

IN THE FEDERAL SHARIAT COURT
(APPELLATE/REVISIONAL JURISDICTION)

PRESENT
MR. JUSTICE IQBAL HAMEEDUR RAHMAN, CHIEF JUSTICE
MR. JUSTICE AMEER MUHAMMAD KHAN

CRIMINAL APPEAL NO. 01-K OF 2024

Talib S/o Sallah, by caste Mangnejo, R/o Adam Shah Colony,
Military road Sukkur (presently confined in Central Prison, Sukkur).

APPELLANT

VERSUS

The State

RESPONDENT

JAIL CRIMINAL APPEAL NO. 01-I OF 2024

Mazno alias Ghulam S/o Ramzan, by caste Mangnejo, R/o Village
Gul Hassan Mangnejo Taluka Kingri, District Khairpur, (presently
confined in Central Prison, Sukkur).

APPELLANT

VERSUS

The State

RESPONDENT

COUNSEL FOR THE APPELLANTS	...	MR. ABDUL SATTAR BROHI, ADVOCATE AND HAFIZ MUHAMMAD AWAIS MALANO, ADVOCATE.
COUNSEL FOR THE STATE	...	MR. KHADIM HUSSAIN KHUHARO, ADDITIONAL PROSECUTOR GENERAL, SINDH.
FIR NO. DATE AND POLICE STATION	...	03 OF 2014, 02.02.2014 20-MILES, DISTRICT SHIKARPUR
DATE OF JUDGMENT OF TRIAL COURT	...	05.12.2023
DATES OF INSTITUTION	...	12.2.2024 05.01.2024
DATE OF HEARING	...	15.04.2025
DATE OF JUDGMENT	...	

JUDGMENT

AMEER MUHAMMAD KHAN, J: These two criminal appeals have been filed by Talib son of Sallah and Mazno alias Ghulam son of Ramzan against their conviction and sentence passed vide judgment dated 05.12.2023, in the Court of Ist Additional Sessions Judge (MCTC), Shikarpur, wherein both the appellants had been convicted for the offence of dacoity with murder punishable under Section 396 Pakistan Penal Code, 1860 and were sentenced to imprisonment for life with fine of Rs. 2,00,000/- (Rupees two lac) each and in case of failure the payment thereof to further undergo six months simple imprisonment. Both the appellants/convicts were further burdened with payment of compensation amount of Rs. 5,00,000/- (Rupees five lac) to the legal heirs of the deceased Ghulam Nabi and and in case the default thereof to further undergo one year simple imprisonment.

They had also been convicted for the offence punishable under Section 337-H(ii) Pakistan Penal Code, 1860 and sentenced to undergo three months simple imprisonment with fine of Rs. 20,000/- (Rupees twenty thousand) each and in default the payment thereof to further undergo one month simple imprisonment. All the sentences so awarded were directed to run concurrently with extension of benefit of Section 382-B

Criminal Procedure Code, 1898, whereas the co-accused namely Hadi Bux, Suhbat, Arbab, Aadho, Muhabat, Nadeem, Saleem, Shabeer, Mitero and Momin were benefited with doubts and acquitted from the charge.

2. Both the above mentioned appeals arising out of the same judgment dated 05.12.2013 are being decided vide this single judgment. The jail criminal appeal No. 01-I of 2024 of Mazno alias Ghulam s/o Ramzan was received on 05.1.2024 through Superintendent Central Prison, Sukkur, whereas the criminal appeal No. 01-K of 2024, filed by Talib s/o Sallah was received through High Court of Sindh, Circuit Court, Larkana, vide order dated 09.2.2024.

3. The Brief facts are that PW-1, Soomar lodged the FIR Exh.05/A, on 02.2.2014 at 18:45 hours regarding the occurrence taken place on 01.2.2014 at about 08:00 a.m, while appearing before PW-5 Muhammad Suleman ASI, police station 20-Miles, District Shikarpur, under Section 302/337H(ii)/148/149 Pakistan Penal Code read with Section 17/1-4, Offences Against Property (Enforcement of Hudood) Ordinance, (VI of 1979), stating therein that on 01.2.2014, he along with his brothers i) Gul Bahar ii) Ghulam Nabi, his nephew (iii) Yousif son of Muhammad Achar Mangnejo, R/o Taluka Ghari Yaseen took out their goats and cows for grazing towards their agricultural land. His

