

IN THE FEDERAL SHARIAT COURT
(Appellate/Revisional Jurisdiction)

PRESENT:

MR.JUSTICE MEHMOOD MAQBOOL BAJWA
MR. JUSTICE SHAUKAT ALI RAKHSHANI

CRIMINAL APPEAL NO.04/I OF 2018

1. AYAZ SON OF KHAIR MUHAMMAD, R/O PAJJAGI,
SPEEN JUMAT,PESHAWAR.
2. IKHTIAR KHAN SON OF NABI GUL, R/O SHAH ALAM
PUL,PESHAWAR
3. NIAZ SON OF MUMTAZ R/O TERAIBALA,
PESHAWAR.

APPELLANTS

VERSUS

1. THE STATE.
2. KHALID KHAN SON OF AHMAD GUL,R/O SHAGAI
HINKIYA PESHAWAR

RESPONDENTS

COUNSEL FOR THE
APPELLANTS

MR. HUSSAIN ALI,
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COUNSEL FOR THE
COMPLAINANT

MALIK HAROON IQBAL,
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COUNSEL FOR THE
STATE

MALIK AKHTAR HUSSAIN
AWAN, ASSISTANT
ADVOCATE GENERAL KPK.

FIR NO. AND DATE &

1167/2016 DATED
22.09.2016

POLICE STATION

P.S. BAHANA MARI,
PESHAWAR

DATE OF IMPUGNED
JUDGMENT OF TRIAL
COURT.

24.2.2018

DATE OF INSTITUTION	07.03.2018
DATE OF HEARING	04.10.2018
DATE OF DECISION	17.10.2018

CRIMINAL REVISION NO.2/I OF 2018

**KHALID KHAN SON OF AHMAD GUL R/O SHAGAI HINKIYA,
TEHSIL & DISTRICT PESHAWAR.**

PETITIONER

VERSUS

1. AYAZ SON OF KHAIR MUHAMMAD
2. IKHTIAR SON OF NABI GUL
3. NIAZ SON OF MUMTAZ AND
4. THE STATE

RESPONDENTS

COUNSEL FOR THE PETITIONER	MALIK HAROON IQBAL, ADVOCATE
COUNSEL FOR THE RESPONDENTS	MR.HUSSAIN ALI, ADVOCATE
COUNSEL FOR THE STATE	MALIK AKHTAR HUSSAIN AWAN, ASSISTANT ADVOCATE GENERAL KPK.
DATE OF INSTITUTION	02.04.2018
DATE OF HEARING	04.10.2018
DATE OF DECISION	17.10.2018

JUDGMENT:

SHAUKAT ALI RAKHSHANI, J: For committing murder of deceased Bilal during the course of robbery of motorcycle Honda 125 bearing registration No.4681 and worth Rs.700,000/- (Rupees seven lacs), the appellants namely Ayaz son of Khair Muhammad, Ikhtiar Khan son of Nabi Gul and Niaz son of Mumtaz have been

held guilty of charge by Sessions Judge/Judge on Special Task Peshawar (hereinafter called as “trial court”) in pursuance of FIR No.1167/2016 (Ex.PA/1) lodged by brother of deceased Khalid Khan (P.W.9) and consequently were convicted and sentenced in the following terms:

- i) Under section 397 of the Pakistan Penal Code (Act of XLV of 1860) (hereinafter called as “Penal Code”) and sentenced each of them to ten years R.I with fine of Rs.100,000/- (one lac rupees) each in shape of compensation to be paid to the legal heirs of the deceased under section 544-A of the Criminal Procedure Code (Act V of 1898) (hereinafter as “the Code”) or in default to further undergo simple imprisonment of six months .
- ii) Under section 412 of the Penal Code and sentenced to three years R.I each with fine of Rs.20,000/- (Rupees twenty thousand) each or in default to further undergo simple imprisonment for two months.
- iii) Under section 15 of the Khyber Pakhtunkhwa Arms Act,2013 and sentenced to three years R.I each with fine of Rs.10,000/- (Rupees ten thousand) or in default to further undergo simple imprisonment for two months.

