evidence that some of the girls were given in lieu of such settlements though they were denying such suggestions put in this regard by the defense side. However, if we look at overall cross examination there appears serious ill will having going on

between the parties. I.O DSP Muhammad Aijaz Bhatti has also admitted that murders were outcome of their old enmity. His such words from cross examination are being reproduced as under:

"----------It is correct that such murders have been committed due to old family enmity.----------."

167. In his evidence, he has also submitted the numbers of FIR pertaining to old criminal cases between them and also their criminal record. It is also appearing in evidence that said deceased Ghulam Qadir alias Qado was involved in murder case of one Qabil Hussain, the son of Karamullah and after whose death an another son was born to him, to whom he had named Qabil Hussain murdered in the present incident, as was submitted during arguments. In view of such enmity the factual matrix of the case laws referred by the learned counsel for informant reproduced above can well be distinguished.

168. The case law now developed on such parameters in respect of allegations containing indiscriminate firing the Hon'ble Supreme Court has started taking different view also, questioning the credibility of such witnesses as to having witnessed the occurrence. In this regard reliance can be placed upon latest view of Honorable Supreme Court reported as **2026 SCMR 122 Re- UMER JAN Versus The STATE through AG, Khyber Pakhtunkhwa,** wherein it has been held as under:

> "11. A glance at the site plan Exh.PW.4/1 reveals that the incident occurred on a thoroughfare in front of an under-construction mosque. It is inconceivable that the complainant and Mehmood Khan PW-5, who claim to have been directly fired upon by two armed assailants having automatic weapons, did not receive even a

scratch. The alleged firing was not only indiscriminate but also continuous, as per the prosecution, yet both the witnesses remained unscathed, raising serious questions about the veracity of their presence at the scene and the truthfulness of their account. Both being brothers of the deceased and sharing a common motive arising out of a longstanding blood feud, they stood on equal footing with the deceased, yet conveniently escaped injury. This improbable conduct further discredits their testimony."

169. In fresh case involving allegations of indiscriminate firings, when the PWs did not sustain any scratch Honourable Supreme Courts doubted the presence of PWs and has proceeded to acquitted on such count also. Reliance in this regard is placed upon **2025 SCMR 45 Re- MUHAMMAD AKHTAR and others Versus The STATE and others,** wherein it has been held as under:

"7. The complainant is son of deceased Haji Muhammad and is having blood relations with all the deceased and the injured. According to his statement recorded at the trial as PW.14, he along with his brothers Muhammad Shafique and Muhammad Akhtar were sleeping on the roof of their residential room in the night of the occurrence while his father along with other inmates (the deceased

and injured) were sleeping in the courtyard. At about 5:30 am they heard the sound of motorbikes and saw the nominated accused present in their courtyard with firearms making firing upon the deceased and injured. PW.14 has specifically nominated all the accused with specific firearms in their hands and he has attributed specific firearm injuries on different parts of the bodies of the deceased as well as the injured to all the accused with precision. Surprisingly, PW.14 did not receive a single firearm injury in the whole occurrence despite indiscriminate firing by six nominated accused and despite allegedly witnessing the entire occurrence from a close range.

8. Non-receiving of any firearm injury by PW.14 during the occurrence and his accurate attribution of each injury of the deceased and injured to each accused specifically with specific firearms casts serious doubt about his presence at the place of occurrence and his planation as an eye-witness of the occurrence due to previous enmity with the nominated accused cannot be ruled out of consideration particularly when his testimony is lacking independent corroboration in material aspects."

170. Somewhat same view has been reiterated in the case law reported as ***2024 SCMR 2042, 2024 SCMR 1224.*** In these case laws, there was admitted enmity going on between parties as is shown in the present case and the PWs still remained unhurt, therefore the Honourable Supreme Court did not accept their version doubting their presence & latest views of Supreme Court have to prevail.