brother Ghulam Nabi was looking after the cattle, whereas they were working in the nearby land. At about 08:00 a.m, the accused Bashir armed with G-3 Rifle, Mazno and Ilyas sons of Ramzan armed with Kalashnikovs, Suleman and Abdul Rehman armed with Kalashnikovs, Hadi Bux armed with double barrel gun, Saleem and Arbab armed with Kalashnikovs, Adho armed with single barrel gun, Muhabat armed with Kalashnikov, Suhbat armed with double barrel gun, Momin armed with Kalashnikov, Talib son of Sallah armed with single barrel gun, Nadeem son of Bashir armed with Kalashnikov, Mitero and Shabir armed with SBBL, all Mangnejo by caste, R/o village Gul Hassan Mangnejo, Taluka Kingri, District Khairpur along with four unknown accused with open faces were seeing clearly and could be identified on appearance, came there while making hackles and took the cattle with intention to snatch them away. Upon which his brother Ghulam Nabi aged 35/36 years made resistance, thereafter the accused Bashir, Suleman, Mazno, Abdul Rehman and Talib, said to his brother that he was resisting them and they will not leave him alive, while saying that accused Bashir, Suleman, Abdul Rehman, Mazno and Talib directly fired with their respective weapons upon his brother Ghulam Nabi, such fires hit him and he fell down on the ground while crying. Thereafter, all accused while resorting to aerial firing

ran away towards Southern side of river and due to fear of weapons they kept silent.

Thereafter they saw their brother Ghulam Nabi had sustained fire-arm injuries on his hands, abdomen, back, kidney and shoulder. His blood was oozing out and he died within their sight. After arranging the conveyance they appeared at police station and post-mortem examination of his brother Ghulam Nabi with the help of police from Taluka Hospital Lakhi Ghulam Shah was conducted. Thereafter they took the dead body for burial, where they remained busy and after consulting with the elders and youngsters, he lodged the FIR against the above mentioned accused and the unknowns, who had tried to rob the cattle and upon resistance of Ghulam Nabi, the accused persons caused his death.

4. Thereafter on 01.3.2014, the report under Section 173 Criminal Procedure Code was filed, different accused had been appearing and the court after taking cognizance adjourned the case sine die and finally through the amended charge dated 01.12.2021, started the trial in this case against thirteen accused namely Hadi Bakhsh, Suhbat, Mazno alias Ghulam, Arbab, Aadho, Suleman, Muhabat, Nadeem, Saleem, Shabir, Mitairo, Talib and Momin, under three heads for commission of Haraabah with causing death and for making aerial firing as

member of unlawful assembly. All the said accused denied the charge and claimed trial.

5. Afterwards, the prosecution evidence was summoned and recorded. The gist of which is as under:-

PW-1 Soomar, the first informer who reiterated the story as mentioned supra in the FIR Exh.05/A, besides that he witnessed the recovery of crime empties comprised of ten shells of Kalashnikov, four empty shells of G-3 rifle and six empty shells of the cartridges and also witnessed the recovery of blood stained earth from the place of occurrence. He further handed over the last worn clothes of deceased Ghulam Nabi to investigation officer and took the same into possession vide Mashirnama attested by Gulzar and Imdad.

PW-2 Muhammad Yousif, is also the eye witness of the occurrence. He also reiterated the same story mentioned supra.

PW-3 Gulzar deposed that on 01.2.2014, the investigation officer inspected the dead body of deceased Ghulam Nabi at police station in his presence and that of co-Mashir Imdad Ali. He attested the said prepared Mashirnama of the dead body as Exh.04/B. He also attested the Mashirnama of receipt of last worn clothes Exh.04/A. He also attested the Mashirnama of place of incident prepared on 03.2.2014 by the investigation

officer at the spot as Exh.04/E. The investigation officer also secured secured blood stained earth and the shells and prepared Danistnama Exh.04/C, he also witnessed the said Danistnama.

PW-4 Manzoor Hussain, Tapedar prepared the site plan Exh.81/B, vide letter Exh.81/A, on the direction of Mukhtiarkar Taluka Garhi Yasin.

