

IN THE FEDERAL SHARIAT COURT
(Appellate/Revisional Jurisdiction)

PRESENT:

MR. JUSTICE MUHAMMAD NOOR MESKANZAI, CHIEF JUSTICE
MR. JUSTICE DR. SYED MUHAMMAD ANWER
MR. JUSTICE KHADIM HUSSAIN M. SHAIKH

CRIMINAL APPEAL NO.02-I OF 2021

1. MUJEEB UR REHMAN SON OF FAZLI RAHMAN, RESIDENT OF MYANA OUCH, EAST DIR LOWER.
2. NOOR UL HAQ SON OF MAZHULLAH, RESIDENT OF BAHRAIN, DISTRICT SWAT, (PRESENTLY RESIDING AT TIMERGARA).
3. HAQDAR ALI SON OF IQBAL SHAH, RESIDENT OF KOTAK, TERNAW, BATAGRAM, SHABQADAR, DISTRICT CHARASADA.
4. YOUSAF KHAN SON OF ZARDAR KHAN, RESIDENT OF MANDEZAI BATGRAM, SHABQADAR, DISTRICT CHARASADA.
5. ANWAR ALI SON OF SHERIN ZAMIN KHAN, RESIDENT OF SHAHGAI TANGAI DARA TIMERGARA DIR LOWER.

APPELLANTS

VERSUS

1. THE STATE.
2. ALAMGIR JAN SON OF JUMA KHAN, RESIDENT OF QAZI ABAD, BALAMBAT, TIMERGARA, DISTRICT DIR LOWER.

RESPONDENTS

CRIMINAL MURDER REFERENCE NO.01-I OF 2021

THE STATE.

APPELLANT

VERSUS

1. MUJEEB UR RAHMAN SON OF FAZLI RAHMAN, RESIDENT OF MYANA OUCH, EAST DIR LOWER.
2. HAQDAR ALI SON OF IQBAL SHAH, RESIDENT OF KOTAK, TERNAW, BATAGRAM, SHABQADAR, DISTRICT CHARASADA.

RESPONDENTS

CRIMINAL REVISION PETITION NO.01-P OF 2021

ALAMGIR JAN SON OF JUMA KHAN, RESIDENT OF QAZI ABAD, BALAMBAT, TIMERGARA, DISTRICT DIR LOWER.

PETITIONER

VERSUS

1. THE STATE.
2. NOOR UL HAQ SON OF MAZHULLAH, RESIDENT OF BAHRAIN, DISTRICT SWAT, (PRESENTLY RESIDING AT TIMERGARA).
3. YOUSAF KHAN SON OF ZARDAR KHAN, RESIDENT OF MANDEZAI, BATAGRAM, SHABQADAR, DISTRICT CHARASADA.
4. ANWAR ALI SON OF SHERIN ZAMIN KHAN, RESIDENT OF SHAHGAI TANGAI DARA, TIMERGARA, DIR LOWER.

RESPONDENTS

Counsel for the Appellants
in Cr. Appeal No.02-I of 2021,
for Respondents in Cr. Murder
Ref. No.01-I of 2021 & in Cr.
Rev.Petition No.01-P of 2021

M/s Ch. Zafar Ali Warraich &
Muhammad Nabi, Advocates.

Counsel for the Petitioner
in Cr.Rev. Petition No.01-P of 2021

M/s Muhammad Ijaz Khan
Sabi & Hazrat Rehman,
Advocates.

Counsel for the State

Sardar Ali Raza, Additional Advocate
General, KPK & Ms. Sofia Noreen,
Assistant Advocate General,
KPK.

FIR No., Date & P.S

408/2015, 26.11.2015,
Ouch, District Dir Lower.

Date of impugned judgment

06.01.2021

Date of Institution of
Cr.A.No.02-I of 2021, Cr.M.Ref.
No.01-I of 2021 and Cr.Rev.Petition
No.01-P of 2021

22.01.2021, 12.01.2021 &
22.02.2021

Dates of Hearing

01.06.2021, 03.06.2021 &
17.12.2021

Date of Judgment

29.04.2022

J U D G M E N T

KHADIM HUSSAIN M. SHAIKH –J. The appellants named above have called in question judgment dated 06.01.2021, passed by the learned Additional Sessions Judge/IZQ, District Dir Lower at Chakdara in Sessions Case No.62/II of 2019 re-The State Vs. Mujeeb-ur-Rehman and 4 others, emanating from Crime No.408 of 2015 registered at Police Station Ouch Dir (Lower) for Offences under Sections 302, 148, 149, 427 of The Pakistan Penal Code, 1860 (XLV of 1860) (“**The Penal Code**”) and Section 17(4) of The Offences Against Property (Enforcement of Hudood) Ordinance, 1979, (“**The Ordinance**”), whereby the appellants have been convicted for offences under Section 396/148/149 of The Penal Code; two appellants namely Mujeeb-ur-Rehman and Haqdar Ali have been awarded death penalty while remaining three appellants namely Noor-ul-Haq,

Yousaf Khan and Anwar Ali have been sentenced to suffer life imprisonment; all the five convicts have been directed to pay amount of Rs.300,000/- (three lac) each as compensation to the legal heirs of deceased Jamiullah under the provisions of Section 544-A of The Code of Criminal Procedure, (Act V of 1898) (**“The Code”**) and in case of default they have been ordered to further undergo S.I for six months; and, all the appellants have also been convicted under Section 427 of The Penal Code and sentenced to suffer imprisonment of one year, extending them the benefit of Section 382-B of The Penal Code.

