IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
Mr. Justice Asif Saeed Khan Khosa
Mr. Justice Mushir Alam
Mr. Justice Dost Muhammad Khan

Criminal Appeals No. 210 and 211 of 2015
(Against the judgment dated 09.03.2015 passed by the Islamabad High Court, Islamabad in Criminal Appeal No. 90 of 2011 and Capital Sentence Reference No. 01 of 2011)

Malik Muhammad Mumtaz Qadri *(in Criminal Appeal No. 210 of 2015)*

The State *(in Criminal Appeal No. 211 of 2015)*

... Appellants

versus

The State, etc. *(in Criminal Appeal No. 210 of 2015)*

Malik Muhammad Mumtaz Qadri *(in Criminal Appeal No. 211 of 2015)*

... Respondents

For the appellants: Mian Nazir Akhtar, ASC
Khawaja Muhammad Sharif, ASC
Mr. Ghulam Mustafa, ASC
(in Criminal Appeal No. 210 of 2015)

Mian Abdul Rauf, Advocate-General, Islamabad
(in Criminal Appeal No. 211 of 2015)

For the respondents: Mian Abdul Rauf, Advocate-General, Islamabad
(in Criminal Appeal No. 210 of 2015)

Mian Nazir Akhtar, ASC
Khawaja Muhammad Sharif, ASC
Mr. Ghulam Mustafa, ASC
(in Criminal Appeal No. 211 of 2015)

Dates of hearing: 05.10.2015, 06.10.2015 &
07.10.2015

JUDGMENT

Asif Saeed Khan Khosa, J.: Almighty Allah has ordained in the Holy Qur'an that upon receipt of a news or information the men of faith ought to ascertain correctness of such news or information before they may act upon the same and that harm may be avoided if such news or information is got investigated in the first place. The following verses of the Holy Qur'an are relevant in this regard:

> **Surah Al-Hujurat: verse 6**
> "O you who have faith!
> If a profligate [person] should bring you some news, verify it, lest you should visit [harm] on some people out of ignorance, and then become regretful for what you have done."
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> **Surah An-Nisa: verse 94**
> "O you who have faith!
> When you issue forth in the way of Allah, try to ascertain: do not say to someone who offers you peace, 'you are not a believer', seeking the transitory wares of the life of this world. Yet with Allah are plenteous gains. You too were such earlier, but Allah did you a favour. Therefore, do ascertain. Allah is indeed well aware of what you do."
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> **Surah An-Nisa: verse 83**
> "When a report of safety or alarm comes to them, they immediately broadcast it: but had they referred it to the Apostle or to those vested with authority among them, those of them who investigate would have ascertained it. And were it not for Allah's grace upon you and His mercy, you would have surely followed Satan, [all] except a few."

In the following paragraphs of this judgment it shall be highlighted as to how the accused person in this case had acted on the basis of nothing but hearsay without getting his information ascertained, verified or investigated and, as Almighty Allah has warned, he has brought harm not only to another person but also to himself. Verily, such are the consequences when Almighty Allah's warnings or commands are not heeded to.

2. The facts of this case are quite simple and straightforward admitting of no ambiguity but the issues posed before us have been made to appear existential and of metaphysical proportions involving religious beliefs and philosophical reflections. With

respect and without prejudice to the strong religious and philosophical views expressed before us we must state at the outset that we, in terms of our calling and vocation and in accord with the oath of our office, are obligated to decide this case in accordance with the law of the land as it exists and not in accordance with what the law should be. There is no gainsaying that the provisions of Article 203G of the Constitution of the Islamic Republic of Pakistan, 1973 categorically oust the jurisdiction of this Court in matters of interpretation of the Injunctions of Islam as laid down in the Holy Qur'an and the Sunnah of the Holy Prophet Muhammad (peace be upon him) falling within the exclusive domain, power and jurisdiction of the Federal Shariat Court and the Shariat Appellate Bench of this Court with reference to an existing law and essentially this Court's jurisdiction in such matters is limited to application of the principles where they are settled. Apart from that, by virtue of the provisions of Article 230 of the Constitution, it is one of the functions of the Council of Islamic Ideology to interpret the Injunctions of Islam with reference to an existing or proposed law and we would not like to usurp that function either.

3. At about 04.15 PM on 04.01.2011 Mr. Salman Taseer, the then Governor of the Province of the Punjab, was returning home near Kohsar Market, Islamabad when Malik Muhammad Mumtaz Qadri appellant, serving in the Elite Force of the Punjab Police and performing the duties of an official guard of the Governor at that time, opened fire at Mr. Salman Taseer from his official weapon riddling his body with bullets and causing multiple injuries. The grievously injured Mr. Salman Taseer was immediately shifted to Polyclinic Hospital, Islamabad but upon arrival at the hospital he was declared dead. Soon after firing at Mr. Salman Taseer the appellant laid down his weapon and surrendered before the other official guards deputed on the Governor's security who arrested him at the place of occurrence and secured the weapon of offence. Mr. Shehryar Taseer, a son of Mr. Salman Taseer deceased, reported the matter to the local police through an application at

05.10 PM on the same day whereafter formal FIR No. 06 was registered in that regard at Police Station Kohsar, Islamabad at 05.25 PM during the same evening for offences under section 302, PPC read with section 109, PPC and section 7 of the Anti-Terrorism Act, 1997.

4. After completion of the investigation a Challan was submitted before the Anti-Terrorism Court-II, Rawalpindi Division & Islamabad Capital Territory which framed a Charge against Malik Muhammad Mumtaz Qadri appellant in respect of an offence of *qatl-e-amd* punishable under section 7(a) of the Anti-Terrorism Act, 1997 read with sections 302 and 109, PPC to which the appellant responded as follows:

> "I have not committed murder of an apostate like Suleman Taseer (the then Governor Punjab) contrary to dictums of the Holy Quran and Sunnah."

During the trial the prosecution produced fourteen witnesses in support of its case against the appellant and also placed on the record some documentary evidence including a positive report of the Forensic Science Laboratory confirming matching of the crime-empties with the firearm recovered from the appellant's possession. Nadim Asif, ASI (PW11) and Muhammad Amer Khan, Inspector (PW12) furnished the ocular account of the incident and also deposed about arrest of the appellant at the spot and recovery of the weapon of offence from his custody. Dr. Muhammad Arshad, Surgeon (PW1) provided the medical evidence and Ch. Muhammad Ali, Assistant Commissioner City, Islamabad (PW9) proved the confessional statement made before him by Malik Muhammad Mumtaz Qadri appellant under section 164, Cr.P.C. Hakem Khan, Inspector (PW14), the investigating officer, stated about the various steps taken by him during the investigation of this case. The remaining evidence produced by the prosecution was more or less formal in nature. In his statement recorded under section 342, Cr.P.C. the appellant admitted killing Mr. Salman Taseer and in response to the question as to why he had been implicated in this

case and as to why the prosecution witnesses had deposed against him he stated as follows:

> "Salman Taseer, at relevant time, was acting as Governor of the Province of Punjab. He was a representative of the Federal Government of Pakistan. While holding the position of the Governor of a Province of the Islamic Republic of Pakistan, he publically exposed himself as a sympathiser of condemned prisoner namely Mst. Aasia, who was sentenced to death by a Court of law for use of derogatory remarks about the Holy Prophet Mohammad (Peace Be Upon Him) and directly defiled the name of Holy Prophet Mohammad (Peace Be Upon Him). Needless to point out that the sentence awarded to the above lady was still holding field and the judgment passed by the trial Court, was yet to undergo judicial scrutiny in the Courts of appeal. However, Salman Taseer in a very derogatory manner on his visit to Jail at Lahore, arranged a "Darbar" for making himself available to receive only self arranged mercy petition of the condemned prisoner. It was not that simple, but Salman Taseer also in his interview published on 23.12.2010, in a very shameful manner called Blasphemy Law as "Black Law". To criticize such law and to challenge it as it was man made law tantamount to directly defiling the sacred name of the Holy Prophet Mohammad (Peace Be Upon Him) and was an attempt to lower down this sacred provision of Law, which is in consonance with the dictates of Quran and Sunnah. In this connection the Daily Express tribune of 5.12.2010 (Portion highlighted Mark A to A) and the Daily Express (Urdu) dated 23.11.2010, marked B to B at page 8 and marked C to C at page 5 are worth mentioning. It is pointed out that the news items mentioned above were never denounced by Salman Taseer in his life time. This situation reveals that Salman Taseer himself was responsible for commission of an offence U/s 295-C of P.P.C. punishable to death or life imprisonment. Inspite of that he was not dealt with in accordance with law, obviously he was the lieutenant of President Asif Ali Zardari and a bully of Americans. So nature had to take its own course and justice was done. It is a lesson for all the apostates, as finally they have to meet the same fate.
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> I may put a question to the prosecution "If a Muslim due to "Sub-o-Shattim" and "Ertad" does not render himself liable to dual liability of being killed? The act which is embedded with both "Sub-o-Shattim" and "Ertad" touches the heights of gravity. Here prosecution has to show that due to Shatum one does not become "Murtad" (apostate) and that "Murtad" is not liable to be killed? This preposition would definitely settle fate of the case, one way or other. Personal life of Salman Taseer shows that right from early times he proved himself as an infidel. He married three times. His one wife was "Sikh" by religion. He arranged his so called marriage in a secret way with that lady in New Delhi in India. From that wedlock a son named Aatish Taseer was born. On attaining youth above Aatish adopted Journalism in London and once or twice traveled to Pakistan to see his father Aatish Taseer wrote a book titled "Stranger to History" and it was published by "Mc CLELLAND STEWART OF LONDON". The author while describing his father Salman Taseer writes at page 21 & 22 of the Book Stranger to History (Book attached)
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> "My father who drank scotch every evening, never fasted or prayed even ate pork and once said "It was only when I was in jail and all they gave me to read was Koran- and read it back to front several times – that I realized there was nothing in it for me".

> His lifestyle, faith and living with a lady of non Muslim faith, reflecting his act of living in constant state of Zinna under the pretext of marriage (not permissible in Islam) speak volume of his character and associated matters.
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> On the faithful day, I being member of Elite Force I was deployed as one of the member of the Escort Guard of Salman Taseer, the Governor Punjab. In Koh-i-Sar Market, the Governor with another after having lunch in a restaurant walked to his vehicle. In adjoining mosque I went for urinating in the washroom and for making ablution. When I came out with my gun, I came across Salman Taseer. Then I had the occasion to address him, "your honour being the Governor had remarked about blasphemy law as black law, if so it was unbecoming of you" Upon this he suddenly shouted and said, "Not only that it is black law, but also it is my shit". Being a Muslim I lost control and under grave and suddenly provocation, I pressed the trigger and he lay dead in front of me. I have no repentance and I did it for "Tahafuz-i-Namoos-i-Rasool" Salman offered me grave and sudden provocation. I was justified to kill him kindly see my accompanying written statement U/s 265(F)(5) of Cr.P.C."

The appellant opted not to make a statement on oath under section 340(2), Cr.P.C. and did not produce any witness in his defence. He, however, submitted a written statement under section 265-F(5), Cr.P.C. maintaining that he was "justified" in killing Mr. Salman Taseer and also placed on the record some newspaper reports.

5. After recording the evidence and attending to the final arguments of the learned counsel for the parties the learned Judge, Special Court-II, Anti-Terrorism, Rawalpindi Division & Islamabad Capital Territory convicted Malik Muhammad Mumtaz Qadri appellant for an offence under section 302(b), PPC *vide* judgment dated 01.10.2011 and sentenced him to death and to pay a sum of Rs. 1,00,000/- to the heirs of the deceased by way of compensation under section 544-A, Cr.P.C. or in default of payment thereof to undergo simple imprisonment for six months. Through the same judgment the trial court also convicted the appellant for an offence under section 7(a) of the Anti-Terrorism Act, 1997 and sentenced him to death and to pay a fine of Rs. 1,00,000/- or in default of payment thereof to undergo simple imprisonment for six months.

6. Malik Muhammad Mumtaz Qadri appellant challenged his convictions and sentences before the Islamabad High Court, Islamabad through Criminal Appeal No. 90 of 2011 which was heard by a learned Division Bench of the said Court along with Capital Sentence Reference No. 01 of 2011 seeking confirmation of the sentences of death passed by the trial court and *vide* judgment dated 09.03.2015 the appeal filed by the appellant was dismissed to the extent of his conviction and sentence recorded by the trial court for an offence under section 302(b), PPC and the connected Capital Sentence Reference was answered in the affirmative to that extent but the appeal was partly allowed to the extent of his conviction and sentence recorded by the trial court for an offence under section 7(a) of the Anti-Terrorism Act, 1997 which conviction and sentence were set aside and he was acquitted of that count of the Charge.

7. Subsequently Malik Muhammad Mumtaz Qadri filed Criminal Petition No. 197 of 2015 before this Court seeking leave to appeal against the above mentioned judgment delivered by the Islamabad High Court, Islamabad and assailing his conviction and sentence for an offence under section 302(b), PPC whereas the State preferred Criminal Petition No. 275 of 2015 before this Court seeking leave to appeal against the same judgment and challenging acquittal of Malik Muhammad Mumtaz Qadri from the charge under section 7(a) of the Anti-Terrorism Act, 1997. On 14.05.2015 this Court allowed both the said Criminal Petitions and granted leave to appeal therein by passing the following order:

> "**Criminal Petition No. 197 of 2015**
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> The record of the case shows that Malik Muhammad Mumtaz Qadri petitioner had admitted killing Governor Salman Taseer and this is so evident from the petitioner's statement recorded under section 164, Cr.P.C., his response to the charge framed against him and his answers to questions No. 3 and 8 put to him at the time of recording of his statement under section 342, Cr.P.C. It has vehemently been argued by the learned counsel for the petitioner that the killing of the deceased by the petitioner was on account of the deceased having committed blasphemy in terms of section 295-C, PPC and in that backdrop the petitioner was justified in murdering the deceased. After hearing elaborate submissions of the learned counsel for the petitioner we are of the

opinion that the following questions, *inter alia,* require consideration of this Court:

i) Did any utterance of the deceased in fact amount to blasphemy in terms of section 295-C, PPC and was sufficient record available in this case to presume commission of blasphemy by the deceased? The learned counsel for the petitioner has read out from clippings of two newspaper reports which *prima facie* tend to show that the deceased had said something about the law framed for the offence of blasphemy and its improper application and apparently the deceased had not uttered any word defiling the sacred name of the Holy Prophet Muhammad (Peace Be Upon Him).