PW-5 Muhammad Sulleman, ASI, stated that on 01.2.2014 he was posted as ASI at police Station 20-Mile, District Shikarpur. On the same date he gave a letter to the complainant party who brought the dead body of Ghulam Nabi in the police station for post-mortem examination and on 02.2.2014 the first informer Soomar went to the police station and disclosed the facts to him about making out a cognizable offence. He lodged the FIR as verbatim which is Exh.5/A, whereas on 01.2.2014, he vide receipt No. Exh.82/A, handed over the dead body to Gul Bahar.

PW-6 Dr. Khadim Hussain, this PW on 01.2.2014 while he was posted as Medical Officer, Taluka Hospital Lakhi Ghulam Shah conducted the post-mortem examination on the dead body of Ghulam Nabi son of Ghulam Hyder, caste Mangnejo, aged 35 years, after seeing the lash Chakas form Exh.4/D. The dead body was identified by Javed Ahmed and Qurban Ali (Cousins). From external examination of deceased he observed as under:-

- i. One LTP wound measuring 3 cm x 1.5 cm cavity deep oval in shape, inverted margins, blackening positive, present over right side of chest anteriorly. (wound of entry).
- ii. One LTP wound measuring 2.5 cm x 1.5 cm cavity deep oval in shape back of right side chest posteriorly. (wound of exit).
- iii. One LTP wound measuring 2 cm x 1.5 cm over right little finger causing fracture.
- iv. One LTP wound measuring 3.5 cm x 1.5 cm cavity deep present right hypochondrium region oval in shape inverted margins blackening positive (wound of entry).
- v. One LTP wound measuring 2.5 cm x 1.5 cm cavity deep back of right side posteriorly averted margins oval shape (wound of exit).
- vi. One LTP wound measuring 2.5 cm x 1.5 cm muscle deep present over right shoulder anteriorly inverted margins (wound of entry).
- vii. One LTP wound measuring 2 cm x 1.5 cm muscle deep oval shape back of right shoulder posteriorly (wound of exit).
- viii. One LTP wound measuring 2.5 cm x 1.5 cm muscle deep left shoulder anteriorly inverted margins oval shape (wound of entry).
- ix. One LTP wound measuring 2.5 cm x 1.5 cm muscle deep averted margins left shoulder posteriorly.

On internal examination of dead body, he had found following injuries on the person of deceased.

Walls and cartilages ruptured, right lung damaged, pericardium and heart right side of heart empty, wall ruptured, stomach containing semi digestion particles of. Small and large intestine ruptured, liver ruptured, right kidney damaged.

According to his opinion, the death occurred due to shock and hemorrhage as a result of injury to vital organs just a liver, right kidney, caused due to discharge from firearm. All the injuries were ante-mortem in nature and were caused due to discharge from firearm. Probable time between injury and death was instantaneously. Probable time between death and postmortem was about eight to nine hours. He issued post-mortem examination report as Exh.4/G.

PW-7, Kifayatullah, SIP, police station Jamalpur, he was the Investigating officer in this case. On 01.2.2014 this PW was posted as ASI, at Police Station 20-Miles, District Shikarpur. On the same day Soomar PW-1 and others brought the dead body of Ghulam Nabi deceased at police station for obtaining letter for post-mortem examination. This PW observed the wounds on the person of deceased and prepared Mashirnama Exh.4/B attested by Imdad and Gulzar Mashirs/PWs. He also prepared Danistnama and inquest report Exh.4/C and Exh.4/D respectively attested by the said PWs. He handed over the dead body of Ghulam Nabi deceased to Muhammad Sulleman ASI

