

IN THE FEDERAL SHARIAT COURT
(Appellate/Revisional Jurisdiction)

PRESENT:

Mr. Justice Agha Rafiq Ahmed Khan, Chief Justice
Mr. Justice Syed Afzal Haider
Mr. Justice Shahzado Shaikh

Criminal Appeal No. 50/L of 2004

Anwaar Hussain Shah son of Nusrat Hussain Shah.
Caste Syed, resident of Bola, Police Station Katha Saghral,
District Khushab.

---Appellant

Versus

The State

--- Respondent

Criminal Appeal No. 377/L of 2004

Muhammad Iqbal Shah son of Imam Shah,
Caste Syed, resident of Dhangiana, District Mianwali.

---Appellant

Versus

The State

--- Respondent

Criminal Reference No. 2/L of 2004

The State Vs. Muhammad Iqbal Shah

Counsel for the appellants --- Malik M. Iftikhar Ahmad Awan,
Mr.M. Farooq Qureshi Chishti, &
Mr. Muhammad Aslam Malik,
Advocates.

Counsel for the State --- Mr. Imran Sherazi, D.P.G.

FIR No. date & --- 116/200 dated 30.07.2000
Police Station Katha Saghral, District Khushab.

Date of Judgment of --- 31.01.2004
the trial Court

Date of Institution --- 25.02.2004 & 10.12.2004
of appeals respectively

Date of Hearing --- 28.09.2010

Date of Judgment --- 11.10.2010

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JUDGMENT

Justice Syed Afzal Haider, Judge.- This judgment will dispose of Criminal Appeal No.50/L of 2004 filed by Anwaar Hussain Shah as well as the Jail Criminal Appeal No.377/L of 2004 filed by Muhammad Iqbal Shah against their convictions and sentences recorded by learned Additional Sessions Judge, Khushab, Camp at District Jail, Shahpur on 31.01.2004. Murder Reference No.2/L of 2004 for the confirmation of death sentence is also before us. The convictions and sentences of the appellants are as follows:-

i) Appellant Muhammad Iqbal Shah:

Offence	Sentence
Under section 460 of the Pakistan Penal Code	10 years rigorous imprisonment.
Under section 20 of the Offences against Property (Enforcement of Hudood) Ordinance VI of 1979 read with Section 396 of the Pakistan Penal Code for committing Harabah/Dacoity with murder of Mst.Amir Bibi.	Death sentence. Also ordered to pay Rs.1,00,000/- as compensation under section 544-A of the Code of Criminal Procedure to the legal heirs of Mst.Amir Bibi deceased.
Under section 412 of the Pakistan Penal Code	10 years rigorous imprisonment with fine of Rs.10,000/-, in default whereof to further suffer 6 months simple imprisonment.

ii) Appellant Anwaar Hussain Shah:

Under section 460 of the Pakistan Penal Code	10 years rigorous imprisonment.
Under section 20 of the Offences against Property (Enforcement of Hudood) Ordinance VI of 1979 read with section 396 of the Pakistan Penal Code for committing Harabah/Dacoity with murder of Mst.Amir Bibi.	Imprisonment for life with a fine of Rs.10,000/-, in default whereof to further suffer 6 months simple imprisonment.
Under section 412 of the Pakistan Penal Code	10 years rigorous imprisonment with fine of Rs.10,000/-, in default whereof to further suffer 6 months simple imprisonment.

Sentences of the accused Anwaar Hussain Shah was ordered to run concurrently. He was allowed benefit of section 382-B of the Code of Criminal Procedure.