2. Briefly, the facts of the prosecution case are that on 25.11.2015, a taxi driver Muhammad Abbas alongwith a passenger namely Majid were coming from Peshawar to Timergara and at about 10:45 p.m. when they reached on road Shahi Timergara Chakdara near police post of Osaki, they found a severely injured person lying unconscious in a car, who while being shifted to Timergara hospital for his treatment, succumbed to his injuries and later on he was identified to be Jamiullah alias Khaperay (**“The deceased”**). On the same night, complainant Alamgir reported the matter in the form of mursaila handed down by ASI Miralam Khan at Timergara hospital, disclosing that the deceased was his cousin, who used to run a shoe shop styled as **“Shafique Boot House”** at Timergara and was also doing business of foreign currency with Fazal & Co; per him on 25.11.2015 the deceased had gone to Peshawar after *“Zahur”* prayer; on the same night at 11:30 p.m. he received a phone call that the deceased had been done to death with firearms while he was coming back from Peshawar and that his dead body was being brought to Timergara Hospital, whereupon he rushed to the hospital and found dead body of his cousin the deceased, having firearm injuries. He, however, suspected none, stating that they had

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no enmity with anyone. The said mursaila was later on incorporated in book under Section 154 of The Code being the subject FIR. It is further stated that after namez-e-janza of the deceased one Fazli Mula told complainant Alamgir that the deceased was bringing Rs.6,000,000/- given to him by one Janat Ullah, from Peshawar for him. The complainant narrated such facts to Inspector Naeem Khan, who incorporated the same in his further statement under Section 161 of The Code on 27.11.2015 and as such Section 17 (4) of The Ordinance was added. On 28.11.2015 four appellants namely Mujeeb-ur-Rehman, Noor-ul-Haq, Haqdar Ali and Yousaf Khan were arrested from bethak of appellant Mujeeb-ur-Rehman while appellant Anwar Ali was arrested from currency shop of Daud Ibrahim located on Timergara road. After usual investigation, the appellants were sent-up with the report under Section 173 of The Code to face their trial, showing co-accused Fakhre Alam as absconder therein. On completing all the formalities, a formal charge was framed against the appellants, who pleaded not guilty and claimed their trial.

3. In order to prove its case, the prosecution examined as many as 25 witnesses i.e. PW-1 to PW-25, whereafter the statements of the appellants under Section 342 of The Code were purportedly recorded, wherein they allegedly denying the prosecution allegations, professed their innocence. They neither examined themselves on oath nor did they produce any person as their defence witness. At the conclusion of trial and after hearing the parties' counsel, the learned trial Court has convicted and sentenced the appellants vide impugned judgment dated 06.01.2021 as discussed in paragraph-I *supra*.

4. Earlier the learned Court of Additional District & Sessions Judge/IZQ, District Dir Lower at Chakdara ("**Trial Court**") vide judgment dated

03.12.2019, convicted all the appellants under Section 302(b)/148, 149 of The Penal Code as *Tazir* read with Section 17(4) of The Ordinance and awarded death penalty to two appellants Mujeeb-ur-Rehman and Haqdar Ali, and sentenced appellants Noor-ul-Haq, Yousaf Khan and Anwar Ali to suffer life imprisonment. The appellants were further convicted under Section 427 of The Penal Code and sentenced to suffer imprisonment for one year. All the sentences were ordered to run concurrently with benefit of Section 382-B of The Code. All the appellants were also directed to pay an amount of Rs.300,000/- (three lac) each as compensation under Section 544-A of The Code to the legal heirs of the deceased and in default whereof they were directed to further undergo six months S.I.

5. As the learned trial Court while passing the judgment dated 06.12.2019 had failed to draw and formulate points of determination and to record and specify the separate sentences by showing specific provisions of The Penal Code in violation of the mandatory provisions of sub-sections (1) and (2) of Section 367 of The Code, therefore, this Court in Criminal Appeal 01-I of 2020, Criminal Murder Reference No.01-P of 2020 and Criminal Appeal No.02-I of 2020, filed against the aforesaid judgment dated 06.12.2019, remitted the case back to the learned trial Court for re-writing of the judgment, following the above mandatory provisions of law and by providing fair opportunity to both the ends vide judgment dated 20.10.2020. The learned trial Court has now passed the impugned judgment dated 06.01.2021 convicting and sentencing the appellants as discussed in paragraph-I *supra*

6. Having felt aggrieved by the impugned judgment dated 06.01.2021, the appellants have preferred the subject appeal. The learned trial Court has made the captioned reference for confirmation of the death penalty of

two appellants namely Mujeeb-ur-Rehman and Haqdar Ali, while the complainant Alamgir has filed the captioned Criminal Revision Application for enhancement of the sentence by converting the sentence of life imprisonment awarded to appellants Noor-ul-Haq, Yousaf Khan and Anwar Ali into death sentence.

7. Earlier we heard the arguments of the learned counsel for the parties and learned Assistant Advocate General, KPK and reserved the case for judgment. However, while going through the record for writing judgment, we found some irregularities in the statements of the appellants under Section 342 of The Code. As none of the parties' counsel had addressed the Court on such material aspects, hence for advancement of cause of justice, the matter was fixed for re-hearing so as to provide fair opportunity of hearing to the parties on such aspect of the case on 17.12.2021, when we again heard the learned Advocates for the appellants, who also have represented them as respondents in Criminal Revision Petition; the learned counsel for the complainant and learned Additional Advocate General, KPK for the State.

8. The learned Counsel for the appellants, who also represent them in Murder Reference and in Criminal Revision Petition, have mainly contended that the appellants are innocent and they have been falsely implicated in the subject case; that the incident was an unseen one and no one claimed to have seen the actual occurrence; that the entire case is based on the circumstantial evidence; that the robbed amount of Rs.6,000,000/- (sixty lac), weapons, motorcar and other articles etc were foisted upon the appellants; that the complainant did not nominate any person as accused in his FIR, but he has named all the appellants in his statement under Section 164 of The Code, therefore, per learned counsel

this is case of two versions; that there are material contradictions in the evidence led by the prosecution, therefore, the prosecution case doubtful; and, that the prosecution has failed to prove its case against the appellants beyond reasonable doubt. The learned counsel placing reliance on the cases of **ALI RAZA ALIAS PETER AND OTHERS VERSUS THE STATE AND OTHERS (2019 SCMR 1982)**, **SIRAJ-UL-HAQ AND ANOTHER VERSUS THE STATE (2008 SCMR 302)**, **NAEEM AKHTAR AND OTHERS VERSUS THE STATE (1993 PCr.LJ 769)** and **FAZAL AKBAR AND ANOTHER VERSUS THE STATE THROUGH A.A.G AND ANOTHER (2013 PCr.LJ 369)** has prayed that the Criminal Appeal may be allowed, the impugned judgment may be set-aside, the Criminal Revision Application may be dismissed and the appellants may be acquitted of the charge, extending them benefit of doubt.