ii) If the petitioner entertained an impression that the deceased had committed blasphemy then did the petitioner, acting in his private capacity, have any legal justification to kill the deceased without having recourse to the law? In this respect Article 9 of the Constitution of the Islamic Republic of Pakistan, 1973 may be relevant which stipulates that no person shall be deprived of his life or liberty save in accordance with law.

iii) Even if the petitioner entertained an impression about commission of blasphemy by the deceased and even if he was motivated by any religious sentiment in that regard still could the petitioner kill the deceased at a time when he was performing the duties of a guard of the deceased and was performing official functions, wearing an official uniform, using an official weapon and possessing officially supplied bullets? It would be relevant in this context to consider as to whether a person given in the protection of the petitioner could be deprived of his life by the petitioner himself and as to whether committing such a murder would not offend against the religious injunctions, precepts or traditions.

iv) If the petitioner had confessed killing the deceased before the learned trial court at different stages of the trial then was it not a case attracting the provisions of section 304, PPC and section 302(a), PPC which offence carries the punishment of death only and has no alternative sentence?

v) In case the petitioner's conviction is not interfered with by this Court then are there any mitigating circumstances available on the record warranting reduction of the petitioner's sentence from death to imprisonment for life or not? It may be relevant in the present context that the petitioner had no personal enmity with the deceased and he had acted only under a religious motivation. It may also be relevant in this context that the petitioner could be said to have acted cruelly and brutally in the matter as he had riddled the deceased's body with as many as thirty-two injuries caused by twenty-eight bullets.

2. The questions mentioned above, amongst others, require consideration of this Court. This petition is, therefore, allowed and leave to appeal is granted for the purpose.

Criminal Petition No. 275 of 2015

3. It has *inter alia* been contended by the learned Advocate-General, Islamabad appearing for the petitioner/the State that while holding that the case in hand did not attract the definition of 'terrorism' contained in section 6 of the Anti-Terrorism Act, 1997 the Islamabad High Court, Islamabad had completely failed to advert to the provisions of section 6(1)(c) of the Anti-Terrorism Act, 1997 which stipulate that an offence of murder committed for the purpose of advancing a religious cause or for the purpose of intimidating and terrorizing the public or government officials amounts to terrorism triable by an Anti-Terrorism Court. He has also argued that the Islamabad High Court, Islamabad had fallen in error in holding that because there was insufficient evidence regarding spreading of fear and insecurity in the society as a result of the petitioner's action, therefore, the case in hand was not a case of terrorism. According to him the High Court had failed to appreciate that the definition of terrorism contained in section 6 of the Anti-Terrorism Act, 1997 had relevance to the design or object of the perpetrator of the offence and not to the fall out of an offence creating a sense of fear and insecurity in the society. In this respect he has relied upon the cases of *Basharat Ali v. Special Judge, Anti-Terrorism Court-II, Gujranwala* (PLD 2004 Lahore 199), *Mohabbat Ali and another v. The State and another* (2007 SCMR 142), *Bashir Ahmed v. Muhammad Siddique and others* (PLD 2009 SC 11), *Ahmed Jan v. Nasrullah and others* (2012 SCMR 59) and *Tariq Mahmood v. The State and others* (2008 SCMR 1631). The learned Advocate-General, Islamabad has gone on to submit that the jurisdiction of an Anti-Terrorism Court is to be determined on the basis of the allegations leveled in the FIR, the statements made under section 161, Cr.P.C. and the attending circumstances of the case becoming available on the record and, thus, an ultimate acquittal of the respondent from the charge under section 7(a) of the Anti-Terrorism Act, 1997 did not preclude the learned Anti-Terrorism Court from trying the case in hand and in this respect he has relied upon the cases of *Allah Din and 18 others v. The State and another* (1994 SCMR 717) and *Mumtaz Ali Khan Rajban and another v. Federation of Pakistan and others* (PLD 2001 SC 169).

4. The contentions of the learned Advocate-General, Islamabad noted above require consideration. This petition is, therefore, allowed and leave to appeal is granted for the purpose.

5. The office is directed to club the appeals arising out of the above mentioned two petitions so that they may be heard together. The office is also directed to fix the appeals for regular hearing in the month of October, 2015, as agreed between the learned counsel for the parties."

Hence, the present appeals before this Court.

8. We have heard Mian Nazir Akhtar, ASC and Khawaja Muhammad Sharif, ASC appearing for Malik Muhammad Mumtaz Qadri convict-appellant and Mian Abdul Rauf, Advocate-General,

Islamabad appearing for the State at considerable length and have minutely gone through the record of the case with their able assistance besides carefully perusing all the religious texts and material produced or referred to during the arguments. In the following paragraphs we propose to separately discuss and deal with all the arguments advanced before us from both the sides.

9. In a case of murder two questions are of paramount importance and they are

(i) was it the accused person facing the trial who had committed the murder in issue?

and

(ii) if it was the accused person facing the trial who had committed the murder in issue then did he have any factual or legal justification for committing that murder?

In the case in hand the answer to the first question had been provided by Malik Muhammad Mumtaz Qadri appellant himself by admitting at every stage of the case that he, and he alone, had committed the murder of Mr. Salman Taseer. During the investigation, in his confessional statement recorded by a Magistrate under section 164, Cr.P.C., in his reply to the Charge framed by the trial court, through some suggestions put by his learned counsel to different prosecution witnesses, in his statement recorded under section 342, Cr.P.C., in his written statement filed under section 265-F(5), Cr.P.C., through the final arguments advanced by his learned counsel at the conclusion of the trial and also before the High Court, at the leave granting stage before this Court and during the submissions made by his learned counsel before this Court at the time of hearing of the present appeals it had and has consistently been maintained by Malik Muhammad Mumtaz Qadri and his learned counsel that Mr. Salman Taseer had been done to death by none other than Malik Muhammad Mumtaz Qadri appellant at the date, time and place

alleged by the prosecution. In these circumstances the question as to who had committed the murder of Mr. Salman Taseer may not detain us any further.

10. The second question as to whether Malik Muhammad Mumtaz Qadri appellant had any factual or legal justification for committing the murder of Mr. Salman Taseer or not has been and is the real bone of contention in this case. This aspect of the case can be divided into two parts, i.e. factual justification and legal justification and we now proceed to discuss these parts separately with reference to the record of the case as well as the submissions made by the learned counsel for the parties before us.