171. It may be noted that in FIR the informant Parvaiz had only disclosed that fires of accused Ali Gohar had hit in the face of his brother deceased Mukhtiar Ahmed and even the later part of FIR, he only disclosed that deceased Mukhtiar Ahmed had sustained injuries on his face and left side of chest. In the FIR, there were no disclosure having been made that deceased Mukhtiar Ahmed had also sustained injury on his left arm. However, MLO has also found one injury on the left forearm of said deceased Mukhtiar Ahmed described as under in his postmortem report and evidence:

> "**6. Firearm lacerated type of wound in 4 c.m x 2 c.m on left forearm laterally, fracture visible."**

172. It was again argued by learned counsel for informant by relying upon case law that in case of such firing, it is not possible for a person to give detail of every injury. In this regard he has referred to **PLD 1976 SC 234 Re- TAJ MUHAMMAD¿¿¿Appellant versus MUHAMMAD YUSUF AND 2 OTHERS.** It was held as under:

> "----------
> --------The learned Sessions Judge had rightly observed that **it was not expected of an eye witness to give details of each and every injury particularly when the number of the injuries was so large**. The learned Sessions Judge having found! the witnesses to be independent and disinterested who had no

reason whatsoever to falsely implicate any one of the respondents rightly relied. on their evidence as a whole, and the learned Judges of the High Court omitted to give due weight to such opinion of the learned Sessions Judge. In disbelieving the three eye¿¿¿witnesses the learned Judges relied more on speculations than on the evidence.

173. In view of above case law, the informant Parvaiz was not supposed to have disclosed each injury on the person of said deceased and ought to have remained silent giving evidence in line with his previous statement/FIR. However, now the law has developed that in case there appears some extra injury on the person of deceased the prosecution/witnesses has to explain. In this regard reliance can be placed upon case law reported as **2019 SCMR 631 Re- MUHAMMAD ARIF Versus The STATE**, wherein it has been held as under:

"6. The ocular account is not fully supported by the medical because in the FIR as well as before the learned trial court only one injury on the person of Javaid Hussain (deceased) was attributed to Muhammad Arif (appellant). Even as per MLC of Javaid Hussain issued in his favour by Dr. Muhammad Akram (PW11), who medically examined him, there was only one entry

wound on the person of deceased. During his cross-examination, he (PW11) stated that he did not observe any other injury on the person of deceased. Dr. Iftikhar Ahmad (PW2) conducted postmortem examination on the dead body of deceased Javaid Hussain. He (PW2) stated in his cross-examination stated that there was only one injury in the MLC; that it was only the entry wound and that no exit wound was observed. However, in the post-mortem examination report two firearm injuries (injury No.1 4 cm x 2 cm and injury No.1 cm x 1/2 cm) were observed. There is no explanation whatsoever as to how the second injury was inflicted on the person of Javaid Hussain (deceased).

174. Somewhat same view has been reiterated in case law reported ***2025 SCMR 1053.*** However, the informant has chosen to attribute such injury to accused Ali Gohar in his Examination-in-chief (which has been reproduced herein above), perhaps under the guise of explaining same though not supported by his PWs Aijaz and Manzoor in this regard, as they did not choose to assign such left arm injury of deceased Mukhtiar Ahmed to either Ali Gohar or Ghulam Murtaza. Even in their evidence they did not disclose whether deceased Mukhtiar had sustained any injury on left arm/forearm thereby contradicted words of informant Parvaiz deposed at trial. Thus, it can be said that this was

material dishonest improvement introduced by informant Parvaiz. It is now established law when a witness introduced a dishonest improvement to bring his evidence in line with medical evidence then is stamped as untrustworthy and loses credence. Reliance is again placed upon case law reported as **2018 SCMR 772 MUHAMMAD MANSHA VERSUS THE STATE,** relied upon by the defense counsel wherein it has been held as under:

> "Once the Court comes to the conclusion that the eye-witnesses had made dishonest improvements in their statements then it is not safe to place reliance on their statements. It is also settled by this Court that when ever a witness made dishonest improvement in his version in order to bring his case in line with the medical evidence or in order to strengthen the prosecution case then his testimony is not worthy of credence. The witnesses in this case have also made dishonest improvement in order to bring the case in line with the medical evidence (as observed by the learned High Court), in that eventuality conviction was not sustainable on the testimony of the said witnesses. Reliance, in this behalf can be made upon the cases of Sardar Bibi and another v. Munir Ahmad and others (2017 SCMR 344), Amir Zaman v. Mahboob and others (1985 SCMR 685), Akhtar Ali and others v. The State (2008 SCMR 6), Khalid Javed and another v. The State

(2003 SCMR 1419), Mohammad Shafiqe Ahmad v. The State (PLD 1981 SC 472), Syed Saeed Mohammad Shah and another v. The State (1993 SCMR 550) and Mohammad Saleem v. Mohammad Azam (2011 SCMR 474)."