9. Learned counsel for the complainant/petitioner in Criminal Revision Petition have mainly contended that the prosecution by examining 25 witnesses and producing all the necessary documents including post-mortem report, memos of place of vardhat, recovery of empties, blood stained material, recovery of robbed amount of Rs.6,000,000/-; recovery of crime weapons, danistnama, sketches, maps, arrest of the appellants, blood stained clothes of deceased and Forensic Expert Report, etc, has proved its case against the appellants beyond reasonable doubt, per learned counsel the learned trial Court has rightly convicted the appellants, but the learned trial Court without assigning cogent has awarded the lesser sentence of life imprisonment to three of the appellants namely Noor-ul-Haq, Yousaf Khan and Anwar Ali. The learned counsel placing reliance upon the cases of **MUHAMMAD LATIF Vs. THE STATE [PLD 2008 SC 503]**, **NAVEED ASGHAR and 2 others Vs. The STATE and others [PLD**

2016 Lahore 467], RIZWAN ASHIQ Vs. The STATE [2018 PCr.LJ Note 41], KHURSHID Vs. THE STATE [PLD 1996 Supreme Court 305], SHERAZ TUFAIL Vs. THE STATE [2007 SCMR 518], INAYATULLAH Vs. THE STATE [PLD 2007 Supreme Court 237], The STATE Vs. MUHAMMAD ABBASI and others [2015 PCr.LJ 1685], ABDUL BAQI Vs. The STATE [2013 PCr.LJ 127], HIKMAT SHAH Vs. BAKHTIAR KHAN AND ANOTHER [2018 YLR 1168], HAJI KHAN and 2 others Vs. THE STATE and others [1991 PCr.LJ 2110], SOHAIL HAMEED Vs. FEDERATION OF PAKISTAN [PLD 1993 FSC 44], 2017 SCMR PAGE-786, ALTAF HUSSAIN Vs. FAKHAR HUSSAIN and another [2008 SCMR 1103], ASADULLAH and another Vs. THE STATE and another [1999 SCMR 1034], SARFARAZ KHAN Vs. THE STATE and 2 others [1996 SCMR 188], Ch. BARKAT ALI Vs. MAJOR KARAM ELAHI ZIA and another [1992 SCMR 1047], SAJID and another Vs. THE STATE and another [1998 PCr.LJ 114] pray that the instant Criminal Appeal may be dismissed, the Criminal Revision Application may be allowed and the Murder Reference may be answered in affirmative.

10. Ms. Sofia Noreen, Assistant Advocate General, KPK supporting the arguments of the learned counsel for the complainant has further submitted that the procedural defect or irregularities in the course of investigation, cannot demolish the prosecution's case when the investigation does not seem to be dishonest and as such procedural irregularities therein could not destroy the evidence adduced by the prosecution.

11. When confronted to the contents of the statements of the appellants recorded under Section 342 of The Code, Sardar Ali Raza, the learned Additional Advocate General, KPK has submitted that in view of the situation as noted in the statements recorded under Section 342 of The

Code, the proper remedy lies to remand the case to the learned trial Court for recording the statements of the accused under Section 342 of The Code afresh and re-writing of the judgment. Opposing the proposal of learned Additional Advocate General, KPK for remanding the case to the learned trial Court, the learned advocates for the appellants and learned counsel for the complainant/petitioner have submitted that the irregularities in the statements of the appellants recorded under Section 342 of The Code, have got no material bearing on the merits of the case, which per them, are curable under Section 537 of The Code. They have further contended that this is the second time that this case is before this Court and if the case is remanded to the learned trial Court for recording the statements of the appellants under Section 342 of The Code afresh, the parties would unnecessarily suffer hardship and inconvenience and further the appellants have not been prejudiced, in any manner, in their defence and are satisfied with their replies, therefore, they have no objection on the statements of the appellants and for deciding the case by this Court on the basis of available material.

12. We have considered the submissions of learned counsel for the parties and have gone through the evidence brought on the record with the assistance of learned counsel for the parties.

13. This case is involving murder of an innocent person namely Jamiullah, who has been murdered by indiscriminate firing at him with weapons during the course of dacoity in odd hours of the night on Peshawar-Timergara highway and in such like cases, the approach of the Court should be dynamic and pragmatic in approaching true facts of the case, drawing correct, rational inference and conclusion while deciding such type of cases and not static, for, inflicting conviction and imposing

sentence is not a mechanical exercise, but it is onerous responsibility to inflict fair, reasonable and adequate sentence, commensurate with gravity and severity of crime; needless to say that, it is duty of a Judge to ensure not only that he dispenses justice, but what is equally of vital importance that justice also seems to have been done.

14. The dacoity is an aggravation of an offence when it is committed on the highway between sunset and sunlight; where the dacoity is pre-planned and firearms are used in its commission, the deterrent sentence is to be passed in order to restore peace and tranquility, as the life and liberty of the citizens is not to be left at the mercy of dacoits and robbers; commission of murder in the course of dacoity is enough to invoke provisions of Section 396 of The Penal Code against all the persons, who conjointly committed dacoity. Determining the commission of murder during the course of dacoity is a pure question of fact and of degree not to be determined by any general rule, but by the special circumstances of each case.

15. In the case one in hand by committing murder of the deceased and snatching huge amount to the tune of Rs.6,000,000/-, from the deceased, the culprits decamped; and, thus, the murder of the deceased was committed in so committing dacoity within the meaning of Section 396 of The Penal Code. For the sake of convenience, Section 396 of The Penal Code is reproduced here:

“396. Dacoity with murder. If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or imprisonment for life, or rigorous imprisonment for a term which [shall not be less than four years nor more than) ten years, and shall also be liable to fine.”

To bring home a charge under Section 396 of The Penal Code, it is necessary to prove that the accused numbering five or more conjointly either "**committed**" or "**attempted to commit**" or "**aided in committing robbery**", as provided under Section 391 of The Penal Code, which, for the sake of convenience, is reproduced here:-

391. Dacoity. When five or more persons conjointly commit or attempt to commit a robbery, or where whole number of persons conjointly committing or attempting to commit a robbery, and person present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding is said to commit "dacoity".