All the sentences of imprisonment were ordered to run concurrently with benefit of section 382-B Cr.P.C.

2. The appellants being aggrieved from the aforesaid judgment, impugned the same by means of filing Criminal Appeal No.4/I of 2018, seeking annulment of the judgment and as such sought their acquittal.

On the other hands, brother of the deceased Khalid Khan (P.W.9) also being aggrieved from quantum of sentence has assailed the impugned judgment through Criminal Revision No.2/I of 2018. As the Criminal Appeal 04/I of 2018 as well as Criminal Revision No.2/I 2018 arise out of the same judgment, therefore both are being disposed of by this common judgment.

3. Summarily, on 22.9.2016 at 12.16 p.m P.W.1 Waris Khan S.I recorded FIR bearing Crime No.1167/2016(Ex.PA/1) at Police Station Bhana Mari, Peshawar on the murasila (Ex.PA) sent by P.W.5 Liaqat Ali,ASI on the basis of report of P.W.9 Khalid Khan, brother of deceased, contending therein that he received information regarding his brother Bilal being killed at Ring Road Qamar Din Garhi opposite Arbab Qudoos Market by firing and when reached hospital, he found his brother lying dead, and was let to know that he had borrowed motorcycle Honda 125 CC bearing registration No.4681 to fetch Rs.700,000/- (Rupees seven lacs) alongwith P.W.10 Muhammad Asghar Khan alias Qari from his brother-in-law Tahir to start his Spare parts business and while returning back, three unknown persons during robbery of the said motorcycle and Rs.700,000/- (Rupees seven lacs only), on resistance, was fired upon, which resulted into his death on the spot.

4. P.W.6 Khushal Khan, S.I, having been entrusted with the investigation reached the place of occurrence, prepared site plan Ex.PB on the pointation of P.W.10 Muhammad Asghar Khan. He also secured blood stained earth through recovery memo Ex.PW.2/1, one empty shell 9 MM bore pistol and two .30 bore empty shells of pistol through recovery memo Ex.P.W.2/2 in the presence of P.W.2 Constable Sher Zaman and Constable Zarnosh. Thereafter he took into possession blood stained garments of the deceased produced by Constable Tajamul from the hospital known as K.M.C (Khyber Medical College) consisting of *qamees* Art.P-3, *shalwar* of sky colour Art.P-4 and Banyan (undergarment) white in colour, Art-P-5 and a piece of cloth "Safa" white in colour produced as Art.P-6 respectively, through recovery memo Ex.PW.3/1 in the presence of marginal witnesses P.W.3 Constable Janat Gul and Samiullah Khan, ASI. The I.O prepared injury sheet Ex.PW.5/1 and Inquest report of the deceased Bilal Ex.PW.5/2 and referred the dead body for autopsy.

Investigating Officer of the case got conducted postmortem from P.W.8 Dr.Khalid Khan, who did autopsy and issued autopsy report along with pictorials Ex.PW.8/1, dated 11.12.2017. The following injuries were observed on the person of deceased Bilal, which are reproduced herein below for ready reference:

“External Examination:

A well built young male body wearing blue colour Shalwar Qameez and White banyan which are blood stained with corresponding firearm defects. PM lividity and RM started developing.

Injuries;

1. A group of two FA entry wounds left outer chest, 1x1 cm in size, 8 cm apart, 10 cm below axilla.
2. A group of two firearm exit wounds right outer chest, 2x1 cm in size, 12 cm apart, 10 cm below axilla.
3. Firearm entry wound left outer ankle 1x1 cm in size with exit wound 2x1 cm in size left inner ankle.

Internal examination:

Thorax, Walls, Ribs cartilages, pleurae, right & left lungs, cardiam and heart, blood vessels injured.

Abdomen

Stomach healthy and semi digested.

Opinion

In my opinion the deceased died due to injuries to the heart and blood lungs due to fire arm. Probable time between injury and death.....Hospitalized.

Probable time between death and PM02-04 hours.”