11. The factual justification consistently advanced by Malik Muhammad Mumtaz Qadri appellant has been that in his capacity as the Governor of the Province of the Punjab Mr. Salman Taseer had committed blasphemy. Two separate parts of such factual justification have been highlighted by the learned counsel for the appellant. The first part is that after conviction and sentence of one Mst. Asia Bibi, a Christian lady, in some case for committing the offence of blasphemy Mr. Salman Taseer had paid a visit to that lady inside a jail and on that occasion and also in some television programme aired later on he had observed that the minorities in Pakistan enjoyed adequate constitutional and legal protections, Mst. Asia Bibi had been convicted not under any law introduced by the Quaid-i-Azam or Zulfiqar Ali Bhutto but under a law promulgated by Zia-ul-Haq which was a black law, according to his own inquiries Mst. Asia Bibi was innocent in the matter, Mst. Asia Bibi was a poor and hapless woman, her conviction and sentence had brought a bad name to our system inside the country and abroad and he had obtained an application from Mst. Asia Bibi for seeking some relief for her from the relevant quarters. For proving such utterances of Mr. Salman Taseer the appellant had produced two newspaper reports before the trial court which had been placed on the record as Mark-A and Mark-B. It has been maintained by the learned counsel for the appellant that the above

mentioned utterances of Mr. Salman Taseer were blasphemous. The second part of the factual justification advanced by the appellant was that immediately before the present occurrence the appellant had said to Mr. Salman Taseer that it was unbecoming of him as a Governor to have remarked about the blasphemy law as black law upon which Mr. Salman Taseer had responded by saying that "Not only that it is black law, but also it is my shit" which response was also blasphemous and the same had gravely and suddenly provoked the appellant. On the basis of the above mentioned two factual aspects the learned counsel for the appellant has canvassed that Mr. Salman Taseer had committed blasphemy and had also provoked the appellant and, therefore, the appellant was quite justified in killing him. The learned Advocate-General, Islamabad appearing for the State has, however, vehemently argued that none of the said factual aspects asserted by the appellant had been lawfully proved or duly established on the record of this case and, therefore, the same cannot be made a basis for claiming any relief for the appellant.

12. In a criminal case whenever an accused person wants the court to accept that his action was justified in the peculiar circumstances of the case the provisions of Article 121 of the Qanun-e-Shahadat Order, 1984 come into play which provide as follows:

> "**121. Burden of proving that case of accused comes within exception.-** When a person is accused of any offence the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Pakistan Penal Code (Act XLV of 1860), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.
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> **Illustrations**
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> (a) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.
> The burden of proof is on A.
>
> (b) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control.
> The burden of proof is on A.

> (c) Section 325 of the Pakistan Penal Code (Act XLV of 1860) provides that whoever, except in the case provided for in section 335, voluntarily causes grievous hurt, shall be subject to certain punishments.
>
> A is charged with voluntarily causing grievous hurt under section 325.
>
> The burden of proving the circumstances bringing the case under section 335 lies on A."

Grave and sudden provocation offered by a victim to the assailant is surely one of the exceptions within the contemplation of the above mentioned Article 121 which exception was previously recognized by Exception No. 1 to the erstwhile section 300, PPC and is now covered by the provisions of section 302(c), PPC. The law is quite settled by now that if an accused person wants the court to believe that some words or actions of the victim had provoked him and on the basis of such provocation he had killed the victim then in all such cases the court is to presume the absence of the circumstances being asserted by the accused person in support of his plea and it is for the accused person to prove through positive and legally admissible evidence that some provocation was actually offered to him by the victim and such provocation was grave and sudden. In the present case both the parts of the factual justification advanced by the appellant had clearly remained unproved by him. As regards the Mst. Asia Bibi related utterances attributed to Mr. Salman Taseer no specific date or time of such utterances or the exact words uttered had been established on the record, the jail and the city wherein he had statedly made the relevant observations were variantly described, the television channel or the programme referred to had not been named, the reporters who had prepared the newspaper reports Mark-A and Mark-B had not been produced as witnesses, both the said newspaper reports were not duly exhibited in evidence and the said reports had never been lawfully proved. Mark-A was a newspaper report published after the murder of Mr. Salman Taseer, i.e. many months after the alleged utterances had been made by him and the said report was purely speculative in nature as the reporter had only speculated that Mr. Salman Taseer had been murdered because of some utterances he had made some

months ago. In that report the reporter had never claimed that he had himself heard Mr. Salman Taseer saying what was alleged to have been said by him. Mark-B was a newspaper report about some observations statedly made by Mr. Salman Taseer in a programme aired by a television channel and in that report neither the television channel nor the programme had been named nor the reporter had claimed to have personally heard or seen Mr. Salman Taseer making those observations. Even the date and time of airing of the television programme had not found any mention in the said newspaper report. During their cross-examination some suggestions were put by the appellant to both the eyewitnesses produced by the prosecution regarding the Mst. Asia Bibi related utterances allegedly made by Mr. Salman Taseer but both of them had categorically stated that those suggestions were incorrect. It is true that a similar suggestion put to the investigating officer was accepted by him to be correct but at the same time it is equally true that no source of knowledge of the investigating officer about correctness of such suggestions had been disclosed by the investigating officer himself or was established on the record by the appellant. Apart from that, even if the Mst. Asia Bibi related utterances attributed to Mr. Salman Taseer were to be accepted as duly proved still all that Mr. Salman Taseer had allegedly said on that occasion conveyed an impression that, according to Mr. Salman Taseer, the law regarding commission of blasphemy had been promulgated by an unrepresentative military ruler and the same was a black law because in the absence of proper safeguards against its misuse it was being utilized as a vehicle of oppression against innocent people and weaker segments of the society including religious minorities. In the alleged utterances Mr. Salman Taseer had never, directly or indirectly, made any observation about the Holy Prophet Muhammad (peace be upon him) so as to attract the definition of blasphemy contained in section 295-C, PPC which definition is relevant only to a person who “by words, either spoken or written, or by visible representation, or by any imputation, innuendo or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet

Muhammad (peace be upon him)". It is, therefore, difficult to accept that the Mst. Asia Bibi related alleged utterances of Mr. Salman Taseer amounted to commission of blasphemy by him and it is even more difficult to accept that such utterances could be treated by the appellant to be providing provocation to him which provocation was neither grave nor sudden so as to attract any general or special exception recognized by the Pakistan Penal Code. We have already observed above that even if any such exception could be said to be attracted to the case in hand it was for the appellant to prove the circumstances attracting such exception through positive and legally admissible evidence which he had completely failed to produce. In these circumstances the judicial presumption regarding absence of such circumstances contemplated by Article 121 of the Qanun-e-Shahadat Order, 1984 stood reinforced.

13. The second part of the factual justification advanced by the appellant pertained to a verbal exchange allegedly taking place between the appellant and Mr. Salman Taseer immediately prior to opening of fire by the former upon the latter. The contents of the alleged exchange of words asserted by the appellant through his statement recorded under section 342, Cr.P.C. have already been reproduced above. It may be reiterated that even in respect of this factual aspect of the case the onus of proof was squarely on the appellant but he had utterly failed to discharge that onus. In his first version before the investigating officer the appellant had not mentioned any such verbal exchange taking place with Mr. Salman Taseer immediately preceding the firing. During the trial some suggestions were put by the defence to both the eyewitnesses produced by the prosecution regarding the asserted exchange of words but such suggestions were categorically denied and controverted by both of them. It may be relevant to mention here that the words forming the verbal exchange put to the two eyewitnesses through suggestions were different and they were also different from the words mentioned by the appellant in his statement recorded under section 342, Cr.P.C. The record of the