2. Brief facts of the case as narrated by complainant Syed Fateh Shah PW-1 in the crime report are that during the night between 29/30 July 2000, he, his wife Mst.Ameer Bibi deceased, grand daughters Mst.Shazia Batool aged 14/15 years (PW-2) and Ajmal Batool were asleep in the courtyard of their house when five unknown

persons, whose features were detailed in the crime report, forced entry in their residential premises. Out of them, 3 persons tied the complainant with the string of the cot (*dawan*) and also gagged his mouth with a *dhoti*. They took his wife and grand daughters inside the room where the house hold effects were ransacked. They confined his wife and grand daughters in separate rooms and went away. At about 5:00 a.m, Phul Pir Shah, nephew of the complainant came there and untied the complainant after the occurrence. When the witnesses entered the room, they found that Mst.Amir Bibi was lying dead on a cot and her neck was tied wit her *dopatta*. The two grand daughters of the complainant were retrieved from another room. The complainant further alleged that the accused persons committed murder of his wife and also took away household articles with them. The accused were identified by the complainant and Mst.Shazia Batool (PW-2) in the light of electric bulb. On the basis of information laid by the

complainant, FIR No.116 dated 30.07.2000 was registered under section 460 of the Pakistan Penal Code at Police Station Katha Saghrat, District Khushab.

3. Investigation ensued as a consequence of registration of the report. During investigation, all the accused were found guilty and a report under section 173 of the Code of Criminal Procedure was submitted in the Court requiring the accused Muhammad Iqbal Shah, Anwaar Hussain Shah, Sibti-i-Hussain Shah and Muhammad Farooq alongwith Mukhtar Hussain Shah (since dead) to face trial.

4. The learned trial Court thereafter framed charges against the accused on 24.01.2004 *firstly* under section 460 of the Pakistan Penal Code, *secondly* under section 20 of the Offences Against Property (Enforcement of Hudood) Ordinance VI of 1979 read with section 396 of the Pakistan Penal Code and *thirdly* under section 412 of

the Pakistan Penal Code. The accused denied the charges and claimed trial.

5. The prosecution in order to prove its case produced 22 witnesses at the trial. The gist of evidence of the witnesses is as under:-

i) PW-1: Fateh Shah is complainant of the case. He endorsed contents of the crime report and the proceedings subsequently conducted by the Police.

ii) PW-2: Mst.Shazia Batool, grand daughter of the complainant, supported the prosecution version.

iii) PW-3: Bari Sultan is an accused turned approver. He remained in Jail with accused Muhammad Iqbal Shah and Mukhtar Hussain Shah. Later on, he was pardoned by legal heirs of the deceased Mst.Amir Bibi. He was released from jail.

According to his testimony both the accused Muhammad Iqbal Shah and Mukhtar Hussain Shah met him and asked him to

commit the crime as they needed. On 29.07.2000 he was called by the accused Mukhtar Hussain Shah and Karam Hussain Shah to their house at Jauharabad where accused Anwaar Shah, Sibti-Hassan, Farooq and Karam Hussain Shah were already present. Mukhtar Hussain Shah and Karam Hussain Shah planned a dacoity in village Rajar. Karam Hussain Shah assured every one of police protection in the event of their apprehension. In furtherance of their common intention, he, Iqbal Hussain Shah armed with .12 bore gun, Mukhtar Hussain Shah armed with .30 bore pistol and 7-MM rifle, Anwaar Shah armed with .30 bore pistol and .12 bore gun, Sibti-Hassan Shah armed with .32 bore revolver as well as Muhammad Farooq proceeded to the dera of Malik Khizar Hayat Rajar on motorcycles. They parked their motorcycles near the mosque and went to the dera of Fateh Shah. Fateh Shah was over-powered by Mukhtar Shah, Iqbal Shah and

Anwaar Hussain and his face was covered with a *dhoti*. His hands and feet were tied with *Dawan* (string of the cot). A woman aged about 55 years and two girls aged about 14 years and 5 years were sleeping in the courtyard of the Dera. The witness caught young girl, Anwar Shah caught the older girl and Mukhtar Shah and Iqbal Shah caught Mst. Amir Bibi and took her in a room. They forcibly took the key from Mst. Amir Bibi and took out gold ornaments, watches, tape-reorder, Thermos, blanket, clothes, title deed of land, copies of identity card and cash amounting Rs.12000/-. During the commission of dacoity the face of Mukhtar Hussain was unmuffled and he was identified by Mst. Amir Bibi whereafter Mukhtar Shah and Iqbal Shah took her to another room where she was strangulated with her *dopatta*. Then they left the place of occurrence. After the

occurrence, all the accused divided the stolen property among themselves. This witness also got recovered the stolen property.