On 27.9.2016, P.W.11 Noman Khan, S.I/SHO of Police Station Bahana Mari, Peshawar, on spy information arrested appellants Ikhtiar and Niaz, vide arrest cards Ex.PC and Ex.PC/1, respectively. During the personal search, .30 bore pistol along with five live rounds (P-1) was recovered from appellant Niaz, secured through recovery memo Ex.PW.11/1, whereas .30 bore pistol along

with 10 live rounds (P-2) from accused Ikhtiar vide recovery memo Ex.P.W.11/2 was recovered in the presence of Constable Saifullah and Constable Rafique(not produced in the court).

In the course of interrogation the name of appellant Ayaz was disclosed by the said appellants as their 3rd companion. According to P.W.11 S.I./SHO Noman Khan, subsequently he along with officials of Police Station Mathra reached the house of appellant Ayaz, who was arrested along with 09 MM pistol, Art-3 and Rs.250,000/- (Rupees two lacs and fifty thousand only) being the robbed money coupled with the plundered motorcycle, which were taken into possession through recovery memo Ex.PW.7/3 and issued arrest card Ex.PC/2. Thereafter, from the house of appellant Niaz Rs.200,000/- (Rupees two lacs) were recovered being his share, which was taken into possession through recovery memo Ex.PW.7/1. It is also case of the prosecution that P.W.11 Noman Khan, S.I./SHO, with the cooperation of S.H.O Police Station Khazana and other police officials went to the house of appellant Ikhtiar and recovered Rs.250,000/- being his share which was taken into possession through recovery memo Ex.PW.7/2. According to him all such articles were handed over to the Investigation Officer.

5. On 10.10.2016 appellants were put to identification parade by P.W.10 Muhammad Asghar Khan alias Qari under the supervision of P.W.4 Muhammad Asghar, Judicial Magistrate

Incharge (JMII-II/MOD), who rightly identified the appellants. Memo of identification parade was tendered as Ex.PW.4/3.

On 13.10.2016, complainant Khalid Khan and P.W.10 Muhammad Asghar Khan alias Qari got recorded their statements under section 164 Cr.P.C produced as Ex.PW.6/5 and Ex.PW.6/6 respectively, whereby the appellants were charged with the offence.

6. On conclusion of the investigation of the case, the appellants were put to trial. Denial of the charge, led the prosecution to produce as many as 12 witnesses to substantiate the crime.

The appellants strenuously refuted the incriminating evidence put to them under section 342 Cr.P.C. None of them opted to record their statement on oath as envisaged under section 340 (2) Cr.P.C. or to produce any defence evidence.

At the end of the trial, on 24.2.2018 the appellants were found guilty of the charge and thereby convicted and sentenced in the terms mentioned herein before.

Criminal Appeal No.4/I of 2018 filed by appellants against their conviction and Criminal Revision No.2/I of 2018 for enhancement of sentence appended with the Criminal Misc. Application No.28/I 2018 for production of C.D pertaining to Press Conference as additional evidence, have been heard at length with

the valuable assistance of learned counsel for the parties and the State.

7. Mr. Hussain Ali, Advocate, learned counsel for the appellants inter alia argued that the prosecution has failed to bring on record as to how the police came to know about the appellants Ayaz and Ikhtiar Khan, which suggests that they have been roped in the instant case, with some ulterior motive. He maintained that recovery of the crime weapon has not been effected, in consequence of a proper disclosure, which makes the recovery of the weapon irrelevant. He added that the F.S.L report has lost its significance because not only there is a delay in sending the crime empty shell and pistol for F.S.L report but the pistol and empties have been sent together, which practice has been disapproved by the Hon'ble Supreme Court of Pakistan. It is further argued that the recovery of alleged stolen money has also not been proved for the reason that neither serial number of the Notes were known nor the same were found marked, so the same cannot be connected in any manner with the appellants, particularly in absence of production of money in the court.

