Judgment Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Appeal No.S-102 of 2013.

Rano & others

Versus

The State

Appellant Rano & another:	Through Mr. Ghulamullah Chang, Advocate.
Respondent the State :	Through Mr. Shahid Ahmed Shaikh, A.P.G.
Date of hearing:	21.06.2017.
Date of judgment:	21.06.2017.

JUDGMENT

SALAHUDDIN PANHWAR, J.- Through the instant appeal, the appellants / convicts namely Rano , Daru alias Darya Khan and Uris Mawali challenged the legality of the judgment 31.7.2013 passed by learned Sessions Judge, Tando Muhammad Khan in S.C.No.94/1994 & 238 /2008 Re-Rano & Others whereby the appellants were convicted u/s 302 r/w section 149 PPC and sentenced to suffer imprisonment for life and to pay Rs.40,000/- each as compensation to legal heirs of the deceased under section 544-A Cr.PC; were also convicted u/s 324 r/w section 149 PPC and sentenced to suffer for five (05) years R.I and to pay a fine of Rs.20,000/- each; convicted u/s 3377-A(ii) r/w section 149 PPC to suffer R.I for five years and to pay a fine of Rs.10,000/- and in default to suffer RI for one year; each of appellants were also convicted u/s 337-

F(ii) r/w section 149 PPC and were directed to pay Rs.5000/- each as DAMAN payable to injured Khamiso as well RI for three years; for offence u/s 338-F(v) r/w section 149 PPC to pay Rs.5000/- each as Daman payable to each victim and to suffer RI for five years. They were directed to remain in jail until payment of DAMAN *however* awarded benefit of section 382-B Cr.PC.

2. Precisely, facts of the prosecution case are that complainant Muhammad Ramzan lodged the FIR on 27.6.1994 at about 0100 hours with PS Kario Ganwar wherein stating that he, his brother's son Qasim and his son Jumoon and accused party are haris of Zamindar Mir Abdul Qadir Jamali. On 26.6.1994 the complainant party was told by Kamdar Ali Akbar Jamali that their Zamindar Mir Abdul Qadir Jamali has directed them to give water to the lands from the water course and then flow the water from that land to take. On such directions, the complainant, injured Qasim, injured Khamiso, injured Esso and deceased Jumoon came to the water course and diverted the water towards the lands and were standing there when accused Mehmood, Rano and Sawan, armed with hatchets, accused Hakeem, Duroo, Uris alias Mawali, Jumoon, Malook, armed with lathis came there. They told the complainant party as to why they have diverted the water. The accused persons were told by the complainant party that they have diverted the water at the instance of Kamdar Ali Akbar Jamali. On this, there was exchange of hot words between them. Thereafter, accused Mehmood Chang gave hatchet blow from the sharp side on the neck of Jumoon, who fell down on the ground and died at the spot. Accused Ranoo caused hatchet blow to injured Esso on his forehead and on his other parts of the body and then accused Sawan caused him hatchet

blows on his left hand and other parts of body. Accused Hakeem and Duroo caused lathi blows to injured Khamiso on his chest and other parts of the body. Accused Jumoon and Malook caused lathi blows to the complainant on his head and shoulder. Accused Urs also caused lathi blows to complainant. On hearing the cries, PWs Khan Muhammad, driver of Zamindar, Abdul Qadir came there running and on seeing him, the accused persons ran away towards their houses along with their hatchets and lathis. Thereafter, they saw injured Jumoon lying dead while injured Qasim and Esso were lying unconscious on the ground. In the meanwhile Kamdar Ali Akbar Jamali came at the place of incident who was narrated the facts to the complainant. Thereafter, complainant took the injured Khamiso, Qasim and Esso to police station and leaving Kamdar Ali Akbar Jamali and PW driver Khan Muhammad over the dead body of Jumoon, lodged the FIR.

3. During investigation police arrested the accused persons and after completing investigation submitted the report wherein showing the accused Sawan, Malook and Hakeem *let-off* and their names were placed in the column-2.