case shows that at the time of the present occurrence Mr. Salman Taseer was accompanied by his friend namely Sheikh Waqas whose presence at the spot at the relevant time was also confirmed by the site-plan of the place of occurrence. As the onus to prove the asserted verbal exchange between the appellant and Mr. Salman Taseer was on the appellant, therefore, the appellant could have produced the said Sheikh Waqas as a defence witness or he could have applied before the trial court for summoning of the said witness as a court witness so as to establish taking place of the asserted verbal exchange between the appellant and Mr. Salman Taseer but the appellant had taken no such step. In the absence of any confirmation of the asserted verbal exchange by the eyewitnesses produced by the prosecution and in the absence of production of Sheikh Waqas as a defence witness or his summoning as a court witness the only other person who could prove or establish the asserted exchange of words between the appellant and the victim was none other than the appellant himself but admittedly he had declined to appear before the trial court as his own witness by making a statement on oath under section 340(2), Cr.P.C. Failure of the appellant to enter the witness-box for making a statement in respect of that asserted fact amounted to withholding the best available evidence and such failure on his part had given rise to an inference adverse to truthfulness of the appellant's factual assertion made in that regard. During his arguments the learned counsel for the appellant was questioned by us regarding complete lack of evidence regarding this part of the factual justification advanced by the appellant and all that he could submit was that it had become available on the record that some of his injuries had been received by Mr. Salman Taseer on the frontal parts of his body and that at some point of time immediately before the firing at him he was facing the appellant and, thus, it could be presumed that some conversation must have taken place between the appellant and Mr. Salman Taseer at that stage. In this context it has also been submitted by him that great number of injuries caused by the appellant to his victim indicated receipt of grave provocation by the appellant and this hinted at

taking place of some exchange of words between the appellant and his victim which had gravely provoked the appellant at the spot. Such submissions of the learned counsel for the appellant have, however, been found by us to be nothing but speculative. The onus of proof on this issue was on the appellant and it cannot be said that the requisite onus had been discharged by the appellant on the basis of a mere speculation, more so when such speculation did not relate to the content of the conversation supposedly taking place which content was the very basis of the factual justification being advanced for the murder. We have, thus, felt no hesitation in concluding that this part of the factual justification advanced by the appellant was nothing but an afterthought and even this part of the factual justification had remained far from being proved or established on the record.

14. As regards the issue of availability of any legal justification with Malik Muhammad Mumtaz Qadri appellant for murdering Mr. Salman Taseer the said issue has also been addressed by the learned counsel for the appellant from two diverse angles. The first angle is that commission of blasphemy by Mr. Salman Taseer had provoked the appellant and as the murder of Mr. Salman Taseer had been committed on account of serious provocation offered by the victim, therefore, the appellant's case attracted some general and special exceptions recognized by the Pakistan Penal Code and, thus, his action did not fall within the purview of section 302(b), PPC. The second angle is that being a devout Muslim the appellant was under a religious and moral, and hence legal, obligation to kill an apostate who had committed the offence of blasphemy, particularly when the State had failed to take any legal action against the offender.

15. We note that both the above mentioned angles of the legal justification advanced are premised upon an alleged commission of the offence of blasphemy by Mr. Salman Taseer and the resultant provocation statedly received or entertained by the appellant which factual premise had, as observed above, remained totally unproved

on the record of this case in accordance with the law. It goes without saying that no court of law can decide a question of law on the basis of a fact which itself remains not established in terms of the legal requirements. When confronted with this legal position the learned counsel for the appellant referred to section 79, PPC which reads as under:

> "**79. Act done by a person justified, or by mistake of fact believing himself justified, by law.-** Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it.
>
> **Illustration**
>
> A sees Z commit what appears to A to be a murder. A in the exercise, to the best of his judgment, exerted in good faith of the power which the law gives to all persons of apprehending murders in the Act, seizes Z, in order to bring Z before the proper authorities. A has committed no offence, though it may be true if Z was acting in self-defence."

By relying upon the provisions of section 79, PPC the learned counsel for the appellant has maintained that even if as a matter of fact Mr. Salman Taseer had not committed the offence of blasphemy within the meanings of section 295-C, PPC still the appellant mistakenly believed that Mr. Salman Taseer had committed the said offence and, therefore, the appellant had committed no offence by murdering him. We have, however, found such an interpretation of section 79, PPC advanced by the learned counsel for the appellant to be misconceived and unacceptable. According to our understanding the said section has two parts and for clarity of comprehension the said section can be read as follows:

> (i) Nothing is an offence which is done by any person who is justified by law in doing it.
>
> (ii) Nothing is an offence which is done by any person who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be justified by law in doing it.

As regards the first part of section 79, PPC the accused person has to refer to and rely upon some express and existing legal provision which makes his act justified by law. In the present case the learned counsel for the appellant has not been able to refer to any express and existing legal provision in the entire body of laws of this country authorizing any person to kill another person on his own because such other person had, or was perceived to have, committed the offence of blasphemy. As far as the second part of section 79, PPC is concerned the accused person has to establish that by reason of a mistake of fact he believed in good faith that his act was justified by law and such belief that his act was justified by law was not based upon a mistake of law. This provision contemplates that if there had been no mistake of fact and if the fact perceived by the accused person to exist actually existed as a fact then the act of the accused person was such that it was justified by law. This provision also makes it clear that the accused person's belief in his act being justified by law should not be based upon a mistake of law. This provision further requires that the accused person must act in good faith. Applying these tests to the case in hand it is quite apparent that even if due to a mistake of fact the appellant entertained an impression that Mr. Salman Taseer had committed the offence of blasphemy still there was no valid basis available with the appellant to believe that his act of killing Mr. Salman Taseer was justified by the law of the land. It is also obvious that if the appellant believed that his act was justified by law then such belief was based upon a mistake of law and, therefore, the provisions of section 79, PPC were inapplicable to the case. As regards the requirement of good faith it cannot be argued with any degree of seriousness that the decision of the appellant to take the law in his own hands was based upon good faith. The appellant was a serving officer of the police department at the relevant time and he, of all the persons, would have known about the importance and requirement of recourse to the law. A police officer acting in a matter by taking the law in his own hands may be termed as the worst manifestation of bad faith. Section 52, PPC

defines “Good faith” and clarifies that “Nothing is said to be done or believed in “good faith” which is done or believed without due care and attention”. In the case in hand the appellant had never claimed that he had himself heard or read the Mst. Asia Bibi related utterances attributed to Mr. Salman Taseer, he had never claimed that he had tried to get his impression or information about commission of the offence of blasphemy by Mr. Salman Taseer verified in any manner whatsoever, he had acted in the matter on the basis of nothing but hearsay and even the asserted verbal exchange between him and Mr. Salman Taseer statedly taking place immediately prior to the occurrence had not been proved by him through any positive evidence at all. In these circumstances it could not be said that the appellant had acted in the matter with “due care and attention” and, hence, in “good faith” within the meanings of section 79, PPC read with section 52, PPC. For all these reasons the arguments addressed by the learned counsel for the appellant on both the angles of the legal justification advanced by the appellant have failed to convince us.