iv) PW-4: Muhammad Saleem Draftsman prepared site plan Ex.PE and Ex.PE/1 according to scale and handed over the same to the Investigation Officer on 06.08.2000.

v) PW-5: Constable Muhammad Sibtain received a sealed parcel on 29.08.2000 said to contain pistol .30 bore from MHC Rehmat Ali. He delivered the same intact in the office of Forensic Science Laboratory on 30.08.2000. On 19.09.2000 he also received another parcel containing .30 bore pistol which delivered intact in the office of Forensic Science Laboratory.

vi) PW-6: Constable Muhammad Hussain was on patrol duty during the night of 5/6-08.2000 alongwith Khalid Masood ASI and Constable Nasrullah on an official vehicle. At about 4:30 a.m, an informer told them about the existence of a red coloured

Motor Cycle No.4942/MIA in the bushes which was taken into possession by Khalid Masood ASI vide recovery memo Ex.PF which was attested by him as well as Constable Nasrullah.

vii) PW-7: Head Constable Ghulam Muhammad stated that he was present alongwith Muhammad Akram Station House Officer, Muhammad Akram ASI and other officials in official van at Kurar Talokar Chowk in the area of Police Station Katha Saghral when 3 persons were seen on a motor cycle coming from Sangha Patroleum and heading towards Lila. The Police party stopped them by obstructing the road with their official van and apprehended all the three persons. On interrogation by the Station House Officer, the said persons disclosed their names as Bari Sultan, Anwaar Hussain Shah and Iqbal Hussain Sbah and also disclosed having stolen a Honda 125 cc motor cycle without number which was taken into possession under section 550 of the

Code of Criminal Procedure vide Ex.PG. The witness as well as

Muhammad Akram ASI attested the said memo.

viii) PW-8: Head Constable Rab Nawaz was Moharrar of the Police Station at the time of incident. He received motor cycle Yamaha 4942/MIA from Khalid Masood ASI and kept the same in the Police Station for about one month which was later on "taken up" by Muhammad Akram Station House Officer on 06.09.2000 in connection with some case.

ix) PW-9: Constable Muhammad Riaz escorted the dead body of Mst.Amir Bibi deceased from the place of occurrence to the mortuary of Civil Hospital, Khushab. After post mortem examination, lady doctor handed over to him last worn clothes of the deceased i.e Shirt P.4, Chadar P.5, Dopata P.6 alongwith sealed envelope and a sealed phial which he produced before the Investigation Officer who took the same vide recovery memo Ex.PH which was attested by him.

x) PW-10: Head Constable Anwar-ul-Haq stated that on 14.09.2000, Mukhtar Shah accused, since dead, during interrogation, disclosed and then led to the recovery of I.D.Card of Mst.Amir Bibi P.7, tape recorder P.8 and cash amount of Rs.4000/- P.9 from his house in village Talokar from an iron box lying in the room. All the said articles including the cash was taken into possession by the Investigation Officer vide recovery memo Ex.PJ which was attested by this witness and Muhammad Akram ASI. On the same day accused Muhammad Iqbal Shah, during interrogation, disclosed and then led to the recovery of an I.D card P.10, 3 ladies suits P.11/1-3 and cash amount of Rs.3000/- P.12 from the bushes by digging over the ditch from the area of village Talokar nearby Pull Madham. The Investigating Officer took the said articles into possession through recovery memo Ex.PK which was attested by him as

well as Muhammad Akram Assistant Sub Inspector. On the same day, accused Anwaar Hussain Shah during interrogation led to the recovery of .12 bore gun P-13 from one Ghulam Hussain from village Kurpalka who on seeing the Police party ran away by throwing the gun P-13 which was then taken into possession by the Investigation Officer vide recovery memo Ex.PL, attested by this witness and Muhammad Akram ASI.