16. From a perusal of the record, it would be seen that on the night falling between 25.11.2015 and 26.11.2015, a taxi driver Muhammad Abbas, who appeared as PW.23 and a passenger namely Majid were coming from Peshawar to Timergara and at about 10:45 p.m. when they reached on road Shahi Timergara, Chakdara near police post of Osaki, they found a severely injured person lying unconscious in a car, but while he was being shifted to Timergara hospital he succumbed to his injuries on the way to hospital, who later on was identified to be Jamiullah alias Khaperay. On the same night, complainant Alamgir, who appeared as PW.22, reported the matter in the form of mursaila Ex.PA, handed down by ASI Miralam Khan PW.2 deployed there in DHQ hospital Timergara, disclosing that the deceased was his cousin, who used to run a shop styled as "**Shafique Boot House**" in Timergara and was also doing business of foreign currency with Fazal & Co; on 25.11.2015 the deceased had gone to Peshawar after "**Zahur**" prayer; on the same night at 11:30 p.m. he received a phone call that the deceased had been done to death with firearms while he was coming back from Peshawar and that his dead body was being brought to Timergara Hospital, whereupon he rushed to the

hospital and found dead body of the deceased, having firearm injuries. The said mursalila was later on incorporated in book under Section 154 of The Code on the same night at 01:15 a.m. on 26.11.2015 being the subject FIR Ex.PA/1; after arrival of the dead body and handing down the mursalila, injury sheet and inquest report were prepared by ASI Miralam Khan Incharge Casualty, DHQ Hospital Timergara, who appeared as PW.2 and produced the aforesaid injury sheet and inquest report at Ex.PW.2/1 and Ex.PW.2/2 respectively; on 25.11.2015 at 11:45 p.m. i.e. on the same night, Dr. Rashid Khan, who appeared as PW.7, conducted the post-mortem of the deceased and found the following injuries on his body:-

- i. Entry wound on left lateral occipital region, posterior to left ear with 1.5 cm in length (probably).
- ii. Exit wound on right lateral occipital region, posterior to right ear with 2.5 cm in length probably.
- iii. Left lateral partial loss of lower lip.
- iv. Right shoulder tip bruise.
- v. A very small wound on lower back closed to spinal cord.

On X-Ray examination a bullet was found present on upper spinal region i.e. cranium and spinal cord of the deceased; scalp, skull and vertebrae, posterior basal part of occipital bone fracture was found present; his thorax and abdomen intact; cause of death was due to severe damage to neck big vessel and spinal cord of the deceased because of firearm injury; time between death and post-mortem was opined to be 2 hours (probable); he produced the post-mortem report at Ex.PW.7/1, and notes of his initial observations through which the dead body was referred to radiologist for his opinion at Ex.PW.7/2, having endorsed injury sheet and inquest report Ex.PW.7/3 & Ex.PW.7/4, Dr. Sartaj Radiologist, who appeared as PW.10, deposed that he had done X-Rays of the deceased,

who was referred by the casualty CMO for his X-Ray Skull, and issued X-Rays Report Ex.PW.10/1 and his opinion Ex.PW.10/2, revealing posterior basal part of occipital bone fracture and bullet shadow in neck. In such view of the matter, unnatural death of the deceased having been caused by firearm injuries stood established.

17. It further reveals that on the following day after namaz-e-janza one Fazli Mullha told the complainant that the deceased was bringing Rs.6,000,000/- (sixty lac) given by one Janat Ullah at Peshawar for him; he narrated the story about the deceased's carrying Rs.6,000,000/- (sixty lac) at the time of incident, to I.O Inspector Naeem Khan, who incorporated the same in his supplementary statement under Section 161 of The Code recorded on 26.11.2015. The Investigating officer, Inspector Tahir Shah, who appeared as PW.24, secured 04 (four) empties of 30 bore pistol, emitting smell of freshly discharged ammunition P.1; one cell phone of Nokia company with IMEI No.358310031277940, containing SIM No.0332-5632514, suspected to be of one of the culprits, from the motorcar of the deceased P.2; blood through cotton from the front seat of the car of the deceased P.3; the broken glasses of the car of the deceased P.4; one puncture preparing kit near the place of occurrence P.5; the motorcar of the deceased, having its front doors' glasses broken P.6. Initial CDR spreading over 4 pages, relating to SIM No. 0332-5632514 Ex.PW-24/1 to Ex.PW-24/4, revealed incoming and outgoing calls made from that suspected mobile set, which was secured from the motorcar of the deceased; on 27.11.2015 the information obtained by investigating officer Inspector Naeem Khan revealed that the suspected SIM was issued in the name of Ibad-ur-Rehman son of Khan Muhammad resident of Shabiqadar; Niaz Muhammad son of Khan Muhammad, who is not the other, but is brother in

law of appellant Haqdar Ali, appeared as PW.18 and stated that accused Haqdar Ali, is his brother in law; SIM No.0332-5632514, obtained by him (accused Haqdar Ali) through the CNIC of his brother Ibad-ur-Rehman, remained in possession and use of accused Haqdar Ali; mobile data whereof revealed that he was in constant contact with appellant Mujeeb-ur-Rehman, who had two different SIMs and his mobile numbers were identified from the mobile data as was deposed by PW.25 investigating officer Inspector Naeem Khan; on having such information, a police party which included I.O. Inspector Naeem Khan and a lady constable, under the supervision of DSP Circle Adenzai with the help of CDR, raided the house of appellant Mujeeb-ur-Rehman located in the area of Meena, Ouch Sharqi Lower Dir on 28.11.2015 i.e. within three days of the incident and arrested appellant Mujeeb-ur-Rehman, recovering from his possession a pistol of 30 bore P.10, five rounds of live bullets of 30 bore P.11, two Nokia mobile sets P.12, containing SIM Nos. 0345-9863787, 0306-5971684 and 0306-8510296, his CNIC P.13, his Driving Licence P.14, his Arms Licence P.15, a gray colour belt P.16, a holster P.17 and a charger.P18 vide recovery memo Ex.PW.1/11; the police party also arrested appellants Noor-ul-Haq, Yousaf Khan and Haqdar Ali from the room/bethak of appellant Mujeeb-ur-Rehman adjacent to his house in Meena, Ouch Sharqi Lower Dir; one pistol of 30 bore Ex.PW.25/B, five live rounds and charger were recovered from the possession of appellant Haqdar Ali vide recovery memo Ex.PW.25/14; one mobile set P.29 and CNIC P.30 were recovered from appellant Yousaf Khan vide recovery memo Ex.PW.1/17; and a CNIC P.28 was recovered from appellant Noor-ul-Haq vide recovery memo Ex.PW.1/16, all the aforesaid articles were sealed separately at the spot in presence of mashirs; the apprehended appellants disclosed that the