16. Faced with the above mentioned insurmountable difficulties in establishing before us that the appellant had any legal justification available with him for committing the murder of Mr. Salman Taseer the learned counsel for the appellant has turned to the religion of Islam which even otherwise has remained the primary focus of all his arguments advanced before us. He has argued that committing blasphemy is a grave offence in Islam and if a Muslim commits the murder of a person guilty of committing blasphemy then he commits no offence at all and he cannot be punished for the murder committed by him. In support of this plank of his arguments the learned counsel for the appellant has referred to the written statement submitted by the appellant before the trial court under section 265-F(5), Cr.P.C. wherein references had been made to different verses of the Holy Qur’an including Surah At-Taubah: verse 12, Surah At-Taubah: verses 13, 14 & 15, Surah Al-Maidah: verse 33, Surah Al-Hujurat: verse 2, Surah An-Nur: verse 63, Surah Al-Baqarah: verse 104, Surah Al-Ahzab: verse

57, Surah An-Nisa, verse 65, Surah At-Taubah: verses 64, 65 & 66, Surah Al-Mujadilah: verses 20 & 21 and Surah Al-Anfal: verses 12, 13 & 14. In the same written statement of the appellant references had also been made to about thirty Ahadith (traditions) of the Holy Prophet Muhammad (peace be upon him) reported in different religious texts. The appellant had also referred in that written statement to two decisions rendered by Caliphs Umar and Ali (May Allah Almighty be pleased with them) and to opinions recorded by some renowned scholars of Islam in respect of liability of a person who has committed blasphemy. The said written statement of the appellant also contained opinions of some religious scholars justifying extrajudicial killing of an apostate and also of his supporters and maintaining that the deadbody of an apostate is not to be given a cleansing bath and no funeral prayers are to be offered for him. Apart from referring to the said written statement filed by the appellant under section 265-F(5), Cr.P.C. the learned counsel for the appellant has also placed on the record some other material containing some more references concerning commission of blasphemy and justifying killing of an apostate. The learned counsel for the appellant has vehemently maintained before us that in the impugned judgment passed by the Islamabad High Court, Islamabad, particularly in paragraphs No. 28, 29 and 30 thereof, some observations had been made by the High Court which observations, according to the learned counsel for the appellant, did not interpret the Islamic law regarding blasphemy in its true and correct perspective. We have gone through all the above mentioned texts, references and material very carefully and with the deepest veneration and respect that they deserve but at the same time we are also conscious of the contours and scope of the jurisdiction that we can exercise in the present proceedings, particularly in the context of Articles 203G and 230 of the Constitution referred to in the opening part of this judgment and also in the context of Article 175(2) of the Constitution which mandates in no uncertain terms that “No court shall have jurisdiction save as is or may be conferred on it by the Constitution or by or under any law”. We may only observe in this

context that we as Muslims are fully aware and convinced of the most exalted position held by the Holy Prophet Muhammad (peace be upon him) in the eyes of Almighty Allah as well as in the hearts and minds of the *Ummah* and the followers of the Islamic faith. It goes without saying that deepest respect and profound reverence for the Holy Prophet Muhammad (peace be upon him) is an article of faith with all of us. Be that as it may the issue involved in this case is not as to whether anybody is allowed to commit blasphemy by defiling the sacred name of the Holy Prophet Muhammad (peace be upon him) or not or as to whether a person committing blasphemy can be killed by another person on his own or not but the real question involved in the present case is as to whether or not a person can be said to be justified in killing another person on his own on the basis of an unverified impression or an unestablished perception that such other person has committed blasphemy. A close and careful examination of all the references made and the religious material produced in this case by the appellant and his learned counsel shows, and shows quite clearly and unmistakably, that such references and material pertain to cases where commission of blasphemy stands established as a fact and then the discussion is about how the apostate may be treated and not a single reference made or instance referred to in the material produced permits killing of a person on the basis only of an unverified impression or an unestablished perception regarding commission of blasphemy. In the case in hand there is nothing on the record to show that the appellant had made any effort whatsoever to get the Mst. Asia Bibi related utterances attributed to Mr. Salman Taseer verified in any manner. An attempt had, however, been made by the appellant during the trial to improve his case in that regard by introducing the story of a verbal exchange taking place between him and Mr. Salman Taseer immediately prior to the occurrence of murder but we have already concluded above that this part of the story introduced by the appellant was an afterthought and the same had also remained far from being proved in accordance with the law. As mentioned above, in the Holy Qur'an Almighty Allah has repeatedly warned those

who start believing in hearsay without getting it ascertained, verified or investigated or conduct themselves on the basis of such hearsay. The appellant, therefore, would have done better if, notwithstanding his professed religious motivation in the matter, he had paid heed to those warnings of Almighty Allah as well before an unjustified killing of another on the sole basis of hearsay. An unjustified killing of a human being has been declared by Almighty Allah as murder of the entire mankind.

17. When specifically questioned by us in that respect the learned counsel for the appellant has maintained that it is not just defiling the sacred name of the Holy Prophet Muhammad (peace be upon him) which constitutes blasphemy but criticizing the law regarding blasphemy is also blasphemous. We may record in this context that for canvassing such a point of view the learned counsel for the appellant has not placed reliance upon any scripture of divine origin but has referred to some scholastic interpretations of human origin. In our country the offence of blasphemy has been defined in section 295-C, PPC and by dictate of the oath of our office we are bound to decide matters in accordance with the Constitution and the law and, thus, we have found it difficult to act in this case on the basis of a definition of blasphemy advanced by the learned counsel for the appellant which definition travels beyond the scope of the statutory definition of the same in the law of the land. Apart from that in a democratic society citizens have a right to contend, debate or maintain that a law has not been correctly framed by the State in terms of the mischief sought to be suppressed or that the law promulgated by the State ought to contain adequate safeguards against its misapplication or misuse by motivated persons. It goes without saying that seeking improvement of a manmade law in respect of a religious matter for better or proper enforcement of such law does not *ipso facto* amount to criticizing the religious aspect of such law. An example at hand is that of the *Hudood* laws introduced in this country in the year 1979 which were followed by persistent protest against their misapplication and misuse against

weaker segments of the society and religious minorities which protest had led to various amendments made in those laws and in the Pakistan Penal Code and the Code of Criminal Procedure from time to time in the later years. For instance, through an amendment section 156-B had been introduced in the Code of Criminal Procedure which provides as follows:

> "**156-B. Investigation against a woman accused of the offence of Zina.-** Notwithstanding anything contained in this Code, where a person is accused of offence of zina under the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (VII of 1979), no police officer below the rank of a Superintendent of Police shall investigate such offence nor shall such accused be arrested without permission of the Court.
>
> ***Explanation.--*** In this section 'zina' does not include 'zina-bil-jabr'."

Section 156-B, Cr.P.C. did not tinker with the offence of *Zina* itself or with the religious aspects of the same but through introduction of some procedural safeguards it only made it difficult for an innocent person to be maliciously subjected to an unnecessary investigation or trial for that offence. Keeping in view the strong religious sentiments in our society it ought to be understood quite clearly that any call coming from serious quarters for reform in the laws regarding religion related offences can only be a call for introducing safeguards against misapplication or misuse of such laws by motivated persons and such call is ordinarily not to be construed as a call against the religious aspects of the offences covered by such laws. Similar is the case as far as the offence of blasphemy is concerned. It is of critical importance to mention here that in one form or the other laws against offending religious sentiments have been a part of the Pakistan (previously Indian) Penal Code since its enactment in the year 1860 by the British Government with an aim to protect the religious feelings, sensibilities and sensitivities of different religious groups or classes of persons. Section 295 has been a part of the Code since its inception and the same provides protection to places of worship of all religions so that the religion of any class of persons is not insulted. Through an amendment section 295-A was added to the