Hulio. At about 04:10 p.m on the same date the said ASI Sulleman Hulio handed over him the last worn clothes of the deceased, same was taken into possession vide mashirnama Exh.4/A. On the next day the said Suleman Hulio, ASI handed over the FIR to him for investigation. On the same day at 02:00 p.m this PW recorded the statement of the witnesses under Section 161 Cr.P.C and on 03.2.2014, he along with both the said Mashirs went to the place of occurrence as pointed out by Muhammad Soomar, first informer. This PW secured the blood stained earth and sealed the same in packet of cigarettes and collected ten empties of Kalashnikov, four shells of G-3 Rifle and six empties cartridges vide Mashirnama Exh.4/E. He recorded the statements of Suhnu, Rano, Mst. Haneefa and Mst. Haleema. Then wrote a letter to Mukhtiarkar for preparing the sketch of wardaat and wrote a letter to the SSP Shikarpur for sending the recovered case property towards Chemical Laboratory, Rohri, the letter is Exh.84/A and the letter to the Mukhtiarkar is Exh.8/A. He dispatched the case property to Chemical Examiner laboratory Rohri, vide road certificate through ASI Imdad. The said road certificate is Exh.84/B. The report of Chemical Examiner is Exh.04/H. Thereafter he submitted the challan in this case under Section 512 Cr.P.C on 01.3.2014.

6. On 19.9.2023 the learned DDPP closed the prosecution case. Thereafter the statements of the accused under Section 342 Criminal Procedure Code were recorded. The accused denied the evidence, claimed innocence and none of them opted for adducing defence evidence or stating in their defence on oath as required under Section 340(2) Criminal Procedure Code.

Then on 05.12.2023, the learned Ist Additional Sessions Judge (MCTC), Shikarpur decided this case, hence these appeals on the following grounds:-

7. The learned counsel Mr. Abdul Sattar Brohi and Hafiz Muhammad Awais Malano, appearing on behalf of appellants contended that the appellants/convicts have been involved in this case due to enmity. They did not commit any offence of dacoity and have been involved in the occurrence after deliberations and consultations through a delayed FIR, the dead body remained lying at the spot for about more than five hours and remained un-attended by the PWs including the first informer. The story of taking away of the animals or the presence of the animals at the spot is a concocted story and actually it was an unseen occurrence. The prosecution failed to prove the charge on record. The witnesses of the identification of the dead body before the doctor have not been produced as PW

and that the conviction of the appellants by the learned trial Court is not based upon any evidence or reasoning and have been picked up without any corroboration or connection with the occurrence. The accused since acquitted had the similar allegation; further contended that the learned trial Court did not apply its judicial mind while picking up the appellants from the accused. No recovery of weapon has been affected and no investigation has been conducted in this regard. The PWs did not support the prosecution case as some of the PWs have neither been produced nor given up. Further contended that no evidence of abscondance in the form of warrants or proclamations, as required evidence under Section 87 Cr.P.C has been adduced in evidence and that the learned trial Court passed a defective judgment against the appellants.

8. On the other hand, Mr. Khadim Hussain Khuharo, learned Additional Prosecutor General, Sindh vehemently opposed the contentions raised by the learned counsel for the appellants and contended that occurrence had not been denied by the defence and prosecution has proved the death of Ghulam Nabi as un-natural and that the culprits were nominated in the FIR with no reason for false implication and that the delay in lodging the FIR has been explained that the time consumed in arranging the Dotson for shifting of the dead body from the

place of occurrence; finally argued that the prosecution has proved the charge.

9. Arguments heard. Record perused.

10. PW-1 Soomar and PW-2 Muhammad Yousif are the star witnesses of prosecution who advanced the ocular account of the occurrence. PW-1 Soomar is the first informer. The deceased Ghulam Nabi was his real brother and paternal uncle of PW-2 Muhammad Yousif. The account advanced by the said PWs was that on 01.2.2014 at about 08:00 a.m, within area of the agricultural fields of the complainant party, the accused Bashir armed with G-3 rifle, Ilyas, Suleman and Abdul Rehman armed with Kalashnikovs, Hadi Bux armed with gun, Saleem and Arbab armed with Kalashnikovs, Adho armed with SBBL gun, Nadeem armed with Kalashnikov, Momin armed with Kalashnikov, Mitero armed with SBBL gun, Khan Muhammad armed with gun, Mazno armed with Kalashnikov and Talib armed with SBBL gun, besides four unknown, the total twenty (20) accused had tried to snatch goats and cows belonging to the complainant party. Ghulam Nabi offered resistance and refused to succumb to the demands. Therefore, the convict/appellants Talib and Mazno along with Bashir, Suleman and Abdul Rehman, directly fired with their respective weapons upon Ghulam Nabi, hitting him, who fell on the ground and died

within the sight of the said PWs, as claimed by them. The culprits after committing the murder of Ghulam Nabi went away towards Southern river side.