According to him, as far as the recovery of the snatched Honda 125 motorcycle bearing registration No.4681 is concerned, that has also not been produced. Neither the titled documents of the said motorcycle nor the motorcycle itself have been produced

before the court. He has urged that the proceedings of identification suffers from gross illegalities, as the same has not been conducted in view of the Peshawar High Court Rules; also against the principles laid down by the Apex Court.

In support of his arguments, the learned counsel for the appellants has made reliance upon the following reported judgments:

PLD 2008 Supreme Court 1, 2008 SCMR 707, 2008 SCMR 6, 2004 YLR 3017, 2017 MLD 1962, PLD 1995 Supreme Court 1, 2005 YLR 954, 2012 YLR 1199, PLD 2005 Quetta 86, 2011 SCMR 537 and 2011 P Cr.L J 1819.

On the other hand Malik Akhtar Hussain Awan, Assistant Advocate General KPK appearing on behalf of the State as well as Malik Haroon Iqbal, Advocate, for the petitioner/complainant vehemently opposed the arguments advanced by the learned counsel for the appellants and submitted that the prosecution has been successful enough to prove the prosecution case. The testimony of eye-witness has not been shaken at all. The recovery of crime weapon, plundered amount of money and recovery of snatched motorcycle corroborates the deposition of the eye-witness P.W.10 Muhammad Asghar Khan alias Qari. It was also argued that as a Rule of Caution the sole eye-witness has rightly identified the appellants to be responsible for the crime as charged.

8. The counsel for the petitioner, while arguing Cr. Misc. App. No.28/I of 2018 has stated that P.W.6 Khushal Khan, S.I and P.W.11 Noman Khan, S.I/SHO has extended undue and dishonest favour to the appellants by stating that during the course of a Press Conference, before identification parade the appellants were present, which infers that they were shown and exposed in Media and that during such Press Conference held by the police officials namely P.W.9 Khalid Khan and P.W.10 Muhammad Asghar Khan alias Qari were also present which, discredit the entire identification parade; which is untrue, thus requested that there is no bar to produce the C.D belonging to Press Conference available with the Police Department and to allow P.W.6 Khushal Khan for re-examination. He also urged that such application was filed before the trial court, which has been left undecided causing prejudice.

9. Analysis and in depth scrutiny of the entire evidence of the prosecution in view of the arguments advanced by counsel for adversaries suggests that the case of the prosecution revolves around the (i) ocular testimony of P.W.10 Muhammad Asghar Khan alias Qari (ii) identification parade conducted under the supervision of P.W.4 Muhammad Asghar Civil Judge Cum Judicial Magistrate, wherein sole eye witness of occurrence P.W.10 Muhammad Asghar Khan alias Qari picked up the appellants as the culprits, (iii) recovery of crime weapons coupled with the positive

F.S.L report, (iv) recovery of plundered money and snatched motorcycle and lastly (v) the medical evidence.

The entire episode of the murder and robbery has been witnessed solely by P.W.10 Muhammad Asghar Khan alias Qari, P.W.9 Khalid Khan. He is brother of the deceased Bilal who has lodged the FIR (Ex.PA/1) on the basis of information provided by the said sole eye witness. The brother of the deceased P.W.9 Khalid Khan in his examination-in-chief has narrated about the occurrence as mentioned in the FIR. However, he admitted that he is not an eye witness of the occurrence, as such, it could be construed that he has no direct information of the ocular account, thus we would like to dilate upon the testimony of P.W.10 Muhammad Asghar Khan alias Qari, who has furnished the ocular account of this unfortunate incident of robbery and murder. He testified that on 22.9.2016 he accompanied Bilal in the motor cycle and went to the shop of Tahir Khan where they took tea and Bilal demanded money from him. He added that Tahir Khan might have handed over money to Bilal and as such while they were coming back at Garhi Qamar Din, he de-boarded from the motorcycle and at a distance of 7/8 paces he saw three persons, aimed their pistol and made firing upon Bilal on his resistance. He deposed that when he rushed towards Bilal, the said three persons while taking the motorcycle of Bilal fled away. He stated that at the relevant time when he was attracted to Bilal, he

found him alive, who was taken to the hospital in a taxi in L.R.H (Lady Reading Hospital) Peshawar where the relatives of Bilal including P.W.9 Khalid Khan brother of the deceased arrived and reported the matter to police in causality. However, in the meanwhile Bilal succumbed to his injuries. He also maintained that after couple of days he was called in police station where recovery of money and pistol made from appellants were shown to him by police officials.