Code in the year 1927 for preventing deliberate and malicious acts intended to outrage religious feelings or beliefs of followers of all religions. Later on the Code was further amended to include section 295-B against willful defiling, damaging or desecrating the Holy Qur'an and still later the Code was again amended and section 295-C was introduced against defiling the sacred name of the Holy Prophet Muhammad (peace be upon him). Such improvements of the Code over time through suitable amendments thereof was never considered as an affront to any religion and, therefore, a call for improvement of section 295-C, PPC for the purpose of providing safeguards against its misuse through leveling of false allegations ought not to be considered as objectionable because the religion of Islam loathes leveling of false allegations which is a serious offence in itself. A bare look at the definition of blasphemy contained in section 295-C, PPC shows that apparently the statutory definition restricts blasphemy to defiling the sacred name of the Holy Prophet Muhammad (peace be upon him) and even the learned counsel for the appellant impliedly considers such definition of blasphemy to be inadequate or incomplete because, on the basis of the views of some religious scholars, he maintains that criticizing the law regarding blasphemy also falls within the mischief of blasphemy. This by itself amply demonstrates that the definition of blasphemy contained in section 295-C, PPC may be considered by some to be needing improvement so as to bring it in line with the true scope of the concept of blasphemy and, likewise, there may be others who may feel that some procedural and other safeguards need to be introduced so that it should become difficult to level or prosecute a false allegation regarding commission of the offence of blasphemy. The above mentioned reference to introduction and amendment of the *Hudood* laws in the country makes it evident that in all matters, including religious, there is an on-going effort to keep the laws of the land updated through amendments so as to meet the emerging challenges and also to provide safeguards against mischievous manipulations, misapplication or misuse of the existing laws. It is an unfortunate fact which cannot be disputed that in many cases

registered in respect of the offence of blasphemy false allegations are leveled for extraneous purposes and in the absence of adequate safeguards against misapplication or misuse of such law by motivated persons the persons falsely accused of commission of that offence suffer beyond proportion or repair. In one of the Judicial Training Toolkits prepared by the Legal Aid Society, Karachi the following statistics have been recorded:

> "The known blasphemy cases in Pakistan show that from 1953 to July 2012, there were 434 offenders of blasphemy laws in Pakistan and among them were, 258 Muslims (Sunni/Shia), 114 Christians, 57 Ahmadis, and 4 Hindus. Since 1990, 52 people have been extra-judicially murdered, for being implicated in blasphemy charges. Among these were 25 Muslims, 15 Christians, 5 Ahmadis, 1 Buddhist and a Hindu.
>
> During 2013, 34 new cases were registered under the blasphemy laws. While at least one death sentence for blasphemy was overturned during the year, at least another 17 people were awaiting execution for blasphemy and at least 20 others were serving life sentences. Although the government has never carried out a death sentence for blasphemy, NGOs reported that at least five persons accused of blasphemy had died in police custody in recent years.
>
> The majority of blasphemy cases are based on false accusations stemming from property issues or other personal or family vendettas rather than genuine instances of blasphemy and they inevitably lead to mob violence against the entire community."

In the case of *Muhammad Mahboob alias Booba v. The State* (PLD 2002 Lahore 587) a learned Division Bench of the Lahore High Court, Lahore had traced the history of the law of blasphemy in the sub-continent and had not only taken judicial notice of the rampant misuse of that law by unscrupulous people trying to settle their personal scores but had also pointed out the hazards of investigation of such cases by untrained and poorly advised investigating officers. Some of the observations made in that case are relevant to the present context and the same are, therefore, reproduced below:

> "15. Historically speaking the Blasphemy Law was enacted by the British to protect the religious sentiments of the Muslim minorities in the Sub-Continent before partition against the Hindu majority. After the creation of Pakistan, the Muslims themselves were in majority. Section 295-A of the Pakistan Penal Code was enacted in 1927. In 1980, section 295-A was added to the P.P.C. In 1982, section 295-B was introduced. While in 1986,

section 295-C was legislated. Initially life imprisonment was the sentence prescribed. However, in 1991 this was replaced with mandatory death penalty.

16. It appears that ever since the law became more stringent, there has been an increase in the number of registration of the blasphemy cases. A report from the Daily Dawn of 18th July, 2002, says that between 1948 and 1979, 11 cases of blasphemy were registered. Three cases were reported between the period 1979 and 1986. Forty four cases were registered between 1987 and 1999. In 2000 fifty two cases were registered and strangely, 43 cases had been registered against the Muslims while 9 cases were registered against the non-Muslims. The report further states that this shows that the law was being abused more blatantly by the Muslims against the Muslims to settle their scores. Because the police would readily register such a case and without checking the veracity of the facts and without taking proper guidance from any well-known and unbiased religious scholar, would proceed to arrest an accused. That an Assistant Sub-Inspector or a Moharrir was academically not competent to adjudge whether or not the circumstances constitute act of blasphemy.

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18. In this case we have observed that the investigation of this case which involves a death sentence and where the allegations were of blasphemy, was entrusted to an official of the rank of an Assistant Sub-Inspector who has himself admitted about his own level of education in his statement, the portions of which have been reproduced above. The D.S.P. (Legal) was never produced to state who guided him in proposing that a case of blasphemy was made out against the appellant. The most preposterous fact of the case is brought on the file by the statement of Adalat Khan (P. W.2), according to which pencils and markers, ordinarily obtainable from the market and purchased by someone other than the appellant, and secured through memo. Exh.P.A., were used as an incriminating evidence against the appellant/convict.

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23. Needless to say that when the case of the prosecution was per se infirm going into a debate pertaining to Fiqah at the end of the trial Court was totally unnecessary, particularly when the learned trial Court had taken no help from any jurisconsult or any Islamic Scholar having known credentials. The nature of the accusations overwhelmed the trial Court to such an extent that it became oblivious of the fact that the standard of proof for establishing such an accusation and as required, was missing. Mere accusation should not create a prejudice or a bias and the duty of the Judge and as has also been ordained by our Holy Prophet (s.a.w.), is to ascertain the facts and the circumstances and look for the truth with all the perseverance at his command.

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30. As we have seen in the recent past cases of such-like nature are on the increase and we have also observed element of mischief involved. This calls for extra care at the end of the Investigating Officers. Whereas, we have seen the failure, inefficiency and incompetence of the Investigating Officer in handling the present case with all its consequences. Therefore, we direct the Inspector-General of Police, Punjab, Lahore, to ensure that whenever such a case is registered, it be entrusted for

> purposes of investigation to a team of at least two gazetted Investigating Officers preferably those conversant with the Islamic Jurisprudence and in case they themselves are not conversant with Islamic Law, a scholar of known reputation and integrity may be added to the team and this team should then investigate whether an offence is committed or not and if it comes to the conclusion that the offence is committed, the police may only then proceed further in the matter.
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> 31. In view of the sensitivities involved and the rise in the accusations of this type which can be easily made besides what is proposed on the investigational side, we further propose that the trial in such-like case be held by a Court presided over by a Judicial Officer who himself is not less than the rank of a District and Sessions Judge."

The procedural safeguards against misapplication or misuse of the law regarding the offence of blasphemy proposed or directed by the Lahore High Court, Lahore through the above mentioned judgment were never termed, and could never justifiably be termed, as blasphemous by any quarter. In this backdrop any call for reform of the law regarding the offence of blasphemy ought not to be mistaken as a call for doing away with that law and it ought to be understood as a call for introducing adequate safeguards against malicious application or use of that law by motivated persons. Commission of blasphemy is abhorrent and immoral besides being a manifestation of intolerance but at the same time a false allegation regarding commission of such an offence is equally detestable besides being culpable. If our religion of Islam comes down heavily upon commission of blasphemy then Islam is also very tough against those who level false allegations of a crime. It is, therefore, for the State of the Islamic Republic of Pakistan to ensure that no innocent person is compelled or constrained to face an investigation or a trial on the basis of false or trumped up allegations regarding commission of such an offence.