The scenario so advanced give rise to the fact that Ghulam Nabi on receipt of fire arm injuries was lying at the spot in injured condition and the three persons namely PW-1 Soomar, PW-2 Muhammad Yousif and Gul Bahar claimed their presence at the spot. The said Gul Bahar is not a prosecution witness in this case, therefore the probability of the presence of PW-1 Soomar and PW-2 Muhammad Yousif at their claimed scene of occurrence is important to be discussed.

As per the statements of these prosecution witnesses, all the culprits went away after firing upon Ghulam Nabi and spared them and did not opt to touch them.

11. The time and date of occurrence as advanced by these two PWs is 08:00 a.m, on 01.2.2014. The dead body remained lying un-attended at the spot till 12:30 p.m. PW-1 Soomar stated during the cross-examination that from 08:00 a.m to 12:30 p.m the dead body was lying at the place of incident on the ground in straight position with face towards sky. He also claimed that till 12:30 p.m, though so many persons came there but they went away after seeing the dead body and again said that no other family member came at the place of incident.

PW-1 Soomar stated that he had brought a cot from the house of one Zamir and then they put the dead body over it and shifted the dead body without cot through a Datsun. This PW further stated that he himself arranged the Datsun from 12:00 to 12:30 p.m. The investigation officer has not taken any such cot in possession nor pointed out regarding staining of any blood on any cot. It is further pertinent to mention here that there is no evidence regarding the staining of blood over the apparels of any of the PWs and no PW has claimed in this regard that they had attended the Ghulam Nabi in injured condition or that their body, hands or apparels got stained with the blood of the deceased.

At the cost of repetition it is to be mentioned that PW-1 Soomar categorically stated during cross-examination that from 08:00 a.m to 12:30 p.m dead body was lying at the place of incident. PW-1 Soomar stated that Ghulam Nabi died within their sight and had sustained fire arm injuries on his left shoulder, back and other parts of his body and his entire body had sustained fire arm injuries, whereas PW-2 Muhammad Yousif stated that Ghulam Nabi sustained injuries on the left side of his hand, left arm and on his abdomen.

This claim of said two PWs that the deceased died within their sight and advancement of seat of injuries could only be

possible, if they had attended Ghulam Nabi in injured condition and in that eventuality the oozing of blood from the body of injured was a natural phenomenon but none of the said two PWs received staining of blood on any part of the body or their apparels and the dead body kept on lying facing towards sky at the spot and the cot could be brought at 12:00 p.m, such conduct of the real brother and the nephew of the deceased is not appealable to the ordinary prudence and the natural expectancy could be that had they seen the occurrence, they could attend the injured and could endeavour to shift him to the hospital or at least to their house forthwith. Therefore, the fact of presence of PW-1 Soomar and PW-2 Muhammad Yousif at the scene of occurrence requires corroboration of some independent facts in support of their said claim. The PWs advanced the nomination with specific attribution of the accused vis-a-vis claiming that they were spared by the culprits but failed to attend the injured from 08:00 a.m to 12:00 noon give rise to their un-natural conduct.

12. PW-1 Soomar stated that they had informed to the police about the occurrence at 01:15 p.m on 01.2.2014 regarding the occurrence taken place at 08:00 a.m, when they had brought the dead body at the police station 20-Miles, District Shikarpur, whereas PW-2 Muhammad Yousif stated that after this incident

they had brought the dead body on one cot towards their village and then from there they shifted the dead body in one Datsun of one Mullan Manjhi at about 12:45 or 01:00 p.m, they left their village along with the dead body and went towards the police station. He along with Soomar, Gul Bahar and police had brought the dead body from their village to the police station. After this incident police came in their village and from there police had accompanied them when they went to the police station. About two/three police officials came there and Soomar PW had obtained letter for post-mortem from police station. Whereas PW-1 Soomar is silent regarding the shifting of dead body from place of occurrence to the village rather stated that from 12:00 to 12:30 p.m, he had arranged the Datsun from village Raja Khan, he along with driver came at the place of incident in Datsun, the name of driver was Ranjhan and they went to the police station, one Subedar Hulio and one ASI Kifayatullah were present there. Said Muhammad Sulleman, ASI was the Station House Officer and Kifayatullah was the Incharge of investigation, came across them and the dead body was referred to the Taluka hospital Lakhi Ghulam Shah for post-mortem examination. When they went to the police station at that time he had narrated whole the story to Subedar Hulio and one ASI and had also given them the names of all the accused. Both the said PWs are at variance even regarding the shifting of dead