175. There is also another unnatural conduct on the part of these prosecution witnesses. There such evidence does not show that during course of either indiscriminate firing on arrival or later on made by accused at the said deceased or even at the time of aerial firing upon them, they do not move a bit to save themselves, which is again against the unnatural conduct, as in such situation every human being try to save himself, otherwise it would be a cock and bull story given by them. It was so held in case law report as ***PLD 1977 SC 557*** **Re-ROSHAN AND 4 OTHERS versus THE STATE,** relied upon by the counsel for the informant relevant portion thereof from minority view being re-produced as under:

"It appears and is only natural and plausible that on seeing the accused the deceased, the prosecution witnesses and their companions took to their heels, that some of the assailants shot and stabbed the three deceased in the Dera and the rest pursued the others and overtook tree of them near the Kojifar Camp where they were killed while the rest succeeded in making good their escape. In view of the circumstances of the case the standing of the prosecution witnesses or any one of their companions at any place for watching the killing is nothing but

of a cock and bull story."

176. Again, there appears another astonishing aspect amounting to the unnatural conduct of these P.Ws. Their dear ones were being fired at, yet they remained silent spectators and did not apparently make efforts to save the life of their dear ones or made efforts to desist the accused from making such fires being persons of good health or to make hue and cry to rescue the deceased. In this respect their evidence is totally silent. In this regard reliance can be place upon the case law reported as **2026 SCMR 251 Re- GHULAM SARWAR GHANGRO Versus The STATE**, being also a case involving firing with KK an automatic weapon, at deceased, wherein it has been laid down as under:

> "8. ----------In addition to this, the conduct of the eye-witnesses as reflected in record is also unnatural as the real son of complainant and real brother of the eye-witness was being murdered in front of their eyes and they neither resisted nor raised any hue and cry to rescue the deceased----------."

177. On this count also, the Court had doubted the prosecution case besides other factors. Not only above, there is also unnatural conduct on the part of accused, if at all there were present there and had made such firing at the informant party, as especially when they have stated in very examination in chief that the threatened messages were of a such nature, that their entire family to be ended/murdered. Both PWs admittedly are first cousins of this informant. In such scenario, it is hard to believe that the accused, if they really came with the intention to kill the entire family, would leave these witnesses unharmed and even did not attempt to cause injuries to them. It is also questionable that why they would leave the scene without completing their alleged plan, especially when they were leaving behind key

eyewitnesses who could later testify against them and get them hanged and that accused allegedly claim to be influentials knew that no person from public would come to deposed against them. This makes the prosecution's story doubtful and unreliable. In this regard reliance can be placed upon case law reported as **2024 SCMR 1579, Re-RAFAQAT ALI alias FOJI and another Versus The STATE and others**, wherein it has been held as under:

> "7. PW-2 is real brother of the deceased and PW-3 is nephew of the deceased. The motive of the occurrence has been alleged by PW-2 as previous enmity and in this regard two FIRs have been brought on record which were got registered by the real brother and paternal uncle of the convict against the deceased. PW-2 and PW-3 claim to accompany the deceased at the time of occurrence but surprisingly they did not receive any firearm injury. It is not believable that by killing a person in presence of his close relatives accused would not attempt to cause any injury to the prosecution witnesses leaving for them evidence to be hanged. PW-2 and PW-3 have also made dishonest improvements in their statements at the trial. The ocular testimony of PW-2 and PW-3 is lacking corroboration in material aspects."