According to him, a couple of days later, he identified the culprits in the identification parade in jail and that he got recorded his statement under section 164 of the Code before the Magistrate and charged the appellants. P.W.10 Muhammad Asghar Khan alias Qari was cross-examined at length and during cross-examination, he was confronted with certain improvements made by him. The improvements so confronted are of no significant value which can diminish the evidentiary value of his testimony. He has furnished the account of the occurrence in clear words that the deceased was fired at by three persons on his resistance and thereafter they made good their escape after snatching the motorcycle and taking away his money.

Although, the said witness in his examination-in-chief has stated that at the relevant time Tahir Khan might have handed over money to Bilal, then how did he identify the cash amount of

Rs.700,000/- (rupees seven lac) to be the same amount, which was snatched from the deceased, therefore, such portion of his statement is highly questionable.

For the sake of arguments if the entire story of the occurrence is believed to be true, even then the appellant cannot be connected with the alleged crime. Firstly, for the reason that P.W.10 Muhammad Asghar Khan alias Qari has not given the description of the culprits involved in the crime as charged, which was necessary as no one can be given license to subsequently involve as many as he likes. We are conscious of the distinction between a case in which a witness has had only fleeting glimpse of the culprits, who happened to be a stranger and a witness who had known the accused previously or who had seen the culprits several times. In the first case, it is always insisted upon having a proper identification parade, whereas in the later case the identification parade can be dispensed with. In the instant case, the culprits were admittedly stranger for the P.W.10 Muhammad Asghar Khan alias Qari, thus it was necessary for such witness to have had rightly identified the appellants in a proper identification parade; subject to two major conditions. The primary condition is that if the prosecution witness, who furnished ocular account in a situation, where he has clues of the culprit must give *description* of such stranger(culprit) in detail so that no mistake is made by him, while

identifying the culprits and secondly, the eye witness who had witnessed the occurrence must also furnish the role of stranger felons individually, so as to avoid mistake in identifying a person, regarding, whom there is even a meager suspicion.

10. Undeniably, in this very case P.W.10 Muhammad Asghar Khan alias Qari has failed not only to give the description of the appellants but has also ascribed no individual role to each appellant. Although in the instant case identification parade has been conducted but the entire proceedings of identification suffers from gross illegalities and infirmities because the procedure adopted during the identification parade is against the rules enshrined in the Peshawar High Court Rules; which have not been observed, evident from the depositions of prosecution witnesses related to identification parade. P.W.6 Khushal Khan and P.W.4 Muhammad Asghar, Civil Judge-Cum-Judicial Magistrate, even failed to give details of the dummies, who participated in the course of identification parade. Above all, P.W.10 Muhammad Asghar Khan alias Qari has also failed to attribute specific role to the appellants played by them individually and collectively during the course of identification parade but also even not before the trial court. Thus it would be unsafe to rely upon the testimony of P.W.10 Muhammad Asghar Khan alias Qari and the identification parade conducted by P.W.6 Khushal Khan under the supervision of P.W.4

Muhammad Asghar Judicial Magistrate. In this regard we are persuaded by the dictum expounded in the case of SHAFQAT MEHMOOD AND OTHERS VS. THE STATE (2011 SCMR 537), ABDUL SALAM AND OTHERS VS. THE STATE AND OTHERS (PLD 2005 QUETTA 86) AND STATE THROUGH ADVOCATE GENERAL SINDH VS. FARMAN HUSSAIN AND OTHERS ANOTHER (PLD 1995 S.C 1) (IV) MUHAMMAD AHMAD ALIAS DANYAL VS. THE STATE (2005 YLR 954).