body of Ghulam Nabi from the place of occurrence. PW-1 Soomar shifted the dead body from the place of occurrence to the police station, whereas PW-2 Muhammad Yousif stated that the dead body was shifted to the village and then on arrival of the police, they shifted the dead body to the police station at about 12:45 or 01:00 p.m. Therefore, another aspect of delay becomes surfaced in lodging the FIR with no plausible explanation. The FIR had not been lodged even at 01:00 p.m, when the dead body was however, taken to the police station and the occurrence was narrated to the police by PW-1 Soomar. The police witnesses, the SHO Muhammad Sulleman Hulio PW-5 and PW-7 Kifayatullah are silent and advance no explanation for not recording the FIR inspite of the fact that PW-5 Muhammad Sulleman, ASI stated before the court "it is a fact that on 01.2.2014 complainant party had not disclosed before me about the names of any accused and voluntarily stated that they disclosed before me that accused by caste Mangnejo has committed murder of deceased". The FIR was not lodged on 01.2.2014, rather it was lodged on 02.2.2014 at 18:45 hours that is 06:45 p.m. The total delay from the time of occurrence to the lodging of FIR is about thirty five (35) hours and the delay from narrating the occurrence to the police at 01:00 p.m on 01.2.2014 to 06:45 p.m on 02.2.2014, the delay in lodging of FIR becomes

thirty (30) hours. This delay in lodging the FIR has not been explained either by the complainant party or by the police.

13. The police of police station 20-Miles inspected the dead body on 01.2.2014, prepared the inquest report, different Mashirnamas but did not opt to chalk out the FIR. Similarly the first informer comfortably came on the next date after thirty five (35) hours and lodged the FIR with nominations and attributions of the weapons, such like conduct of the PWs give rise to the impression of consultation and deliberations. The inquest proceedings comprising of Danistnama and Lash Chakas form Exh.04/C and Exh.04/D were carried out by the police on 01.1.2014 at 01:00 p.m. The SHO PW-5, Muhammad Sulleman stated that “ On 01.2.2014, I was posted as ASI at police station 20-Miles. On the same date, complainant party had brought the dead body of deceased Ghulam Nabi at the police station, where I had given them a letter and they took away letter towards Taluka Hospital Lakhi Ghulam Shah for post-mortem. On 02.2.2014 complainant Soomar came at the police station and disclosed to me the facts of the cognizable offence, as such, I had lodged his FIR as per his verbatim. The contents of the FIR were read over to him and then I had obtain his LTI thereon”.

The above said statement of PW-5 Muhammad Sulleman, confirms the lodging of FIR on 02.2.2014 and further at the cost

of repetition it is mentioned “ it is fact that on 01.2.2014 complainant party had not disclosed before me about the names of any accused, vol. says that they disclosed before me that accused by caste Mangnejo has committed murder of deceased”.

Therefore, it is clear that the nomination and attribution of weapons were the result of deliberations and consultation on part of the prosecution witnesses, when they had not disclosed the names of the accused to the police in the first appearance. The inference of deliberations and consultations stands confirmed in lodging the FIR in this case. The proposition hereinabove has been discussed in the following judgments, titled “ *Muhammad Hassan and another Versus the State and others*” cited at “2024 S C M R 1427”, case titled “*Khial Muhammad Versus the State*” cited at “2024 S C M R 1490”, the case titled “*Muhammad Nawaz and another Versus the State and others*” cited at “2024 S C M R 1731” and the case titled “*Zafar Ali Abbasi and another Versus Zafar Ali Abbasi and others*” cited at “2024 S C M R 1773”.

14. The motive set-forth by PW-1 Soomar and PW-2 Muhammad Yousif that the twenty culprits armed with lethal weapons, as mentioned supra tried to snatch the animals comprise of goats and cows of the complainant party but there is no evidence on record about snatching of the animals rather

these PWs stated that they went away towards the river side, meaning thereby that the culprits did not tether the cattle along with them. The investigation officer PW-7, Kifayatullah is also silent in this regard and did not utter a word about the motive part that is the attempt to snatch the cattle. Therefore, the motive part can be culminated as not proved.