suspected mobile set secured from the motorcar of the deceased, is of appellant Haqdar Ali and that they were spending night there in order to distribute among themselves the looted amount, and confessing their guilt they made disclosure that the robbed money alongwith other personal articles of the deceased and the motorcar used in the commission of the subject crime are lying inside the house of appellant Mujeeb-ur-Rehman, who then led the police party to a room inside his residential house and got recovered the looted amount of Rs.6,000,000/- (sixty lac) i.e. sixty packets of currency notes of Rs.1,000/, CNIC, motorway toll plaza payment receipt, union membership card of Anjuman Tajeran and purse (wallet) all of the deceased with a school bag, wrapped in a liner chaddar/sheet containing blood stains, from an almira lying in the said room of the residential house of appellant Mujeeb-ur-Rehman, out of which six packets of currency notes of Rs.1,000/- contained blood stains, hence one note of Rs.1,000/- from each packet, containing the blood stains were sealed separately and whereas the remaining amount of Rs.5,994,000/- and other aforesaid articles belonging to the deceased were sealed separately in presence of mashirs; then recovery of motorcar registration No.U-4553 Peshawar used in the commission of offence, parked in the courtyard inside the house of appellant Mujeeb-ur-Rehman, was made by the police on the pointation of appellant Mujeeb-ur-Rehman in presence of mashirs and such mashirnamas, pointation memos and sketches were separately prepared at their respective spots, which have been produced at Ex.PW.1/1, Ex.PW.1/8, Ex.PW.1/9, Ex.PW.1/10, Ex.PW.1/11, Ex.PW.1/12, Ex.PW.1/13, Ex.PW.1/15, Ex.PW.1/16, Ex.PW.1/17, Ex.PW.1/19, Ex.PB/1, the aforementioned pistol recovered from appellant Mujeeb-ur-Rehman was a licenced one, standing in his own name, but appellant Haqdar Ali

had no licence for the pistol and cartridges recovered from him, therefore, a separate mursaila for registration of FIR under Section 15-AA against appellant Haqdar Ali was reduced into writing, which was later on incorporated in book under Section 154 of The Code; I.O took into possession three cots/charpai P.31, four foams/mattresses P.32, three quilts P.33, three pillows P.34 and four bed sheets P.35, secured from the Hujrah of appellant Mujeeb-ur-Rehman vide recovery memo Ex.PW.1/18, which established that the accused stayed in the Hujrah/bethak of appellant Mujeeb-ur-Rehman, wherefrom they were apprehended; the arrested appellants had further disclosed that all the information of movements of the deceased were provided by appellant Anwar Ali son of Sher Zamin resident of Timergara since many days, while absconding accused Fakhri Alam was also engaged with them to accomplish the crime; then on such disclosure appellant Anwar Ali was arrested from Currency Shop of Dawood Ibrahim located on Timergara road vide his card of arrest Ex.PW.25/15; then on the disclosure of appellants Anwar Ali and Yousaf Khan a motorcycle red colour Honda-125 number DGN-9204 model 2011 chassis No.0216072 and Engine No. 6530640, which was used in the commission of offence by appellants Yousaf Khan and Fakhre Alam for having chased and kept watch on the movements of the deceased at different places before the commission of offence, was recovered on their pointation from Aljazira Hotel on Peshawar by-pass road in presence of mashirs vide recovery memo Ex.PW.5/5; the I.O also secured ownership and registration documents of the said motorcycle vide recovery memo Ex.PW.5/6; appellant Mujeeb-ur-Rehman further disclosed that the motorcar recovered from his house used in the commission of offence is owned by one Muhammad Zubair Khan son of Afghan Faqeer resident of

Timergara, who appeared as PW.11 and produced the registration documents of the car P.6 and copies of stamp papers P.7 regarding his claim of ownership, which were sealed into parcel vide recovery memo Ex.PW.1/7 and stated that the said motorcar was hired by appellant Mujeeb-ur-Rehman at the rate of Rs.2500/- per day on rent since 02.11.2015; further data of the subject SIMs from 22.11.2015 to 28.11.2015, consisting of 21 pages Ex.PW.9/3, revealed that the appellants remained in constant contact with each other; 30 bore licenced Pistol No.21055777 marked-A recovered from appellant Mujeeb-ur-Rehman, 30 bore unlicensed pistol No. Nil marked-B recovered from appellant Haqdar Ali, four 30 bore crime empties marked C-1, C-2, C-3 and C-4 secured from the place of vardhat were sent to ballistic expert and FSL report Ex.PW.25/36 would reveal that two empty shells marked C-1 and C-2 matched with the licenced pistol recovered from appellant Mujeeb-ur-Rehman while two empty shells marked C-3 and C-4 matched with the unlicensed pistol recovered from appellant Haqdar Ali; blood collected from the front seat of the car of the deceased, blood stains garments (clothes) of the deceased and six blood stained currency notes were also sent to the forensic science laboratory for forensic reports and FSL report thereof Ex.PW.25/37 would reveal that blood collected from the place of incident i.e. the motorcar of the deceased, blood stains on the clothes of the deceased and blood stains on the currency notes out of the recovered looted money of Rs.6,000,000/- was determined to be the blood of human origin of the same group; at the time of their arrest, the investigating officer put off boot of appellant Mujeeb-ur-Rehman and slipper/chappal of appellant Haqdar Ali, and then I.O also took their moulds in presence of Judicial Magistrate Chakdara and sealed the same as P.38 and P.39

respectively vide memo Ex.PW.1/25, which were sent to FSL alongwith the moulds secured from the place of vardhat and report whereof Ex.PW.25/38 would reveal that moulds of the appellants Mujeeb-ur-Rehman and Haqdar Ali taken by the investigating officer coincided with the moulds secured from the place of incident; subsequently turn by turn on the pointation of the appellants the investigating officer inspected a room on first floor in a building known as Hussain Rehman Ada where they (accused) had stayed in for the night prior to the occurrence, wherefrom I.O secured three (Razai) P.13/A, three (Thulai) P.13/B, three (Takiya) P.13/C and a paid in the name of appellant Mujeeb-ur-Rehman P.13/D, establishing their stay there; the currency shop of appellant Anwar Ali situated on Timergara road where planning for snatching money from the deceased was hatched by the appellants; Saji Hotel Chakdara where appellants kept under observation the departure of the deceased from Timergara to Peshawar and waited for his return before the commission of offence; the place known as Malak Ada where deceased Jamiullah used to park his motorcar No.113-DD Islamabad and wherefrom the appellants chased the deceased and intercepted him at the place of incident namely Osaki on Chakdara-Timergara road, while he was coming back from Peshawar to Timergara and committed the subject heinous crime of dacoity and during the process of dacoity, committed brutal murder of an innocent person the deceased, depriving him of huge amount of Rs.6,000,000/- and, place namely Insaf block factory where after commission of the offence the appellants took shelter alongwith looted money and personal articles of the deceased. The police prepared pointation memos, inspection memos and sketches including sketch showing the necessary details relating to the points where the appellants were standing at the time of commission of offence and the