178. Further reliance can be placed upon case law reported as ***2021 YLR NOTE 30 RE-GAMAN BANGULANI AND 2 OTHERS V. THE STATE***, wherein it has been held as under:

“15……The question arises why they were let off unhurt by the accused party particularly when none of them could escape alive and the accused party was well within knowledge that they would become witness against them in time to come. Such a behavior of accused party does not appeal to a prudent mind that when they could easily wipe out the entire evidence against them why they have not done so. Reliance may well be made to the case of Mst. Rukhsana Begum and others v Sajjad and others reported as 2017 SCMR 596, wherein it has been held that:-

"Another intriguing aspect of the matter is that, according to the FIR, all the accused encircled the complainant, the PWs and the two deceased thus, the apparent object was that none could escape alive. The complainant being father of the two deceased and the head of the family was supposed to be the prime target. In fact he has vigorously pursued the case against the accused and also deposed against them as an eye-witness. The site plan positions would show that, he and the other PWs were at the mercy of the assailants but being the prime target even no threat was extended to him. Blessing him with unbelievable courtesy and

mercy shown to him by the accused knowing well that he and the witnesses would depose against them by leaving them unhurt, is absolutely unbelievable story. Such behavior, on the part of the accused runs counter to natural human conduct and behavior explained in the provisions of Article 129 of the Qanun-e-Shahadat, Order 1984, therefore, the court is unable to accept such unbelievable proposition".

179. Even PW/eye witness Aijaz Chandio has admitted that during course of trial he was being tutored/coached, for giving evidence by uttering: "***The complainant used to remain in consultation with prosecutor and thereafter coaching us.***" It can reasonably be inferred from his such admission that the other witness Manzoor had also been tutored. In such eventuality the Courts do not accept evidence of such a witness, who is found to be tutored. Such wisdom can be drawn from the case law reported as ***2024 YLR 2272***, ***Re- AAMIR KHAN and others Versus The STATE and others***, wherein it has been held as under:

"11. The ocular account has its own importance in any murder case and the fate of the case mainly hinges upon its credibility. The presence of an eye-witness at the spot is not to be presumed rather is to be proved satisfactorily by the prosecution during trial. For ascertaining the truth behind the claim of an eye-witness about his acclaimed presence, the court has to examine his evidence with best possible circumspection. It is a fallacious approach to follow

*blindly the notion that a murder occurrence having taken place at a thickly populated place cannot go un-noticed thus the narrators of such ocular account ought to be believed***. Often a false witness after being properly tutored successfully overcomes the test of cross-examination but still the courts must not let the ends of justice be defeated and instead such depositions, before acceptance, be put to the test of strict scrutiny**. *If such a witness gives evasive replies to material questions or express ignorance regarding them, the testimony of such a witness is to be looked with suspicion and be discarded in accordance with doctrine of abundant caution. If any reference is needed that can be made to the case reported as "Abdul Haq and others v. The State" (2020 SCMR 116), wherein the Supreme Court of Pakistan observed as under:*

" he also admitted his acquittance with Abdul Haq petitioner, his co-villager while evasively avoiding a query regarding pendency of different civil and criminal cases instituted by Abdul Ghani petitioner against him as well as his brother. Similarly, in his examination-in-chief, the abductee did not name Muhammad Yousaf petitioner as

being one of the culprits; while denying litigation between the two families, he however, admitted that both the petitioners, real brothers inter se, lived in the same neighbourhood. In this backdrop, no importance can be attached to the identification parade, conducted under magisterial supervision. In the totality of circumstances, the prosecution case is not free from doubt, doubts deducible from stated prosecution positions, otherwise inherently improbable."

(Bold and underline by me)

180. On such count alone, their evidence can be kept out of consideration too.

181. In the evidence, the informant has claimed that when they were taken the injured and deceased from place of incident their clothes smeared with blood by uttering following words:

"----------. I helped the policemen in shifting of injured Karmaullah and Mukhtiar Ahmed to Taluka Hospital Mehar on police mobile. Blood also smeared to my hands and clothes. I did not produce my blood stained clothes before I.O during investigation."