xi) PW-11: Zafar Iqbal stated that the Motor Cycle bearing No.SGJ 5956 belonged to him which was stolen and its report was lodged by his maternal uncle Iftikhar Hussain with Police Station Mitha Tiwana. This witness identified the motorcycle on 02.09.2000 in Police Station Katha Saghral.

xii) PW-12: Lady Dr.Naureen Imtiaz conducted post mortem examination on the dead body of Mst.Amir Bibi. In her opinion injury No.1 was anti mortem and caused by strangulation. Injury

No.1 was sufficient to cause death in ordinary course of events as it had caused respiratory arrest. After post mortem examination, she handed over the well stitched dead body, police papers, post mortem report, three vaginal swabs sealed in a bottle to the escorting Constable. According to the report of Chemical Examiner the vaginal swabs were not stained with semen.

xiii) PW-13: Rehmat Ali ASI received a sealed envelope containing swabs for safe custody. On 07.08.2000, he handed over the said parcel to Constable Muhammad Sibtain for onward submission in the office of Chemical Examiner, Rawalpindi. On 25.8.2000 this witness also received a parcel of .30 bore pistol alongwith 6 cartridges for safe custody etc. On 29.08.2000, he handed the said parcel to Constable Muhammad Sibtain for onward transmission in the office of Forensic Science Laboratory, Lahore. On 11.09.2000 he received another parcel of

.30 bore alongwith 20 cartridges which were handed over intact to Constable Muhammad Sibtain on 19.09.2000 for onward transmission to the office of Forensic Science Laboratory, Lahore.

xiv) PW-14: Sikandar Hayat stated that during the night between 20 and 21 May 2000 he was busy in thrashing wheat whereas his motorcycle (P.14) was parked at a short distance.

Later on he came to know that the motorcycle was taken away by accused Muhammad Iqbal Shah and Mukhtar Hussain Shah.

They carried out the search for the same. On 06.09.2000 they heard about arrest of gang of dacoits by Police of Katha Saghral and recovery of some motorcycle from them. On the following day i.e 07.09.2000 he alongwith Haji Abdur Rehman went to Police Station K/Saghral to verify the fact. The missing motorcycle No.3068/SGH was identified by them. The motorcycle

(P.14) was carrying a number plate with a fake registration No.

4942/MIA. The Investigation Officer prepared the identification

memo Ex.PR which was attested by him and his father PW Haji

Abdur Rehman.

xv) PW-15: Lal Khan stated that on 11.09.2000 he was present

in the police station Katha Saghrul. Muhammad Iqbal Shah

accused, during interrogation, disclosed about the recovery of .12

bore gun and led to the recovery of .12 bore gun P.15 alongwith

five live cartridges P.16/1-5 from the house of accused Mukhtar

Shah, since died, from an iron box lying in the residential room

of the house. The Investigating Officer took the same into

possession through recovery memo Ex.PS which was attested by

him as well as Muhammad Akram Assistant Sub Inspector. On

the same day Anwar Hussain Shah accused also disclosed and

led to the recovery of pistol P.17 alongwith 15 live bullets

P.18/1-15 from the house of Mukhtar Shah accused from the ceiling of Veranda. The Investigating Officer took the same into possession through recovery memo Ex.PT which was attested by him as well as Muhammad Akram Assistant Sub Inspector. On the same day Mukhtar Hussain Shah accused also led to the recovery of rifle 7-MM P.19 alongwith 20 live cartridges P.21/1-20 and a bag from his house from underneath the bedding lying on a cot. The said rifle and bullets were sealed into parcel and taken into possession vide memo Ex.PU which was attested by him as well as Sher Muhammad Assistant Sub Inspector.

xvi) PW-16: Farman Ali identified dead body of Mst.Amir Bibi deceased at the time of post mortem.

xvii) PW-17: Muhammad Sultan stated that he alongwith Ali Muhammad went to the Police Station in connection with a dispute regarding his land where he happened to see Muhammad

Farooq accused who was being interrogated by the police.