11. Adverting to the Criminal Misc. Application No.28/I of 2018 filed by the petitioner in Cr.Rev.No.4/I of 2018 by the counsel for the complainant for production of C.D pertaining to the Press Conference held by police official during which allegedly according to P.W.6 Khushal Khan admitted in cross-examination that the appellants were shown to the Media as well as the eye witnesses. It may be observed that the said application cannot be considered at this stage as it was incumbent upon the complainant and his counsel to have had enclosed the copy of alleged C.D in the first place and then it was his duty to have had demonstrated that the favour made by P.W.11 Noman Khan SI/SHO was incorrect and that a false concession was extended so evident from the video clips. Even otherwise, if the version of the complainant is admitted and the favour extended by P.W.11 Noman Khan, SI/SHO is discarded and disbelieved to be true that at the time of their Press

Conference the appellants were exposed to Media, P.W.9 Khalid Khan and P.W.10 Muhammad Asghar Khan alias Qari, even then by no means it strengthens the prosecution case for the main reason that the sole eye witness P.W.10 Muhammad Asghar Khan alias Qari had neither given any description nor attributed role to them. He had ample opportunity during the course of identification parade or even before the trial court to attribute specific role but he failed to do as it was necessary. In such view of the matter Criminal Misc. Application 28/I of 2018, being misconceived and unnecessary at this stage without any plausible reason, stands dismissed.

12. Admittedly, recovery of pistols from the appellants have not been effected in consequence of disclosure. The recovery of .30 bore from the possession of appellants Ikhtiar and Niaz were made at the time of their arrest. The said recoveries have two dimension in the instant case; firstly, as a corroborative piece of evidence and secondly, the pistol having been found unlicensed. We are aware that the recoveries of the crime weapons made by all the three appellants have not been effected before disclosure and not in consequence thereof, henceforth; it will have no corroborative value in absence of any disclosure memoos unless three empties shells recovered from the place of occurrence coincide with the crime weapons but not otherwise.

13. Looking into the recovery of pistols having no license, effected from the possession of appellants Ikhtiar and Niaz as an independent offence as provided under section 15 of the Khyber Pakhtunkhwa Arms Act,2013, we have thoroughly scrutinized the testimony of Seizing Officer P.W.11 Noman Khan, S.I./SHO, who though stated to have recovered pistol from the possession of appellants but has also not denied that while making the recovery, the parcels of the pistols were not prepared on the spot, rather, the parcels were prepared subsequently, for which no explanation has been offered by the prosecution. Above all, the marginal witnesses namely Constables Saifullah and Rafique of the recovery memo of the pistol effected from the appellants Ikhtiar and Niaz have not been produced before the court to corroborate the testimony of P.W.11 Noman Khan, S.I./SHO, as such the recovery of pistols cannot be relied upon. In so far the recovery of pistol 9 MM from the appellant Ayaz is concerned, the said Seizing Officer while arresting him did not make parcels with seal on the spot, which has made the recovery highly doubtful. Even otherwise, there are material contradictions in the statements of the prosecution witnesses, which has made the entire recovery doubtful.

14. In the instant case although the prosecution has been successful to procure positive F.S.L report (Ex.P.2/1) consisting of two pages, but after due scrutiny and critical examination of the

testimony of P.W.6 Khushal Khan, the Investigating Officer of the case and P.W.11 Noman Khan, SI/SHO, in view of the F.S.L reports, we have concluded with no doubt in mind that the F.S.L report (Ex.P.2/1) consisting of two pages is un- worthy of credence as corroborative piece of evidence; for the reason that the three empties shells and crime weapons have been sent together, which practice has been disapproved by the Hon'ble Supreme Court of Pakistan as held in the case of MUSHTAQ AND 3 OTHERS VS. THE STATE (PLD 2008 S.C 1).