4. At trial, prosecution to prove its case, examined PW-1 Ramzan at Ex.14 who produced the FIR of the case at Ex.15; PW-2 Qasim at Ex.16 who produced his 164 Cr.PC statement at Ex.17; PW-3 Esso at Ex.18 who produced his 164 Cr.PC statement at Ex.19; PW-4 Khamiso at Ex.20 who produced his 164 Cr.C statement at Ex.21; PW-5 Doulat Khan at Ex.22 who produced provisional and final medical certificates of injured Esso, Qasim, Ramzan and Khamiso at Exs.23 to 29 respectively; PW-6 Jan

Muhammad at Ez.30 who produced the post mortem report of deceased Jumoon at Ex.31; PW-7 Muhammad Aijaz at Ex.32 who produced mashirnama of recovery of clothes of deceased Jumoon at Ex.33; PW-8 Muhammad Shabir at Ex.34; PW-9 Karam Ali at Ex.35 who produced site plan at Ex.36; PW-10 Abdul Wahid at Ex.37 who produced mashirnamas at Ex.38 to 40 respectively; PW-11 Muhammad Hashim at Ex.41 who produced memo of injuries on the person of injured at Ex.38, mashirnama of place of vardat at Ex.39, Danistnama at Ex.40, mashirnama of arrest of accused Uris Mawali and Jumoon Chang at Ex.42, mashirnama of recovery of hatchet form accused Rano at Ex.43, mashirnama of recovery of lathi from accused Urs at Ex.44, mashirnama of recovery of lathi from accused Duroo alias Darya Khan at Ex.456 and PW-12 Muhammad Ibrahim at Ex.46; Mukhtiarkar and FCM Ghazi Khan was given up by DDA for State vide statement at Ex.47 and then side was closed vide statement at Ex.48.

5. The statement of accused persons were recorded under section 342 Cr.PC at Ex.49 to 54 respectively wherein they denied allegations but did not examine themselves on Oath. The accused persons *however* examined five witnesses in their defence namely Bashir Ahmed at Ex.56 who produced FIR crime NO.13/1994 at Ex.57; Mataro at Ex.58, Jan Muhammad at Ex.59, Allah Jurio at Ex.59; DW Abdul Sattar at Ex.61 and then further statement of accused u/s 342 Cr.PC was recorded at Ex.63 to 67 respectively.

6. On such completion of the trial, the accused persons namely Rano, Mehmood, Uris , Duroo and Jumoo were convicted by court of 1st Additional Sessions Judge, Badin vide judgment dated 07.10.1999 which

was challenged. In consequence whereof the conviction was set-aside and matter was remanded for fresh trial after framing appropriate charge.

7. Fresh charge was framed which was also pleaded as 'not guilty'. Accordingly, prosecution examined PW Dr. Jan Muhammad Memon; Dr. Do8lat Khan Jiskani; PW-SIP/SHO Munawar Ali Nizamani who produced statement of nek-mards namely Mir Hassan and Muhammad Bux, death certificate of complainant and statement on Oath; PW Ghulam Raza who produced bailable warrant of arrest, statements of nek-mards namely Kirshan and Alam Khan; PW / ASI Abdul Karim Talpur who produced death certificate of accused Jumoon and statement of nek-mards namely Parya Chang and Ghulam Muhammad Chang; PW/injured Esso Khaskheli who produced his 164 statement; PW injured Khamiso Khaskheli who produced his 164 Cr.PC statement; PW injured Qasim Khaskheli who produced his 164 Cr.PC statement; ASI Abdul Karim who produced letter of the court of 1st Additional Sessions Judge, Badin, statements of nek-mards namely Zahoor Ahmed and Abdul Rauf and death certificate of PW SIP Abdul Wahid Mandro ; PW Inspector Muhammad Ibrahim Lasi; PW Muhammad ashim Khaskheli who produced mashirnama of place of incident, memo of injuries , lash chakas form and danistnama; PW ASI Muhammad Aijaz Memon who produced mashirnama of clothes of deceased Jumoon; PW Tapedar Muhammad Bashir Mughal who produced sketch (three copies). The DPP then closed prosecution side vide statement at Ex.93. The statement of HC Muhammad Yousuf was recorded who produced photo copy of death certificate of accused Mehmood and his statement on Oath. Thereafter, side was closed.

8. The statement of accused persons were recorded u/s 342 Cr.PC wherein they denied prosecution allegation but did not examine themselves on Oath; DW Bashir Ahmed was examined who produced copy of FIR No.13/1994 and then side was closed.

9. In consequence of completion of trial, the arguments were heard and appellants were convicted vide impugned judgment. The appellant Uris Mawali *expired* during appeal proceedings.