Nothing happened before him nor did he witness any recovery.

He was consequently declared hostile.

xviii) PW-18: Ali Muhammad stated that he knew nothing about the occurrence. He was also declared hostile.


ixx) PW-19: Muhammad Rafiq Assistant Sub Inspector stated that on 22.09.2000 he alongwith Akram Head Constable joined the investigation of this case. In their presence Sibti-i-Hassan accused made disclosure and led to the recovery of looted property i.e. a pair of golden ear rings P.25/1-2, cash amount of Rs.1100/- (one currency note of rupees 1000 Ex.P.26 and one currency note of rupees 100 P.27), a copy of record of land P.28 and a pair of baby shoes P.29/1-2 which were taken into possession by the Investigating Officer through recovery memo Ex.PW which was attested by him as well as Akram Head

Constable. Accused Sibt-i-Hassain also led to the recovery of .32-bore revolver P.30 alongwith 8 live cartridges P.31/1-8 from nearby the wall of a Mosque at Nari Adda after digging the ground. The Investigating Officer took the same into possession through recovery memo Ex.PX which was attested by him and Akram Head Constable.

xx) PW-20: Nazir Ahmad Inspector had investigated the case.

He recorded FIR Ex.PA on the statement of complainant Fateh Shah. He visited the place of occurrence where he found dead body of Mst. Amir Khatoon lying in the room. He prepared her injury statement Ex.PN; inquest report Ex.PP and sent the dead body for postmortem examination to mortuary at Civil Hospital, Khushab under the escort of Muhammad Riaz constable. He took into possession *dhotti* (Dupatta) P.3 through recovery memo Ex.PC allegedly used for strangulating Mst.Amir Khatoon

deceased, dhoti P.2 and string Ex.P.1/1-3 through recovery memo Ex.PB which were used to tie up Fateh Shah complainant. He inspected the spot, prepared rough site plan of the place of occurrence Ex.PY and recorded statements of the witnesses under section 161 of the Code of Criminal Procedure. After postmortem examination Riaz constable produced before him last worn clothes of the deceased shirt P.4, Chadir P.5 and dupatta P.6 alongwith one sealed envelope containing swabs which he took into possession through recovery memo Ex.PH. He recorded supplementary statement of complainant Fateh Shah and Mst.Shazia Batool PW on 01.08.2000 and also recorded statements of two other PWs. On 03.08.2000 he sent Muhammad Saleem Draftsman to the place of occurrence who prepared scaled site plan Ex.PE & Ex.PE/1 and produced before him on 06.08.2000.

xxi) PW-21:Muhammad Akram Ex.Police Inspector stated that on 16.08.2000 he took up investigation of the case on the transfer of Nazir Ahmad Sub Inspector/SHO. He arrested accused Mukhtar Shah, Iqbal Shah, Bari Sultan and Anwar Hussain as suspects in the case when they were coming on a motor cycle bearing without number plate. On his application Ex.PZ the District Magistrate Khushab deputed Sh. Muhammad Hanif  Magistrate Ist Class for supervision of identification parade. He recorded statement of Ghulam Muhammad and Muhammad Akram Assistant Sub Inspector under section 161 of the Code of Criminal Procedure. On 02.09.2000, Ghulam Jafar Station House Officer police station Mitha Tiwana came to police station Katha Saghral alongwith Zafar Iqbal and Ramzan and informed that motorcycle Honda 125 without number recovered from the accused on 25.08.2000 was the case property of FIR No.54 dated