Moreover, there is a considerable delay while sending the pistols coupled with the three empties shells. Evidently, the three empties shells were secured from the crime scene on 22.9.2016, whereas the crime weapons were recovered from the appellants on 27.9.2016 but the parcels of three empties shells and pistols were sent together, so received by the F.S.L Peshawar on 13.10.2016, which is not only strange as to why the officials of police station Bhana Mari situated at Peshawar City has sent the same with such delay despite both offices situated in a city. P.W.6 Khushal Khan who is I.O of the case at no occasion has offered any explanation for such delay for keeping the aforesaid parcels in police station for 16 days. This delay give rise to suspicious of manipulation and tempering with the said articles, which is depreciable in a case of capital punishment, hence no explicit reliance can be placed on

such F.S.L report. In this regard, we are guided from the dictum laid down by the Hon'ble Apex Court in the case of ALI SHER AND OTHERS VS. THE STATE (2008 SCMR 707).

15. In so far as recovery of plundered money is concerned, the same has also no evidentiary value. The prosecution has failed to prove that the amount recovered from the appellants is the same which was plundered. Neither the serial number of the Notes were earlier available any where with any witness including P.W.12 Tahir Khan who gave money to the deceased on the fateful day nor he had stated in his testimony that the Notes comprised of such and such denominations or it had such marks of identification. So it is absolutely difficult to conclude that the amount recovered from the appellants was the same amount which was plundered by the deceased or else.

Above all, the prosecution has failed to produce the aforesaid amount secured through recovery memos Ex.PW.7/1, Ex.PW.7/2 and Ex.P.W.7/3, henceforth non production of the case property (money worth Rs.700,000/-) has made the recovery memoes and testimony of the recovery witnesses without any credence which has destroyed the entire case of the prosecution. The observation of the trial court regarding explanation offered by the prosecution that the said amount was mis-appropriated and action was taken against the officials involved in mis-appropriation has no

substance as no such evidence has been placed on record to substantiate their plea. This Court in the case of SAID AMEEN VS. THE STATE (2017 MLD 1962) disbelieved the recovery of alleged stolen property made on the pointation of the appellant, when not produced in the court. Thus, we are also of the considered opinion that the recovery mainly appearing on paper and not physically produced during the course of trial would be insignificant and unsafe to rely upon.

The un-natural death of the deceased has not been questioned, therefore, the medico-legal evidence need not to be brought under scrutiny for it does not lead to identify or connect the appellants with the crime, particularly in the peculiar circumstances of the instant case. The Hon'ble Supreme Court of Pakistan in the case of HASHIM QASIM AND ANOTHER VS. THE STATE (2017 SCMR 986) has held that medical evidence was only confirmatory or of supporting nature and was never held to be corroboratory evidence, to identify the culprit(s). In this case as well the medical evidence has no corroborative value to connect the appellants with the crime.

16. For what has been discussed hereinabove, we are of the considered view that the ocular testimony of P.W.10 Muhammad Asghar alias Qari coupled with the identification parade, which is unworthy and does not inspire confidence cannot be relied upon to

upheld the conviction and sentence awarded to the appellants and that the recovery of arms, ammunition as well as the plundered amount is also inconsequential, as same has not been proved. Thus, the accumulative effect of the entire appraisal of the evidence has persuaded us to believe that the prosecution by all means has failed to prove the case without shadow of doubt, rather, the entire case seems to be highly doubtful, if seen and examined with which ever angle.

The upshot of the above reasoning is that the Criminal Appeal No.4/I of 2018 filed by Ayaz son of Khair Muhammad, Ikhtiar son of Nabi Gul and Niaz son of Mumtaz is allowed, henceforth, the impugned judgment dated 24.02.2018 passed by learned Sessions Judge/Judge on Special Task, Peshawar is set aside and the appellants are acquitted of the charge. The appellants be released forthwith, if not required in any other case.

After allowing the criminal appeal No.4/I of 2018, the criminal revision No.2/I of 2018 has become infructuous, therefore, it stands dismissed.

SHAUKAT ALI RAKHSHANI
JUDGE

MEHMOOD MAQBOOL BAJWA
JUDGE

Announced in open court on 17.10.2018
At Islamabad/
M.Akram/