182. So also, during cross examination the PW Aijaz made same claim by uttering following words:

> "Complainant and P.W Manzoor took the injured Qabil in the car for hospital and I followed the police mobile on foot.----------
> During shifting of dead bodies from crime scene to the police mobile, my clothes became blood stained. It is correct to suggest that I did not hand over such blood stained clothes to the I.O during course of investigation.----------"

183. If it was so same ought to have been given to the police, to positively established their presence thereat at relevant time. In the light of case laws relied upon by advocate for accused reported as **2024 SCMR 1373 and 2020 SCMR 319, 2023 YLR 1865 and 2022 YLR 484**, supporting their arguments. The learned counsel for informant however contended that it was neglect of police. The case referred by defense counsel reported as ***2023 YLR 1865,*** also shows that it was equally duty of I.O to collect the same. In this respect we have to look at the evidence of ASI Manzoor Mangi as to why, he did not collect the same or for that DSP Muhammad Aijaz Bhatti. When we perused cross examination of ASI Manzoor Mangi we come across his words **" *Complainant was available in hospital when I reached there in the morning. The clothes of complainant were not seen by me to be blood stained, nor of his witnesses available there."*** Had the said police officials seen the clothes of witnesses to be blood stained they

might have performed their duty. On one hand, these aspects bring material contradictions in the case of prosecution and on the other hand, doubt the presence of informant party at place of incident or his claim of helping the police officials for taking both injured in to their mobile van or having taken his brother injured Qabil in his car. Against this claim of informant party that they had helped said police officials and also went to hospital just with them or following them, DSP Muhammad Aijaz Bhatti has told a different story based on his investigation. His words from cross examination in this regard are being reproduced as under:

"----------

During investigation on 23.01.2018 I had recorded statements under section 161 Cr.P.C of DPC Fida Hussain Lakhair and PC Altaf Ali Zardari of P.S A. Section Mehar. They are officials who had reached immediately after the incident at such place of incident. I say that in their such statements said DPC Fida Hussain and PC Altaf Hussain had not disclosed names of any accused person to have been seen by them to be present at such place at that time or having seen them decamping therefrom. I say that in such statements of DPC Fida Hussain and PC Altaf Ali had not disclosed names of complainant Pervaiz and P.Ws Aijaz and Manzoor to have been seen by them to be present at the place of incident. Voluntarily says that even I did not put such questions to them in this regard. It is correct that in such statements they have disclosed that they had taken injured

Karamullah and his two sons therefrom in police mobile to hospital.----------
."

184. Likewise said shopkeepers as discussed herein above, these two police witnesses not being connected with either side, were natural witnesses in respect of manner of occurrence. This witness DSP Muhammad Aijaz Bhatti and the statements of said two police officials DPC Fida Hussain and PC Altaf Ali Zardari, has also recorded statements of those shopkeepers also and during cross examination following admissions could be found from his cross examination: -

"**Cross conducted by Mr. Safdar Ali G Bhutto for accused Sikandar and Zulifqar**. "I had examined shopkeepers of the surrounding shops of the place of incident under section 161 Cr.P.C. It is correct that in their respective statements recorded by me the said shopkeepers namely Abdul Hafeez, Ashfaque Ali, Ahmed Ali and Ali Sher had not disclosed the names of accused Sikandar Ali and Zulfiquar Ali having come there or having participated in the commission of offence. It is incorrect to suggest that actually both accused Sikandar and Zulfiquar are innocent.

Cross conducted Mr. Ayaz Hussain Tunio learned counsel for accused Ghulam Murtaza. "The shopkeepers of such surrounding shops were called by me through SHO. They were in all four shopkeepers. It is correct that said shopkeepers did not take the name of any of the present accused to be present there at the time of incident. In their statements those shopkeepers had also disclosed that at the time of

incident, they were present at such place. ----------.”

Mr. Ifitikhar Ahmed Shah learned counsel for accused Abdul Kareem. During investigation on 23.01.2018 I had recorded statements under section 161 Cr.P.C of DPC Fida Hussain Lakhair and PC Altaf Ali Zardari of P.S A. Section Mehar. They are officials who had reached immediately after the incident at such place of incident. I say that in their such statements said DPC Fida Hussain and PC Altaf Hussain had not disclosed names of any accused person to have been seen by them to be present at such place at that time or having seen them decamping therefrom. I say that in such statements of DPC Fida Hussain and PC Altaf Ali had not disclosed names of complainant Pervaiz and P.Ws Aijaz and Manzoor to have been seen by them to be present at the place of incident. Voluntarily says that even I did not put such questions to them in this regard. It is correct that in such statements they have disclosed that they had taken injured Karamullah and his two sons therefrom in police mobile to hospital.”