28.07.2000 under section 381-A of the Pakistan Penal Code,
Police Station Mitha Tiwana. On 4.9.2000, he arrested accused
Sibt-e-Hassan and Farooq on spy information and sent them to
judicial lock up for identification parade. On 06.09.2000, during
interrogation, accused Mukhtar Shah and Iqbal Shah disclosed
about the motorcycle used by him in the occurrence which they
left at the spot in some other occurrence in village Lal Hussain
police station Jaura Kalan. On this disclosure both the accused
were taken to police station Jaura Kalan where motorcycle
Yamaha bearing chasis No.114233-K-3-AH.6 was present. This
motorcycle was handed over to him by Khalid Masood Assistant
Sub Inspector of police station Jaura Kalan as it had been used in
this occurrence. On 07.09.2000 Mukhtar Shah accused disclosed
and led to recovery of rifle 7-MM P.19 alongwith 20 live bullets
P.20/1-20 from his house situated in village Talokar from

underneath the beddings which were taken into possession through memo Ex.PU attested by Lal and Muhammad Sher Assistant Sub Inspector. He prepared site plan of the place of recovery Ex.PU/1 and recorded statements of the PWs regarding the said recovery. On 10.09.2000 Mukhtar Shah accused disclosed and led to the recovery of Taveetri P.32, golden Gani P.33, wrist watch P.34 from an iron box lying in residential room of his another house situated in Ejaz Colony, Jauharabad which he took into possession through recovery memo Ex.PBB, prepared site plan of the place of recovery Ex.PBB/1. On the same day i.e. 10.09.2000 Bari Sultan accused turned approver and got recovered two golden rings P.35/1-2, one Khasra Girdawari P.36 and cash amount of Rs.1500/- P.37. He took the same into possession through recovery memo Ex.PCC, prepared site plan of the place of recovery Ex.PCC/1. On the same day

Anwaar Hussain accused made disclosure and led to the recovery of a thermos P.38, two blankets P.39/1-2, one lady wrist watch P.40 and cash amount of Rs.1500/- which he took into possession through recovery memo Ex.PDD, prepared recovery memo of the place of recovery Ex.PDD/1 and recorded statements of the PWs regarding recoveries. On 11.09.2000 Iqbal accused got recovered .12 bore gun P.15 alongwith five live cartridges P.16/1-5 from the house of Mukhtar Shah accused situated in village Talokar which he took into possession through recovery memo Ex.PS and prepared site plan of the place of recovery Ex.PS/1. On 11.09.2000 Anwaar Hussain Shah accused got recovered .30 bore pistol P.17 alongwith 20 cartridges P.18/1-20 from the house of Mukhtar Shah accused situated in village Talokar which he took into possession through recovery memo Ex.PT, prepared site plan of the place of recovery Ex.PT/1

and recorded statements of the PWs. On 14.09.2000 Iqbal Shah accused made disclosure and led to the recovery of I.D Card of Fateh Shah complainant P.10, 3 lady's suit P.11/1-3 and cash amount of Rs.3000/- P.12 which he took into possession through recovery memo Ex.PK and prepared site plan of the place of recovery Ex.PK/1. He also recovered ID card of Mst. Amir Bibi deceased P.7, tape recorder P.8 and cash of Rs.4000/- on the disclosure of Mukhtar Shah accused from his residential house situated in village Talokar which he took into possession through recovery memo Ex.PJ, prepared site plan of the place of recovery Ex.PJ/1. On 22.09.2000 he recovered cash amount of Rs.900/- (one note of rupees 500 P.21, 4 currency notes valuing rupees 100 each P.22/1-4), one wrist watch P.33 and one copy of Jamabandi P.24 on the disclosure of Farooq accused from an iron box lying in his house situated in village Bola. He took the same

into possession through recovery memo Ex.PV and recorded statements of PWs regarding the said recovery. On 22.09.2000 Sibti-i-Hassan accused got recovered a pair of golden ear ring P.25/1-2, cash amount of Rs.1100/- (one currency note of the value of Rs.1000/- P.26 & one currency note of the value of Rs.100/- P.27), copy of Jamabandi P.28 and one pair of baby shoes P.29/1-2 from his house situated in village Bola. He took the same into possession through recovery memo Ex.PW and prepared site plan of the place of recovery Ex.PW/1. Sibti-i-Hassan accused also got recovered .32-bore revolver P.30 alongwith 8 live bullets P.31/1-8 from nearby the Mosque of Nari Adda after digging the earth. He took the same into possession through recovery memo Ex.PS, prepared site plan of the place of recovery Ex.PS/1 and recorded statements of the PWs regarding said recovery. On 22.09.2000 the complainant

identified the stolen articles and identification memo Ex.PD was prepared.