deceased's car was standing and the point wherefrom the appellants fired at the deceased and committed his brutal murder and then decamped from the spot after committing this heinous crime, as is evident from the evidence of PW.1 mashir Liaquat Ali, PW.5 mashir Jehan-e-Rome, PW.13 Qazi Alim Ullah, PW.21, Inspector Muzammal Khan of P.S Takhtbahi and PW.25 investigating officer Inspector Naeem Khan and from the pointation memos, inspection memos and sketches Ex.PW.13/2, Ex.PB/5, Ex.PW.13/3, Ex.PB/6, Ex.PB/1, Ex.PB/2, Ex.PW.1/20, Ex.PW.1/23, Ex.PB/3, Ex.PW.1/22, Ex.PW.21/2 which have been substantiated by the aforesaid PWs.

18. Record further reveals that PW.8 Yousaf Ali son of Dawai Gul obtained mobile SIM No. No.0302-5509753 through his CNIC, which remained in use of appellant Yousaf Khan son of Zardar Khan being his Rakhsha driver, where under he remained in contact with other appellants during commission of offence; the suspected mobile set secured from the place of incident namely motorcar of the deceased, contained SIM No.0332-5632514, which remained in possession and use of appellant Haqdar Ali, where under he also remained in contact with appellant Mujeeb-ur-Rehman, stand in the name of Ibad-ur-Rehman, who is brother in law of appellant Haqdar Ali and CDR thereof helped the police party in tracing and arresting the appellants, followed by recovery of looted money, personal articles of the deceased, motorcar, motorcycle and weapons used in the commission of offence as is evident from the depositions of PW.8 Yousaf Ali son of Dawai Gul, PW.18 Niaz Muhammad, and, PW.25 I.O Inspector Naeem Khan; SIM No.0306-5971684 used during the commission of the subject crime by appellant Mujeeb-ur-Rehman, was given to him by PW.16 Rahat Ullah, who time and again told him to transfer

the same to his name, but he did not do so, as was deposed by PW.16 Rahat Ullah; recovered blood stained liner *chaddar* P.8, in which looted cash amount of Rs.6,000,000/- lying in a school bag alongwith a wallet, CNIC, driving licence, Anjuman Tajeran Card and motorway toll plaza receipt of deceased were wrapped, belonged to appellant Yousaf Khan as is evident from recovery memo Ex.PW.1/8 and deposition of PW.25 investigating officer Inspector Naeem Khan.

19. Apparently, disclosures of the appellants giving information to the police after their arrest, in pursuance whereof, on the pointation of appellants, the recovery of looted money and personal articles of the deceased was made from an *almirah* lying in a room of the house of appellant Mujeeb-ur-Rehman, motorcar and motorcycle used in the commission of subject crime, from the courtyard of his house and Aljazira Hotel on Peshawar by-pass road respectively, are the relevant and material pieces of evidence under Article 40 of The Qanun-e-Shahadat Order, 1984, (“**The Order**”), which for the sake of convenience is reproduced here:-

40. How much of information received from accused may be proved: When any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

Furthermore, the arrest of the appellants with recovery of looted huge cash amount of Rs.6,000,000/-, other personal articles of the deceased, together with the recovery of hired motorcar and motorcycle used in the commission of offence, with the crime weapons by use whereof the murder of the deceased was committed as discussed *supra*, are also

formidable circumstances admissible under Article 21 of Qanun-e-Shahadat Order, 1984. The illustration A thereof, which is relevant, for the sake of convenience is reproduced herein below:-

(i) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

20. It is worthwhile to mention here that Muhammad Abbas taxi driver, who appeared as PW.23, had attended the deceased per chance shortly after the assault when the appellants already decamped from the scene, has submitted state forward, consistent and confidence inspiring evidence on the issue of commission of offence at the place of occurrence; similarly, PW.22 complainant Alamgir Jan son of Juma Khan, who is cousin of deceased Jamiullah, reported the matter as mursaila handed down by ASI Miralam Khan deployed there being Incharge Casualty, DHQ Hospital Timergara, which was later on incorporated in book under Section 154 of The Code, wherein he did not nominate anyone; he merely pointed that he receiving the information about the murder of deceased Jamiullah, who was being brought to the hospital, rushed to the Timergara hospital where he found the deceased dead, having firearm injuries; on the next day after namaz-e-janza one Fazli Mula told him that the deceased was bringing Rs.6,000,000/- (sixty lac) for him from one Janat Ullah from Peshawar; he narrated such facts to investigating officer Inspector Naeem Khan, who incorporated the same in his statement under Section 161 of The Code recorded on 26.11.2015, which has been substantiated in their evidence by Fazi Mula son of Bacha Muhammad and Janat Ullah, who appeared as

PW.14 & 15 respectively; having also produced receipt containing endorsement receipt dated 25.11.2015 on its bottom in respect of the aforesaid amount of Rs.6,000,000/- at Ex.PW.15/1, and in the given facts and circumstances of the case, no animus can be attributed to any of the aforesaid PWs. On 07.12.2015 PW.22 complainant Alamgir Jan recorded his statement under Section 164 of The Code available at page 532 & 533 in the paper book that would reveal that the complainant reiterated the same story as was narrated in his report initially lodged by him and the additional fact of carrying amount of Rs.6,000,000/- by the deceased from Peshawar to Timergara as narrated in his further statement recorded on 26.11.2015, but he never claimed himself to be an eye witness; he, however, had taken the names of the appellants and absconding co-accused Fakhre Alam in his statement under Section 164 of The Code with reference to the disclosure of their names by themselves while making extra judicial confession in his presence, which by no stretch of imagination can be termed to be the improved and/or second version of the complainant, that does not affect the prosecution case in any manner; he was duly confronted to the contents of his statement under Section 164 of The Code, which from its face is in line with the version of the complainant as discussed *supra*, but the same, suffers from legal infirmity, for, the said statement of the complainant under Section 164 of The Code was recorded on 07.12.2015 in absence of the appellants, who having already been arrested, were in custody since 28.11.2015 and that too without giving them notice and/or opportunity of cross examination as required ***under Section 265-J of The Code***, which provides that ***the statement under Section 164 of The Code should be recorded in presence of the accused; the accused should have notice of the recording of such***