15. The role of investigating officer under the law and the Rules regulating the process of investigation requires responsibilities from the members of the police force. The investigation includes all the proceedings under the Criminal Procedure Code, for collection of evidence conducted by a police officer.

The police visited the spot on 03.2.2014 and on the said date PW-7 Kifayatullah SIP stated that he had secured blood stained earth of the deceased and sealed the same in a packet of cigarette and recovered ten empties of Kalashnikov, four empties shell of G-3 Rifle and six empties cartridges which were sealed by him vide Mashirnama Exh.4/E. Thereafter wrote a letter to Mukhtiarkar for preparation of sketch of *wardat*. On 07.2.2014, he dispatched the case property towards Chemical Laboratory Rohri vide R.C number 5 through ASI Imdad and produced the report of Chemical Examiner Exh.4/H and then submitted challan in this case under Section 512 Criminal

Procedure Code. The investigation officer PW-7, Kifayatullah did not utter a word about getting any non-bailable warrants of arrest of any of the accused nor any evidence is available that the non-bailable warrants of the accused persons were got issued or remained un-executed who was assigned for execution of such warrants or affixation of the proclamations of the accused. There is no evidence whatsoever in this regard on record. The prosecution did not opt to produce any such evidence whereas the abscondance is a question of fact has to be proved by the prosecution during the trial and the accused has got a right to cross-examine the such witnesses.

The sketch of *wardat* was prepared by PW-4 Manzoor Hussain, who went to the place of occurrence on 09.2.2014 that is after eight days of the occurrence. Therefore, on part of the investigating officer there is negligence and failure in collecting the evidence. He has not opted to proceed to the spot forthwith. He was bound by the Police Rules 1934, mentioned at Rule number 25.13 for preparation of two plans of the offence. He did nothing in securing the scene of occurrence rather acted negligently even in lodging the FIR. The site plan got prepared through the PW-4 Manzoor Hussain, is incomplete even unable to highlight the sight of occurrence and also has not shown the place of presence of the PWs or the cattle. He also has not

mentioned the place of collection of blood stained earth by the investigation officer. In short, same proved a futile exercise and served no purpose whatsoever for the prosecution.

16. So far as the medical evidence is concerned, PW-6 Dr. Khadim Hussain observed six entry wounds on the dead body vide post-mortem report Exh.4/G. It is pertinent to mention here that the post-mortem report Exh.4/G is not accompanied with the pictorial part which could show the locale of injuries. It is also admitted by the doctor in his cross-examination and is evident from post-mortem examination report Exh.4/G, that the column of time of the commencement of post-mortem examination is blank. He also admitted it correct that in the post-mortem report it had not been mentioned that he had received the dead body at 01:15 p.m, in response to his voluntary part when he stated in reply to the question that in the post-mortem examination report, it was not mentioned that on which particular date and time he had received the dead body. This PW observed the presence of blackening on the entry wound No. 1 and 4 and during cross-examination stated that *"As per my expert opinion, deceased had sustained all the injuries from his front side from the distance of about 10 feet"*.

Whereas injury No. 6 and 8 were muscle deep on right and left shoulder respectively but the doctor has not taken out any

led material, on dissection from the said injuries. Therefore, the medical evidence is not available for determining the kind of weapon like gun or the rifle or the injuries caused with bullet or with the pellets.

The doctor has not stated a word about the availability of corresponding holes or blackening on the last worn clothes of the deceased taken into possession vide Mashirnama Exh.04/ A, the said Mashirnama also contains no such marks on the detail of apparels mentioned therein. The doctor did not claim signing of the apparels of the deceased, which otherwise he was duty bound to mark the corresponding holes and to sign the same.

17. The post-mortem examination report contains that the dead body was identified by Javed Ahmed and Qurban Ali, (cousins) before the doctor at the time of post-mortem examination but none of the said persons appeared in court as a prosecution witnesses for confirming this fact.