xxii) PW-22: Sh.Muhammad Hanif, Special Judicial Magistrate, conducted identification parade of the accused Mukhtar Hussain, Muhammad Iqbal Shah, Anwaar Hussain Shah and Bar: Sultan in Shahpur Jail on 02.09.2000 and the PWs named in his statement identified the culprits of this case from among 20 under trial prisoners. On 09.09.2000, he conducted identification parade of accused Sibti-i-Hassan Shah and Farooq in Shahpur Jail and the PWs identified the accused from among 12 mixed under trial prisoners.

6. The learned trial court after close of the prosecution evidence recorded statements of the accused Muhammad Iqbal Shah, Sibti-i-Hassan (since acquitted), Anwar Hussain Shah, Muhammad Farooq (since acquitted). All the accused pleaded innocence and

claimed that they had been falsely, malafidely and maliciously implicated due to grudge against them. In reply to question, "Why this case against you and why the P.Ws have deposed against you?, the accused Muhammad Iqbal claimed that he had been made scapegoat by the Police; in fact he was driver of Bari Sultan his co-accused (approver) who in order to save his skin falsely implicated him at the instance of the complainant and the Police. In reply to question, "Why this case against you and why the P.Ws have deposed against you?, the accused Anwaar Hussain Shah stated that he was implicated falsely due to relationship with accused Mukhtar Shah (since died). Defence version of accused Sibt-i-Hassan and Muhammad Farooq need not be discussed as they were acquitted. Accused Mukhtar Shah died during the trial hence his defence plea needs no comments.

7. The accused did not make statement on oath under section 340(2) of the Code of Criminal Procedure nor was any witness produced by them in their defence.

8. We have heard arguments of learned Counsel for the appellants as well as the learned D.P.G for State assisted by learned Counsel for complainant. The statements of witnesses for prosecution as well as documentary evidence on record alongwith the statements of accused have been perused. Relevant portions of the impugned judgment have been scanned.

9. Learned Counsel for the appellants has taken up the plea that:

- i) no role was attributed to any accused;
- ii) that the stolen property was not identified;
- iii) there was no source of light at the place of occurrence and hence the question of identification becomes irrelevant;

- iv) that the approver had been tutored by police; and
- v) in the end it was stated that the approver had been forgiven by the complainant party. In this view of the matter the learned Counsel for the appellants claimed acquittal of the appellants.

10. We will first of all take up the question of approver. We have examined the provisions contained in sections 337 and 338 of the Code of Criminal Procedure as well as Articles 3, 16 and 129 illustration (b) of the Qanun-e-Shahadat Order, 1984 (Presidential Order No. X of 1984) in the light of various precedents. The result of our examination is as follows:-

- i. that Article 3 of Qanun-e-Shahadat Order, 1984 is not repugnant to the Injunctions of Islam;
- ii. that an accomplice is a guilty associate in crime and not merely a party to a scheme for the detection of crime;

iii. that even then he is a competent witness against the accused facing the trial except in the case punishable with *Hadd*;

iv. that pardon can be granted to an accomplice with a view to obtaining the evidence of a person supposed to have been directly or indirectly concerned in or privy to the offence provided he makes a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence;

v. that no such pardon will be tendered without the permission of the victim or heirs of the victim, as the case may be, in cases involving *Qatl* and offences against human body;

vi. that the uncorroborated testimony of an accomplice can, at the legal plane, become basis of conviction (Article 16 of Presidential Order X of 1984) but on factual plane the Court (in view of illustration (b) of Article 129) may presume that an accomplice is unworthy of credit unless he has been corroborated in material particulars. However