185. In view of above evidence, on one hand, their non examinations has brought adverse inference against the claim of informant party in the light of provisions of article 129 (g) QSO 1984 and in the light of case law relied upon herein above on such point. And at the same time, their evidence is also lacking independent corroboration in the light of the case laws relied herein above. So also, though the PWs may be resident of neighborhood, yet this version of

said PWs recorded by DSP Muhammad Aijaz Bhatti uttered by him at trial, heavily doubted not only the presence of informant party thereat but also the presence of accused party. So also, this heavily contradicts claim of informant party either they helped said officials in taking the injured/dead bodies to hospital in police van or in their own car. In view of such backdrop, we have found that these witnesses were not disinterested witnesses having motive against the accused, therefore their evidence can not be relied upon without independent corroboration in the light of case laws even relied upon by the advocate for informant, so also by the defense counsel in this regard. Thus, we can now answer the question that whether these PWs have motive to implicate the accused, would be in affirmative. So also, we can answer the question, that had they seen incident? the answer would be in negative or at least doubtful. So also, at the same time, the above discussion led to show that the incident has not taken place at least in mode and manner as had been put forth by these PWs. We know that a charge which includes date, time, place and mode/manner of occurrence. In case, any of such ingredients is not established beyond any shadow of doubt then benefit thereof has to be resolved in favour of accused. Reliance in this regard can be placed upon case law reported as **2025 SCMR 1024 Re-MANZAR ABBAS and another Versus The STATE,** wherein it has been held as under:

> "14. **In view of what has been discussed above we are firm that the occurrence has not taken place in the mode and manner as alleged by the complainant and PW Mst. Musarrat Jabeen**. Both the alleged eye-witnesses being close relative of the deceased are procured witnesses, thus false implication of the appellant on the basis of motive of previous blood feud cannot be ruled out. It would be highly relevant to mention here that motive is a double-edged weapon, which can be used either

way and by either side i.e. for real or false involvement. Reference in this regard may be made to cases of Noor Elahi v. Zafrul Haque (PLD 1976 SC 557), Allah Bakhsh v. The State (PLD 1978 SC 171), Khadim Hussain v. The State (2010 SCMR 1090), Tahir Khan v. The State (2011 SCMR 646), Tariq v. The State (2017 SCMR 1672) and Muhammad Ashraf alias Acchu v. The State (2019 SCMR 652).

15. The above discussed infirmities, glaring omissions and contradictions in the prosecution's case led us to an irresistible conclusion that the prosecution has failed to prove the charge against the appellants beyond reasonable doubt. It is settled principle of law that for giving the benefit of the doubt it is not necessary that there should be so many circumstances rather a single circumstance creating reasonable doubt in a prudent mind is sufficient for extending its benefit to an accused not as a matter of concession but as of right. Reliance is placed on the cases of "Muhammad Mansha v. The State" (2018 SCMR 772) and Najaf Ali Shah v. The State (2021 SCMR 736)."

(Bold and underlined by me for emphasis).

186. While holding so, the Honourable Supreme Court, proceeded to acquit the accused therein. It was contended by advocate for informant that Court has to take evidence which is otherwise not dented by sifting the grain and had relied upon number of case laws. But I am reminded of the fresh view of Honourable Supreme Court reported as **PLD 2019 SC 527**, wherein it has now been held Honourable Supreme Court that when any witness introduced falsehood even partially to the evidence and do not speak whole truth then his whole evidence has to be kept out of consideration.