10. Learned counsel for appellants argued that there have been material contradictions and *ocular* account was never established *safely* by the prosecution hence the appellants are entitled for *acquittal;* the witnesses of *ocular* account remained changing their stances from very beginning till subsequent *trial* , ended in conviction to the appellants therefore, such set of evidence was never worth sustaining the conviction; the motive was never worth believing nor was proved / established. He further contends that circumstantial as well medical evidence will not prevail over the ocular account, which is contradictory. He concluded while praying for acquittal of the appellants.

11. In contra, learned APG contends that judgment of trial Court is well reasoned and is in accordance with settled principles of appreciation of evidence hence needs no interference.

12. Heard arguments and perused the record *meticulously*.

13. According to prosecution story, the dispute arose when the appellant **Mehmood** reacted to opening / removing of GANDA (obstruction) and it was he (Mehmood) who had brought seven (07)

other persons, including other appellants; assaulted which resulted into death and injuries on person of the injured witnesses. The perusal of the record *however* shows that the witnesses of ocular account were disbelieved to extent of *specifically* nominated accused namely Sawan, Malook and Hakeem as they were let-off while submitting the challan / charge sheet although as per *FIR* they were assigned specific injuries on persons of witness Esso, Khamiso and complainant Ramzan. It is a matter of record as is evident from *impugned* judgment itself at page-10 as:

> *"… He has further argued that after registration of FIR, complainant made further statement after consulting , hearing his witnesses, the police and changed his version to the effect that Rano caused fatal blow to deceased Jumoon and not Mehmood. According to such further statement it was made on 28.6.1994 but complainant in his first and last evidence in court stated that he recorded such further statement after 10/12 days. By his, such further statement he has given division to the prosecution case as to which accused fatal blow to the deceased either Rano or Mehmood. ..*

Thus, admittedly the complainant came forward with *two* statements thereby had brought *clouds* over his presence and witnessing the incident. One whose presence becomes even under slightest doubt then it is never to believe his words. Reference may be made to the case of *Mst. Rukhsana Begum & Ors v. Sajjad & Ors* 2017 SCMR 596 wherein it is held as:

> "A single doubt reasonably showing that a witness / witnesses' presence on the crime spot was doubtful when a tragedy takes place would be sufficient to discard his / their testimony as a whole. …"

Thus, it is quite evident that the witnesses of *ocular* account even did not stick with their first version. It is by *now* a well established principle of law that where a witness is found to be improving or changing his stance brings his credibility under serious clouds hence *normally* it is never safe to convict on evidence of such witnesses. Reference may be made to the cases reported as 2007 SCMR 1825 & 2011 SCMR 1517.

14. Be as it may, the perusal of the *impugned* judgment shows that learned trial Court also failed to appreciate another well settled principle of law that injuries on a prosecution witness are only indicative of his presence at the spot but are not affirmative proof of his credibility and truthfulness hence the Courts shall never deviate from appreciating the evidence, as per settled principles of law, and should never accept the words of *injured* witness even without processing it through judicial examination. Reference may be made to the case of *Amin Ali v. State* 2011 SCMR 323 wherein it is held as:

> "12. Certainly, the presence of the injured witnesses cannot be doubted at the place of incident, but the question is as to whether they are truthful witnesses or otherwise, because merely the injuries on the person of P.Ws would not stamp them truthful witnesses. It has been held in the case of Said Ahmed vs. Zammured Hussain 1981 SCMR 795 as under:-
>
> > *"It is correct that the two eye-witnesses are injured and the injuries on their persons do indicate that they were not self-suffered . But that by itself would not show that they had, in view of the afore-noted circumstances, told the truth in the Court about the occurrence; particularly, also the role of the deceased and the eye-witnesses. It cannot be ignored that these two witnesses are closely related to the deceased, while the two other eye-witnesses mentioned in the FIR namely Abdur Rashid and Riasat were not examined at the trial. This further shows that the injured eyewitnesses wanted to withhold the material aspects of the case from the Court and the prosecution was apprehensive that if independent witnesses are examined, their depositions might support the plea of the accused'*

The prosecution is always under a mandatory obligation to establish the charge beyond a *shadow* of doubt and per settled law a single reasonable dent is sufficient for acquittal, therefore, prosecution can seek no exception to its such bounden duty. Reliance is placed on the case of *Abdul Majeed v. State* 2011 SCMR 941 wherein it is held as:

> 7. The basic principle of criminal law is that it is the burden of the prosecution to prove its case against the accused beyond reasonable doubt. This burden remains throughout and does not shift to the accused, who is only burdened to prove a defence plea, if he takes one…"

Now, let's have a direct reference to evidence of witnesses of *ocular* account which are:

PW QASIM.