statement; and, he should also be given an opportunity of cross-examining the witness. In such view of the matter, in our humble view, the alleged statement of complainant Alamgir under Section 164 of The Code besides being illegal, was certainly ill-advised; however, this indiscretion notwithstanding, the value of his testimony is not diminished even after excluding the aforesaid statement of the complainant under Section 164 of The Code, for the reason that he was only the person among the relatives of the deceased being his cousin, who rushed to the Timergara hospital, where the dead body of deceased Jamiullah was brought. Had he any intention to falsely implicate the appellants?, he could easily do that while reporting the matter, but he did not name any person as an accused of the subject crime in his report and in his further statement; he throughout the proceedings right from inception never claimed himself to be the eye witness of the occurrence. And thus, the contention of the learned counsel of the appellants that the statement of the complainant under Section 164 of The Code rendered the prosecution case of two versions being absurd, is rejected.

21. It is further added that the prosecution witnesses have supported the prosecution case, they were subjected to lengthy and searching cross-examination, but nothing could be elicited to shatter their testimony; they remained consistent on all material particulars; no doubt there are some minor contradictions in their statements, but those being natural because of lapse of such long time of more than six (06) years between the incident and their examination, are insignificant; the most significant feature of the case is that the occurrence had taken place on 26.11.2015 at 10.45 p.m; PW Abbas taxi driver, who firstly attended the deceased immediately after the incident and found him in injured condition gave straight-forward

statement, nominating no one as accused of the subject crime and complainant Alamgir, who despite being cousin of the deceased, having reached at Timergara hospital on receiving information about the murder of the deceased did not claim himself to be an eye witness of the actual occurrence. In absence of enmity or any animus of the PWs with the appellants, their plea of false implication would not appeal to reason when there was no occasion for the complainant and witnesses to have falsely implicated the appellants in this case involving heinous crime of dacoity of huge amount from the deceased and his murder during the process of dacoity; moreover, the reference to IMEI Numbers of the aforesaid cell phones recovered from the appellants and the aforesaid suspected cell phones, pointing on the appellants and clinching their presence at the venue of incident at the relevant time and so also before and after the incident; recovery of huge robbed amount of Rs.6,000,000/- (sixty lac), various other personal articles of the deceased, hired motorcar and motorcycle used in the commission of the offence, from the appellants, in pursuance of their disclosures; blood collected from the place of incident, blood stains on the clothes of the deceased, blood stains on the currency notes (looted money), opined to be the blood of human origin of the same group, recovery of two crime weapons from appellants Mujeeb-ur-Rehman and Haqdar Ali and their matching with the four empties, secured from the place of incident inescapably framed the appellants with this crime; and, the injuries sustained by the deceased are consistent with the medical evidence and the crime weapons recovered from the appellants. These various pieces of prosecution evidence are so naturally synchronized with another that every hypothesis of appellants' innocence stands excluded and this is the best evidence available on the record, in the circumstances

of the case, with no paddling or overdoing and these pieces of evidence are found consistent with the truth and probability.

22. Considering the common course of natural events as discussed *supra*, which lead us to an irresistible conclusion that it was a pre-planned dacoity in which the aforesaid huge amount was robbed from the deceased after committing his murder during the course of dacoity by the appellants, that could be displaced only if the appellants had satisfactorily accounted for the presence of appellants namely Haqdar Ali, Noor-ul-Haq and Yousaf Khan in the house of appellant Mujeeb-ur-Rehman at the time of the police raid, more particularly, when they are of different castes belonging to the different areas, which are far away from each other; for their possession of such huge robbed amount of Rs.6,000,000/- (sixty lac), the other aforesaid personal articles of the deceased, crime weapons, hired motorcar and motorcycle used in the commission of the offence, hence onus heavily lay on the appellants to explain such aspects, but they have absolutely no explanation to offer and the failure on their part to satisfactory explain such aspects of the case adversely reflects upon them, as their failure to give satisfactory account in this behalf, burdens them with responsibility for the commission of the highway robbery of such huge amount of Rs.6,000,000/- (sixty lac) coupled with murder of the deceased. In our humble view, mere denial of the charge or bald statements of the appellants in this regard, would not stand them in good stead without any evidence in support, but they have miserably failed to produce any evidence at all. Needless to say that an innocent person feels no difficulty in proving his innocence and, in any event, at least can create a reasonable doubt, as to the correctness of charge against him, but despite the time log of more than six years of their arrest and eventual pronouncement of judicial verdict against them, no one

among their relatives, friends or sympathizers came forward to put in word as to the innocence or false implication of any of the appellants. All the appellants namely Mujeeb-ur-Rehman, Noor-ul-Haq, Haqdar Ali, Yousaf Khan and Anwar Ali in their respective statements under Section 342 of The Code, while giving answer to question No.2 have stated that they were not present on the cited date and time at the place of occurrence, stating further that they were present at their respective residences, which needless to say, are situated at different areas and far away from each other as is evident from the title page of memo of the instant appeal, but none among them has established such *alibi plea*, by examining any person even from the inmates of their respective houses, which adversely reflects upon them, furthermore, a licenced pistol with five live rounds, arms licence, driving licence both stand in the name of appellant Mujeeb-ur-Rehman and his CNIC were recovered from appellant Mujeeb-ur-Rehman and then on the pointation of the appellants several material places were inspected and recovery of the looted money and personal articles of the deceased was made and such questions were asked from him in his statement under Section 342 of The Code, to which he replied that “**my brother and father were compelled to produce my licenced pistol, CNIC, driving licence and arms licence**” and that “**my father and brother were arrested by the police officials on 26.11.2015 and the pointation is the result of torture, duress and illegal confinement of my father and brother**”, but neither any document was brought on record by appellant Mujeeb-ur-Rehman regarding alleged arrest of his father and brother nor did he examine even anyone among his father or brother to establish his such defence plea.