187. Lastly, I may say that learned counsel for both parties in support of their contentions have relied upon number of case laws of Superior Courts almost on each point. We may say that these case laws at the most create two possibilities, one favoring informant party and other favoring accused party and learned counsel for informant had contended that it is in the discretion of the Court to take either view. However, I may say that principle on such point too, is very much settled by our Honourable Superior Courts. Over such aspect reliance is placed upon **PLD 2023 SC 536 Re-GUFRAN ALI Versus HASEEB KHAN and another,** wherein it has been held as under:

> "----------it is settled principle of law that if two views are possible from the evidence adduced in the case then the view favourable to the accused is to be adopted. Reliance is placed on Saghir Ahmed v. State (2023 SCMR 241) and Sahib Ullah v. The State (2022 SCMR 1806).----------."

188. Now here I may say that being a Court for administration of criminal justice, the Court is not to see who committed such murders but it was duty casted upon Court per law, to see whether charges so put forth against these accused have been proved to hilt or otherwise and for that exercise of whole trial, appreciation of evidence, has

to be made in the light of settled principal of law by our Superior Courts without being influenced by any extraneous consideration, I may again referred to dictum of Honourable Supreme Court in this regard reported as **PLD 2021 SC 600 Re- NAVEED ASGHAR and 2 others Versus The STATE**, wherein it has been directed as under:

"10. The ruthless and ghastly murder of five persons is a crime of heinous nature; but the frightful nature of crime should not blur the eyes of justice, allowing emotions triggered by the horrifying nature of the offence to prejudge the accused. Cases are to be decided on the basis of evidence and evidence alone and not on the basis of sentiments and emotions.[8] Gruesome, heinous or brutal nature of the offence may be relevant at the stage of awarding suitable punishment after conviction; but it is totally irrelevant at the stage of appraising or reappraising the evidence available on record to determine guilt of the accused person, as possibility of an innocent person having been wrongly involved in cases of such nature cannot be ruled out.[9] An accused person is presumed to be innocent till the time he is proven guilty beyond reasonable doubt, and this presumption of his innocence continues until the prosecution succeeds in proving the charge against him beyond reasonable doubt on the basis of legally admissible, confidence inspiring, trustworthy and

reliable evidence. No matter how heinous the crime, the constitutional guarantee of fair trial under Article 10A cannot be taken away from the accused. It is, therefore, duty of the court to assess the probative value (weight) of every piece of evidence available on record in accordance with the settled principles of appreciation of evidence, in a dispassionate, systematic and structured manner without being influenced by the nature of the allegations. Any tendency to strain or stretch or haphazardly appreciate evidence to reach a desired or popular decision in a case must be scrupulously avoided or else highly deleterious results seriously affecting proper administration of criminal justice will follow."

189. After appreciation of evidence, the Honourable Supreme Court in above dictum, proceeded to acquit the accused involved therein by observing as follows:

"33.----------In common law, it is based on the maxim, "It is better that ten guilty persons be acquitted rather than one innocent person be convicted". While in Islamic criminal law it is based on the high authority of sayings of the Holy Prophet of Islam (peace be upon him): "Avert punishments [hudood] when there are doubts";35 and" Drive off the ordained crimes from the Muslims as far as you can. If there is any place of refuge for him [accused], let him have his way, because the leader's mistake in pardon is better than his mistake in punishment".[36] A three member Bench

of this Court has quoted probably latter part of the last mentioned saying of the Holy Prophet (peace be upon him) in Ayub Masih v. State[37] in the English translation thus: "Mistake of Qazi (Judge) in releasing a criminal is better than his mistake in punishing an innocent."

34. Keeping in view the said golden rule of giving benefit of doubt to an accused person for safe administration of criminal justice, we are firmly of the opinion that all the circumstantial evidence discussed above is completely unreliable and utterly deficient to prove the charge against the petitioners beyond reasonable doubt. The prosecution has miserably failed to complete the chain of circumstances so as to establish conclusively the guilt of the petitioners in a manner that can rule out every hypothesis inconsistent with their innocence. The circumstantial evidence tendered by the prosecution is not found to be like a well-knit chain, one end of which can touch the dead body of the deceased persons and the other the neck of the petitioners. We find that the missing links have been liberally filled up by the courts below, apparently being influence by the heinous nature of the charges involved in the case, on the basis

of surmises and conjectures, and this has resulted in grave injustice. The courts below have overlooked serious pitfalls and grave infirmities in the prosecution evidence by adopting a superficial and cursory approach, not befitting the seriousness of the crime charged in the present case. The concurrent verdict returned by the courts below (trial court and appellate court) is manifestly erroneous, having been arrived at without a complete and comprehensive appreciation of all the evidence and relevant aspects of the case. The petition is therefore converted into appeal and is allowed: the judgments of the courts below are set aside and the petitioners are acquitted of the charges. They shall be released forthwith, if they are not required to be detained in some other case.