> "The deceased was my son. The incident took place about 8/10 years back. It was about 6:00 pm. I, Ramzan, Esso, Jummo, Khamiso were present on the land of Zamindar Mir Abdul Qadir Jamali. The accused **Jumoon Chang** was also present there on which they asked to accused **Jumoon** that Ali Akbar Jamali (Kamdar) told them that the water course be opened by removing the GANDA (blocked water). On which the accused **Jumoon** refused to open the water course they then forcibly opened the water course by removing the Ganda (obstruction). The accused **Jumoon** abused them and went away. In the meantime, he brought, Rano was armed with hatchet, Duroo armed with lathi, Jumoon armed with hatchet, came there. The accused **Rano** gave sharp side hatchet blow to his son **Jumoon** which hit him on the back side of neck. The accused **Jumoon** also gave sharp side hatchet to him which hit him on his left hand (back side). The other accused then went away.

This witnesses categorically stated that it was accused **Jummo** with whom hot words exchanged; it was he (**accused Jummo)** who abused

and brought other accused persons but the complainant in his FIR had not stated so rather stated as:

> *"..on 26.6.1994 the complainant party was told by Kamdar Alil Akbar Jamali that their Zamindar Mir Abdul Qadir Jamali has directed them to give water to lands from the water course and then flow the water from the land to lake. On such directions the complainant, injured Qasim, injured Khamiso, injured Esso and deceased Jumoon came to the water course and diverted the water towards the lands and were standing there when accused* **Mehmood, Rano and Sawan,** *armed with ……They told the complainant party as to why they have diverted the water. The accused persons were told by the complainant party that they have diverted the water at the instance of Kamdar Ali Akbar Jamali. On this, there was exchange of hot wards between them. Thereafter,* **accused Mehmood Chang** *gave hatchet blow from the sharp side on the neck of* **Jumoon ,** *who fell down on the ground and died at the spot.* **Accused Ranoo** *caused hatchet blow to injured* **Esso**…

15. The above is sufficient that the prosecution (complainant) had never parted the incident into two parts as done by the witnesses during trial. Further, the complainant had specifically attributed sharp injury to accused **Mehmood Chang** but the witness Qasim during evidence attributed such injury to accused **Rano.** This material contradiction rather a deviation thereby changing main part of the allegation was not properly appreciated by the trial Court while recording the conviction.

PW ESSO.

> "The deceased **Jumoon** was son of his sister. The incident took place about 10/12 years back. It was 06:00 P.M, he was present in his land while P.Ws Khamiso and Jumoon were standing at the distance of two choukry. The Kamdar Ali Abar asked Jumoon to flow the water in the lake. Jumoon started to open the water on which accused **Mehmood** prevented him from opening the water on which they both exchanged hot words. He restrained Jumoon not to open the water course and the matter will be brought to our Zamindar. He then re-closed the wate course. PW Khamiso, the borther of the Jumoon came running there. PW Khamiso and Jumoon asked

> **Mehmood** that the Kamdar Ali Akbar asked them to open the water, as per orders of zamindars. In the meantime, accused **Mehmood** went away after abusing them. Khamiso and Jumoon then came to his land. In the meantime, accused Rano, Uris, Duroo , Jumoon out of them accused Rano was armed with hatchet and the other accused persons were armed with lathis and Danda. <u>In the meantime, the accused **Mehmood** and deceased Jumoon grappled with each other,</u> the accused **Rano** gave sharp side hatchet blow on back side of the neck of Jumoon. The accused Duroo, Uris , Jumoon gave lathi injuries to him. <u>The accused **Rano** also gave him hatchet blow which hit him on right side of forehead.</u> In the meantime, Khan Mohammad also came there on tractor. PW Khan Muhammad then went to inform Kamdar Ali Akbar and Mir Abdul Qadir, he then went unconscious. He gained senses in Civil Hospital Hyderabad after two days of the incident. The complainant Ramzan lodged such FIR with Police. "

This witness *even* describes the manner of incident in a different way as per him (PW Esso) the matter of obstruction/GANDA was agreed to be settled before Zamindar hence there was no occasion for further dispute. On this point, all witnesses i.e complainant, PW Qasim and Esso were not on one line though claimed to be eye-witnesses of whole incident. Further, this witness also attributes allegation of sharp-side blow to appellant **Rano** not to accused **Jummo** , as was told by complainant in his FIR.