23. Undoubtly, there is no eye witness of the incident and the entire case rests on the circumstantial evidence and it is well settled that in such a case if the Court feels satisfied about the commission of offence by the accused facing trial on the basis of circumstantial evidence, it will be just and proper to award *Tazir* punishment to the accused, as it is proverbial that a man may tell lie, but the circumstances do not. In the instant case, as would appear from the evidence, due to nonfulfillment of the conditions laid down under Section 7 of The Ordinance, the appellants have been convicted and sentenced by way of *Tazir* under the provisions of The Penal Code as provided by Section 20 of The Ordinance, which reads as follows:-

***20. Punishment for 'haraabah' liable to Tazir.---
Whoever commits haraabah which is not liable to the punishment provided for in Section 17, or for which proof in either of the forms mentioned in Section 7 is not available, or for which punishment of amputation or death may not be imposed or enforced under this Ordinance, shall be awarded the punishment provided in the Pakistan Penal Code (Act XLV of 1860) for the offence of dacoity, or extortion, as the case may be.***

24. The case law cited at bar by the learned counsel for the appellants being distinguishable on facts and circumstances is not helpful for the appellants as none of the cases cited by the learned counsel involved the facts and circumstances as are involved in the case one in hand inasmuch as the case of Ali Raza alias Peter and others involved two versions setup by the parties against each other by lodging their separate respective FIRs, and the appellants resorted to violence at the spur of the moment without premeditation and choice weapons, therefore, the Hon'ble Apex Court converted the death sentence awarded to the appellants under Section 302 (b) of The Penal Code into ten years imprisonment under Section 302 (c) of The Penal Code; the case of Siraj-ul-Haq involved robbery of Rs.20,000/-

from the house of PW Bavar Khan, who named several persons as accused, but did not implicate the petitioners in that case, who were involved in that case on the basis of statement of co-accused Zulum recorded during the investigation before the police and maker of such statement namely Zulum was acquitted of the charge; the case of Naeem Akhtar and others involved abduction of Mst. Naheed Akhtar, who then was murdered, one Ghulam Mustafa and two unknown persons were accused according to FIR lodged by Mst. Shadmah Bibi, but in her statement before the Court Mst. Shadmah Bibi had not named Ghulam Mustafa as accused and instead had talked of two persons only namely Naeem Akhtar and one unknown person; likewise PW Abdul Malik, who happened to be the father of deceased abductee Mst. Naheed Akhtar and complainant Mst. Shadmah Bibi, had named appellant Naeem Akhtar as accused stating that Ghulam Mustafa was not at fault and whereas the case in hand involved the commission of pre-planned dacoity of huge amount of Rs.6,000,000/- coupled with murder of deceased Jamiullah during the course of dacoity and there was no question of commission of the offence at the spur of the moment without premeditation; in pursuance of the disclosures and information given by the appellants after their arrest, recovery of huge looted amount of Rs.6,000,000/-, together with personal articles of the deceased on the pointation of appellant Mujeeb-ur-Rehman from an almirah lying inside a room in his house; hired car from the courtyard of house of appellant Mujeeb-ur-Rehman and the motorcycle both used in the commission of the offence; and, the crime weapons from appellants Mujeeb-ur-Rehman and Haqdar Ali, was made and there was no question of joint recovery of the looted amount etc. So far the case of Fazal Akbar and another is concerned, the conviction and sentence inflicted by the

learned Trial Court upon the appellants in that case were maintained by dismissing the appeal filed by them, which rather goes against the appellants.

25. In view of what has been discussed above, we are of the considered view that there are very strong circumstances favoring the belief that the appellants have committed the pre-planned dacoity of huge cash amount of Rs.6,000,000/- from deceased Jamiullah by committing his murder in odd hours of the night on highway and such natural inference becomes irresistible as the inculpatory facts proved, are incompatible with the innocence of the appellants and the chain of the circumstances in this case is so well-knitted that the offence against the appellants has been proved to the hilt, which do constitute sufficient basis to sustain charge against the appellants, therefore, in our considered view, the appellants have rightly been convicted under Section 396 of The Penal Code. Since four empty shells secured from the place of incident matched with the crime weapons namely two pistols of 30 bore recovered from appellants Mujeeb-ur-Rehman and Haqdar Ali, which proved that the murder of the deceased, whose unnatural death as result of firearm injuries, having gone unchallenged, was committed by firing from the weapons recovered from appellants namely Mujeeb-ur-Rehman and Haqdar Ali, hence, the said two appellants namely Mujeeb-ur-Rehman and Haqdar Ali have rightly been awarded death penalty, while the rest three appellants namely Noor-ul-Haq, Yousaf Khan and Anwar Ali, whose participation in commission of this heinous crime, having also been established, have been awarded life imprisonment by the learned Trial Court instead of normal penalty of death, holding that they have not played active role in killing of the deceased, rightly so for the reason that only four empty shells were secured from the

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place of incident articles C-1, C-2, C-3 and C-4; of them two empty shells articles C-1 and C-2 matched with the licenced pistol recovered from appellant Mujeeb-ur-Rehman while two empty shells articles C-3 and C-4 matched with the un-licenced pistol recovered from appellant Haqdar Ali, which established that the murder of the deceased was committed by use of aforementioned crime weapons recovered from appellants Mujeeb-ur-Rehman and Haqdar Ali; no other empty shell was found at the place of incident, hence, no active role towards the killing of the deceased could be attributed to the said three appellants namely Noor-ul-Haq, Yousaf Khan and Anwar Ali; furthermore, no weapon was recovered from either of them during the investigation; and, in the wake of such mitigating circumstances, in our view, these three appellants namely Noor-ul-Haq, Yousaf Khan and Anwar Ali have rightly been awarded sentence of life imprisonment instead of normal sentence of death penalty; moreover, during the commission of the offence, the appellants had also caused damage to the motorcar of the deceased having broken its glasses and as such the appellants have also rightly been convicted and sentenced for offence punishable under Section 427 of The Penal Code. Accordingly, the captioned Criminal Appeal being devoid of merit is dismissed. The Criminal Revision Application having no substance is also dismissed. The Criminal Murder Reference seeking confirmation of death sentence of two appellants namely Mujeeb-ur-Rehman and Haqdar Ali is answered in affirmative.

(JUSTICE KHADIM HUSSAIN M.SHAIKH)
JUDGE

(JUSTICE MUHAMMAD NOOR MESKANZAI)
CHIEF JUSTICE

(JUSTICE DR. SYED MUHAMMAD ANWER)
JUDGE

Khurram