the accepted rule of prudence is that conviction cannot be based solely on the uncorroborated statement of a self confessed accused. The reason for this rule is the general presumption that an approver testifies against others in order to save himself. This rule of practice has been followed with the result that it has acquired rigidity of law;

vii. that the order tendering pardon to an approver must be available on record before his evidence is worthy of consideration by Court;

viii. that corroboration in every detail of the crime is not necessary. Recovery of blood stained clothes or crime weapon would be sufficient corroboration;

ix. that the evidence of the approver must reveal that he took part in the crime even though the part assigned to himself is minor;

x. that the statement of an approver should be tested on two scores:- Intrinsic worth and External support. Intrinsic worth includes

the extent of truth reflected in the statement and the external support

means the element of corroboration on material points;

xi. that the corroboration must come from an established fact.

The evidence of an approver cannot be corroborated by the statement of

another approver. Corroboration must be sought from independent and

reliable source; and

xii. the testimony of an approver would be acceptable in a case

where the punishment to be awarded is by way of *tazir*. The Federal

Shariat Court in the case of Haider Hussain Vs. Govt. of Pakistan, PLJ

1991 FSC 139, held that an accomplice becomes *fasiq* and his

testimony is not worthy of credence. However *Ayat* 06 Sura 49, ordains

that the statement of a *fasiq* should be ascertained lest you repent for

having acted upon his statement. The rule relating to corroboration is

thus established by this Injunction of Islam.

11. We have examined the position of the approver Bari Sultan PW.3, in the light of our observations noted above. The complainant Fateh Shah PW.1 has given the eye witness account of the occurrence while he was corroborated by another eye witness Shazia Batool, PW.2, who is his grand-daughter. Her presence in the house is established. The statement of the approver is corroborated by natural witnesses. The approver supports the prosecution version. Conviction can be based on the testimony of an approver if corroborated by reliable evidence. Reference Sekandar Bayati and others Versus The Crown 1969 P.Cr.L.J 1021 also reported as 1969 SCMR 477.

12. The contents of the impugned judgment have also been examined by us. The learned trial Court does not place reliance on the identification parade but found that the statement of approver Bari Sultan had been corroborated. The learned trial Court has discussed in detail the entire evidence and considered the prosecution version from

different angles. The learned trial court consequently convicted the appellants but gave benefit of doubt to the co-accused Sibt-i-Hassan as well as Muhammad Farooq. The impugned judgment is well reasoned and no objection has been raised as regards the conduct of trial. We agree with findings arrived at by the learned trial Court.

13. The conviction recorded by learned trial Court is based upon established facts. However Murder Reference No.2/L of 2004 is being answered in the negative because it is not possible for us to maintain the sentence of death awarded to Iqbal Shah appellant for the simple reason that the complainant PW.1 himself stated that:

“all the accused then took my wife and my grand-daughters in room. The accused except one went inside the room and I do not know what they have been doing inside the room. At 5.00 AM Phul Pir Shah went inside the room and saw my wife whose neck was tied with dopatta and her hair were tied with the cot and she was dead.”

In the absence of specific role of each accused, the extreme penalty of death cannot be awarded.

14. As a consequence of what has been stated above the two criminal appeals are dismissed. The conviction on all counts recorded by the learned trial court are maintained. However the sentence of death awarded to Muhammad Iqbal Shah appellant under section 20 Ordinance VI of 1979 read with section 396 of the Pakistan Penal Code is altered to imprisonment for life. The other sentences awarded to Muhammad Iqbal Shah appellant as well as Anwaar Hussain Shah appellant are being maintained. All the sentences shall run concurrently with benefit of section 382-B of the Code of Criminal Procedure.

Sd/- [Redacted]

JUSTICE SYED AFZAL HAIDER

Sd/-

[Redacted]
JUSTICE AGHA RAEQ AHMED KHAN
CHIEF JUSTICE

Sd/-

[Redacted]
JUSTICE SHAHZADO SHAIKH

Announced at Lahore on 11.10.2010.
Imran/*

Sd/-

Fit for reporting.

[Redacted]
JUSTICE SYED AFZAL HAIDER