35.

Before parting with the judgment, we feel constrained to observe though at the cost of some repetition but for the sake of clarity that in a criminal trial an accused person cannot be convicted on the basis of mere "suspicion" or "probability" unless and until the charge against him is "proved beyond reasonable doubt", a standard of proof required in criminal cases in

almost all common law jurisdictions. An accused person cannot be deprived of his constitutional right[38] to be dealt with in accordance with law, merely because he is alleged to have committed a gruesome and heinous offence. The zeal to punish an offender even in derogation or violation of the law would blur the distinction between arbitrary decisions and lawful judgments. No doubt, duty of the courts is to administer justice; but this duty is to be performed in accordance with the law and not otherwise. The mandatory requirements of law cannot be ignored by labelling them as technicalities in pursuit of the subjective administration of justice. One guilty person should not be taken to task at the sacrifice of the very basis of a democratic and civilised society, i.e., the rule of law. Tolerating acquittal of some guilty whose guilt is not proved under the law is the price which the society is to pay for the protection of their invaluable constitutional right to be treated in accordance with the law. Otherwise, every person will have to bear peril of being dealt with under the personal whims of the persons sitting in executive or judicial offices, which they in their own wisdom and subjective

assessment consider good for the society.

36. Foregoing are the reasons for our short order dated 07.12.2020, which for ease of reference and completion of record is reproduced hereunder:

"For reasons to be recorded later, the instant jail petition is converted into an appeal and the same is hereby allowed. The convictions and sentences of appellants Naveed Asghar, Khurram Shehzad and Qadeer Ahmed alias Saqib are set aside. They are acquitted of the charge(s) framed against them. They are behind the bars and are ordered to be released forthwith, if not required to be detained in any other case."

190. In view of my above discussion, the points No. 02 to 06 are replied having not been proved beyond any shadow of doubt as such doubtful.

Point No. 07.

For the said reasons, discussion and findings given on Points No.2 to 06 above, I am of the firm view that in the case in hand prosecution has failed to establish the charges against all the said accused beyond shadow of any reasonable doubt, therefore, I acquit the ***accused 1. Sikandar Ali S/o Ali Hassan Chandio (in custody), 2. Ali Gohar S/o Bakhtiar alias Yakhtiar Chandio (in custody), 3. Sardar Ahmed Khan S/o Nawab Shabir Ahmed Khan Chandio (on bail), 4. Burhan Khan S/o Nawab Shabir Ahmed Khan Chandio (on bail), 5. Abdul Sattar S/o Muhammad Saffar Chandio (on bail),***

6. Zulfiquar S/o Ghulam Qadir @ Qadoo Chandio (in custody), 7. Ghulam Murtaza S/o Muhammad Saffar Chandio (in custody), 8. Abdul Kareem @ Kareem Bux S/o Allah Bux Chandio (on bail), U/S. 265-H(1) Cr.P.C, by extending them benefit of doubt. Those accused who are shown in custody are directed to set at liberty fortwith if they are not required in any custody case/crime with acquittal intimation be remanded back to jail custody. Accused, who are shown to be on bail, their bail bonds and sureties stand discharged.

In last before parting with judgment, I must record appreciation for the para-legal staff assigned to my Court for having sacrificed their off hours, so also holidays with me to conclude this case.

Pronounced in the open Court.

Given under my hand & seal of the Court,

This the 30th day of March, 2026.

PROPERTY ORDER UNDER S.517 CR.PC.

The case properties which shown in chargesheet which are no value be destroyed while those, while those belonging to accused side be returned but after passage of appeal period and subject to orders of appellate court, if any appeal is filed.

(HassanAliKalwar)

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