<u>PW KHAMISO</u>

> "Deceased Jumoon is known to him. The incident took place about 12/12 years back. It was about 6:00 p.m, he , Muhammad Ramzan, Esso, Qassim were present on the land of Zamindar Haji Abdul Qadir Jamali. <u>The accused **Mehmood Chang** was armed with hatchet was also standing there</u> on which exchange of hot word was taken place between **Mehmood Chang** and his brother Jumoon. In the meantime, **Mehmood** went and brought Rano was armed with hatchet, Duroo armed with lathi, Uris armed with Lathi, Jumoo s/o Bhambho Chang armed

> with lathi came there. The accused **Rano** gave sharp side hatchet to his brother Jumoon which hit him on the back side of neck, who fell down on the ground. The accused **Jumoon** gave sharp side hatchet blow to him which hit him on his head. The accused **Jumoon** also gave sharp side hatchet blow to his father which hit him on left hand. The accused **Mehmood** also gave sharp side hatchet blow to his maternal uncle which hit him on his forehead. His father and maternal uncle went unconscious. In the meantime, the tractor driver Khan Muhammad also rushed there. The accused on seeing him went away towards their houses.

Even this witness neither narrates the beginning of the incident as was told by the complainant and other witnesses. Thus, if the evidences of all above witnesses of *ocular* account is considered / appreciated it would be safe to conclude that all the witnesses never *safely* corroborated each other on material aspects hence mere injuries on their persons or their relationship with deceased were sufficient to escape the golden rule of **benefit of doubt**. Reference may be made to the case reported as 2011 SCMR 910 wherein it is held as:

> "Keeping in mind that the complainant PW 9 was a full brother of the deceased and the only other eye-witness was the son of PW 9, strongly suggests that their testimony was tainted on account of their close relationship with the deceased. It is correct, as observed by the learned Courts below, that the testimony of a close relative of a victim cannot by itself, be sufficient for the purpose of excluding the same from consideration. In the present case, however, there are so many circumstances, discussed above, which undermine the credibility of PW 9 and PW-10 and thus seriously weaken, indeed negate the probative value of their testimony. In these circumstances, it would be unsafe to base a conviction and to maintain the sentence of capital punishment awarded to the appellant."

16. The perusal of the impugned judgment would reflect that learned trial Court Judge gave much importance to non-existence of *motive* and has held as held at page-13 of judgment as:

> *".. I have already discussed that; there is admitted enmity between the parties which has been pleaded and proved by the prosecution but nothing has been brought on record that; present P.Ws have any motive to falsely implicate the accused…"*

Although per complainant and witnesses the accused party was also *hari* of same Zamindar and there was *pleaded* no **enmity / motive** in the FIR, as is evident from referral of evidence, made above. Even otherwise, absence of *motive* for false implication *alone* is never sufficient to convict an accused but it is always the intrinsic worth and probative value of the evidence which plays a decisive role in determining the guilt of innocence. Reference may be made to the case of *Azeem Khan & another v. Mujahid Khan & ors* 2016 SCMR 274 wherein it is held as:

> "29. The plea of the learned ASC for the complainant and the learned Additional prosecutor General, Punjab that because the complainant party was having no enmity to falsely implicate the appellants in such a heinous crime thus, the evidence adduced shall be believed, is entirely misconceived one. It is a cardinal principle of justice and law that only the intrinsic worth and probative value of the evidence would play a decisive role in determining the guilt or innocence of an accused person. Even evidence of uninterested witness, not inimical to the accused may be corrupted deliberately while evidence of inimical witness, if found consistent with the other evidence corroborating it, may be relied upon. Reliance in this regard may be placed on the case of *Waqar Zaheer v. The State* (PLD 1991 SC 447)"

17. The material contradictions in *ocular* account as well unchallenged letting-off of the specifically nominated accused persons and improvements, made during trial, were always sufficient for acquittal because no conviction could sustain except on direct, natural and confidence inspiring evidence which *too* must be free from any reasonable doubt. The referral to evidence of PW Muhammad Ibrahim,

SHO PS Kario Ganhwar as he *then* was would also make it clear that the complainant had *categorically* named as many as *eight* (08) persons as accused but subsequent not only omitted but also improved its case. The PW Muhammad Ibrahim stated as:

> "In the year 1994 he was posted as SHO at PS Kario Ganhwar (Sub-Inspector). On 26.6.1994 he has gone out of police station for investigation purpose in other case. On 26.6.1994 Additional SHO namely SIP Abdul Wahid Mandro was available at P.S at about 1.00 a.m complainant appeared at PS and he gave details of incident to Additional SHO Abdul wahid Mandro and he registered FIR at the verbatim of complainant. Said Additional SHO had investigated the matter, thereafter when he came at PS he handed over him the papers of this case for furthr investigation. On 2.7.1994 he arrested accused **Rano, Mehmood, Jumoon, Eisso, Mehmood, Duroo, Uris and one other.** The accused voluntarily led them to their houses from where accused **Rano** took out hatchet and accused **Mehmood also took out hatchet and other handed over him lathis, which they took out from their houses. He prepared such mashirnsma……**

Therefore, contradictions and improvements made at subsequent stage, including that at *trial* cannot be said to be *minor* hence benefit thereof cannot be kept away from the accused / appellants because a *reasonable dent* in prosecution case results into tilting the scale in favour of the accused not as matter of *grace* but as of right.

18. The motive was never established properly by the prosecution because the accused party was also hari of same Zamindar and they both were working under one command i.e Kamdar Ali Akbar Jamali; even per witness Esso the issue of removing or otherwise of GANDA was agreed to be settled before Zamindar. Further, the prosecution neither examined independent witnesses namely Khan Muhammad,

tractor driver and Kamdar Akbar Jamali which *too* without any plausible explanation and reason. With-holding of independent witnesses without any plausible cause would always result in concluding that had they been examined they would not have supported the prosecution evidence. Such conclusion, being permissible within meaning of Article 129(g) of Qanun-e-Shahadat Order, if favourable to accused, be always so drawn and deviation therefrom would never be safe.

19. The medical evidence, per settled law, can establish weapons and manner thereof but can never help the prosecution in identifying the *culprit* which would always be dependant upon ocular account. Reference may be made to the case of *Ghulam Qadir v. State* 2008 SCMR 1221 wherein it is held as:

> "So far as medical evidence is concerned, it is settled law that the medical evidence may confirm the ocular evidence with regards receipt of injuries, nature of the injuries, kind of weapons, used in the occurrence but it would not connect the accused with the commission of the offence."

Thus, failure of *ocular* account always diminishes the value of *corroborative* pieces of evidence.

As regard, the recovery, the prosecution examined PW Muhammad Hashim, the mashir who stated as:-

> "... The police arrested accused in his presence from them recovered from accused **Rano** and **Mehmood** hatchets and from one other accused hatchet was also recovered by the police but he does not his name and from other culprits, lathis were recovered. …

The SHO PW Muhammad Ibrahim stated as:

> On 2.7.1994 he arrested <u>accused **Rano, Mehmood, Jumoon, Eisso, Mehmood, Duroo, Uris and one other.**</u> The accused voluntarily led them to their houses from where accused **Rano** took out hatchet and accused **Mehmood also took out hatchet and other handed over him lathis, which they took out from their houses.**

Such *claim* was never worth believing particularly in view of the observation, made in the case of <u>*Sardar Bibi & another v. Munir Ahmed & Ors*</u> 2017 SCMR 344 (Rel. P-350) wherein it is observed as:

> "… So far recovery of Toka from Qamar Abbas appellant is concerned, we observed that such recovery effected after about one month of occurrence and Talib Hussain PW-4 admitted that the place of recovery was collectively inhabited by all the accused so the place of recovery is a joint house and was not in the exclusive possession of Qamar Abbas appellant. Allegedly, the recovery was effected after about one month of the occurrence and it is not expected from an accused person to keep such weapon (stained with blood) as souvenir because during the said period there was ample time to destroy or at least washout the said weapon. The Toka was recover3ed from behind the door of a house which according to PW was collectively inhabited by many persons. In these circumstances, it could not be said that the recovery was made form the exclusive knowledge and possession of the accused. So no reliance can be placed n such recovery and the High Court had wrongly considered and doubtful recoveries as corroborative piece of evidence to the unreliable ocular account. In the absence of any independent corroboration, the appellants, Falak Sher and Qamar Abbas deserve the acquittal, in view of the case law referred above.

20. Even otherwise, the recovery or medical evidence and *motive* will never sustain a conviction if the *ocular* account fails. Therefore, it was never safe to maintain the conviction. Accordingly, the impugned judgment of conviction, being not sustainable in law, was set-aside and appeal was allowed by short order dated 21.6.2017. In consequence

whereof, the appellants were acquitted. These are the detailed reasons thereof.

JUDGE

Sajid