The finding of the doctor PW-6 that the assailants were at ten feet distance from the victim Ghulam Nabi at the time of firing, whereas PW-4 Manzoor Hussain, Tapedar vide his site plan Exh.81/B, stated the distance of 40-feet where from the accused persons had fired upon the deceased. He prepared the sketch as pointed out by the first informer, Soomar Mangnejo, PW-1.

18. Admittedly no weapon has been recovered from any of the accused including the convicts/appellants. Even the crime empties so claimed by the prosecution recovered from the place of occurrence after two days during inspection by the investigation officer/PW-7 Kifayatullah has not been stated to be placed with the concerned official Moharar of the police station for placing in the Malkhana, nor there is any witness to whom the investigation officer handed over such properties for safe custody, interestingly the investigation officer has not even claimed so. The said crime empties have not even been forwarded to the ballistic expert for determination of their caliber for any corroboration to the ocular account.

19. As per Section 510 of the Criminal Procedure Code, 1898 the reports of Chemical Examiner and Serologist are per-se admissible in evidence without calling the examiner as a witness but requires that thing should be duly submitted to him for examination or analysis. Therefore, it was duty of the prosecution particularly the investigation officer who claimed the collection of blood stained earth from the place of occurrence, after two days to state that same was kept in safe custody and through whom the same was duly submitted to the office of Chemical Examiner. The report Exh.04/H contains that it was received through one Imdad Ali but such Imdad Ali is not

a PW before the Court. Therefore, when the due submission of the parcel of blood stained earth has not been proved before the Court, the report of Chemical Examiner Exh.04/H, becomes of no use to the prosecution.

20. The learned trial Court has acquitted the accused Hadi Bux, Suhbat, Arbab, Aadho, Muhabat, Nadeem, Saleem, Shabeer, Mitero and Momin, whereas attributed active participation to the appellants Mazno alias Ghulam and Talib along with some absconding accused for their common object.

So far as the active participation as recorded in the impugned judgment by the learned trial Court for accused Mazno alias Ghulam and Talib is concerned, that is without any connecting and corroborative piece of evidence.

21. The ocular account advanced by PW-1 Soomar and PW-2 Muhammad Yousif becomes directly in conflict with the medical evidence. The doctor state that as per his opinion the deceased had sustained fire arm injuries from one and same weapon, in standing position, as per his expert opinion all the injuries were received from the front side, from a distance of ten feet. During the cross-examination PW-2 Muhammad Yousif stated that accused Bashir along with others were standing in front of Ghulam Nabi. While accused Mazno (the appellant) was standing behind him. Ilyas was standing on his right side and

the accused made firing from the points, where they were standing around him. This PW has assigned the injuries to Mazno alias Ghulam from behind the deceased. There is no injury from the back side on the person of the deceased and the doctor has categorically stated that all the injuries were caused from the front side. Similarly, the cross-examination of PW-1 Soomar that all the accused had surrounded the Ghulam Nabi, when they committed his murder. He also stated that he and the PWs were also surrounded by the accused.

Admittedly, none of the PW is injured nor got their apparels stained with blood of the deceased. The claim of the PWs of ocular account that all the five accused armed with Kalashnikovs, SBBL gun, 12-bore guns and G-3 rifle fired upon the deceased with their respective weapons is not found corroborated through medical evidence, rather is contradictory on record and the doctor refuted their claim while stating that all the injuries were caused with one and the same weapon.

22. Therefore, in view of the above discussion, it comes out on record that the prosecution failed to prove the motive, the presence of the PWs at the spot is confronted with their unnatural conduct, the FIR lodged with delay with the expectancy of consultation and deliberations and the delay has been remained unexplained. The ocular account is at variance to

the medical evidence. The investigation remained defective as no corroborative piece of evidence is available on record either to confirm the presence of the PWs at the scene of occurrence and the account advanced by them.

23. Consequently, both these appeals are allowed. The conviction and sentence of the appellants was without any justification, hence the same is hereby set-aside along with the impugned judgment dated 05.12.2023. The appellants/convicts Talib and Mazno alias Ghulam are acquitted from the charge, they are in jail, they be released forthwith, if not required in any other case. Files be consigned to record room and the original record be sent back to the learned trial Court.

JUSTICE AMEER MUHAMMAD KHAN
JUDGE

JUSTICE IQBAL HAMEEDUR RAHMAN
CHIEF JUSTICE

Dated, Islamabad the

Salman