18. As a sequel to the discussion made above a conclusion is irresistible, unavoidable and inescapable that it was Malik Muhammad Mumtaz Qadri appellant who had committed the murder of Mr. Salman Taseer at the date, time and place alleged by the prosecution and also that the appellant had no factual or legal justification available with him for committing the said murder. In

view of this conclusion reached by us the conviction of the appellant recorded by the trial court for an offence under section 302(b), PPC and upheld by the Islamabad High Court, Islamabad has been found by us to have been validly recorded and upheld.

19. We have also attended to the question as to whether the provisions of section 302(a), PPC stood attracted to this case or not and have found that although Malik Muhammad Mumtaz Qadri appellant had at all stages of this case admitted killing Mr. Salman Taseer yet he had always advanced some factual, legal or religious justifications for such act of his. The appellant had pleaded not guilty to the Charge framed against him and, therefore, it was not possible to equate his qualified admission regarding killing Mr. Salman Taseer with an unqualified confession of guilt so as to attract the provisions of sections 304 and 302(a), PPC to the facts of this case.

20. The next question to be considered is as to whether by committing the murder of Mr. Salman Taseer, the then Governor of the Province of the Punjab, the appellant had also committed the offence of 'terrorism' as defined by section 6 of the Anti-Terrorism Act, 1997 or not which offence is punishable under section 7(a) of the said Act. Section 6 of the Anti-Terrorism Act, 1997, as it stood at the time of the present occurrence, provided as follows:

> "6. **Terrorism**.—(1) In this Act, "terrorism" means the use or threat of action where:
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> (a) the action falls within the meaning of subsection (2), and
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> (b) the use or threat is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect or create a sense of fear or insecurity in society; or
>
> (c) the use or threat is made for the purpose of advancing a religious, sectarian or ethnic cause.
>
> (2) An "action" shall fall within the meaning of subsection (1), if it:
>
> (a) involves the doing of anything that causes death;

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(3) The use or threat of any action falling within sub-section (2) which involves the use of firearms, explosive or any other weapon is terrorism, whether or not sub-section (1)(c) is satisfied.

(4) In this section "action" includes an act or a series of acts.

(5) In this Act, terrorism includes any act done for the benefit of a proscribed organization.

(6) A person who commits an offence under this section or any other provision of this Act, shall be guilty of an act of terrorism.

(7) In this Act, a "terrorist" means:-

(a) a person who has committed an offence of terrorism under this Act, and is or has been concerned in the commission, preparation or instigation of acts of terrorism.

(b) a person who is or has been, whether before or after the coming into force of this Act, concerned in the commission, preparation, or instigation of acts of terrorism, shall be included in the meaning given in clause (a) above."

A plain reading of section 6 of the Anti-Terrorism Act, 1997 shows that while defining 'terrorism' the said section bifurcates the same into two parts, the *mens rea* for the offence falling in section 6(1)(b) or (c) and the *actus reus* of the offence falling in section 6(2) of the Act and in order to attract the definition of terrorism in a given case the requisite *mens rea* and *actus reus* must coincide and coexist. The provisions of section 6(5), (6) and (7) of the Act also indicate that there may be some other actions of a person which may also be declared or recognized as acts of terrorism by some other provisions of the same Act. Restricting ourselves to the provisions of section 6 of the Anti-Terrorism Act, 1997 for the present purposes we note that in a case where the action involves the doing of anything that causes death [section 6(2)(a)] and such causing of death is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect or create a sense of fear or insecurity in society [section 6(1)(b)] or such causing of death is for the purpose of advancing a religious, sectarian or ethnic cause [section 6(1)(c)] there the causing of death of the victim is to be accepted and treated as terrorism triable exclusively by an Anti-Terrorism Court. As far as the case in hand is concerned the action of Malik

Muhammad Mumtaz Qadri appellant involved firing at Mr. Salman Taseer and thereby causing his death and, thus, his *actus reus* fell within the ambit of section 6(2)(a) of the Anti-Terrorism Act, 1997. As regards the appellant's *mens rea* he had himself stated in his statement recorded by the trial court under section 342, Cr.P.C. that the murder of Mr. Salman Taseer committed by him was "a lesson for all the apostates, as finally they have to meet the same fate". That statement of the appellant clearly established that he not only wanted to punish Mr. Salman Taseer privately for the perceived or imagined blasphemy committed by him but the appellant also wanted to send a message or teach a lesson to all others in the society at large who dared to follow Mr. Salman Taseer's suit. In this view of the matter the causing of death of Mr. Salman Taseer by the appellant was surely designed to intimidate or overawe the public or a section of the public or to create a sense of fear or insecurity in the society so as to attract the requisite *mens rea* contemplated by section 6(1)(b) of the Anti-Terrorism Act, 1997. Apart from that it cannot be seriously contested that the appellant had committed the murder of Mr. Salman Taseer for the purpose of advancing a religious cause and, thus, even the *mens rea* contemplated by section 6(1)(c) of the Anti-Terrorism Act, 1997 stood fully attracted to the case of the appellant. In these circumstances we have entertained no manner of doubt that the action of the appellant and the intention, design or purpose behind such action fully attracted the definition of terrorism contained in section 6 of the Anti-Terrorism Act, 1997 and, therefore, he was correctly and justifiably punished by the trial court under section 7(a) of the said Act for committing the offence of terrorism. In paragraph No. 44 of the impugned judgment the Islamabad High Court, Islamabad had set aside the appellant's conviction and sentence recorded by the trial court under section 7(a) of the Anti-Terrorism Act, 1997 on the sole ground that sufficient evidence had not been brought on the record by the prosecution to establish that the murder committed by the appellant had in fact created any sense of fear or insecurity in the society. We have found such an approach adopted by the Islamabad High Court, Islamabad *vis-*

à-vis the offence of terrorism to be utterly misconceived. The provisions of section 6(1)(b) of the Anti-Terrorism Act, 1997 quite clearly contemplate creation of a sense of fear or insecurity in the society as a design behind the action and it is immaterial whether that design was actually fulfilled or not and any sense of fear or insecurity was in fact created in the society as a result of the action or not. It is the specified action accompanied by the requisite intention, design or purpose which constitutes the offence of terrorism under section 6 of the Anti-Terrorism Act, 1997 and the actual fallout of the action has nothing to do with determination of the nature of offence. In this view of the matter we find ourselves in agreement with the learned Advocate-General, Islamabad that Malik Muhammad Mumtaz Qadri appellant's acquittal by the Islamabad High Court, Islamabad from the charge under section 7(a) of the Anti-Terrorism Act, 1997 is liable to be set aside and consequently his conviction for the said offence recorded by the trial court needs to be restored.

21. It has been argued by the learned counsel for the appellant that the Charge framed in this case contained only one count in respect of committing "the offence of *qatl-e-amd* punishable under clause (a) of section 7 of the Anti-Terrorism Act, 1997 read with sections 302 and 109, PPC" and as no separate charge had been framed by the trial court in respect of an offence under section 6 read with section 7(a) of the Anti-Terrorism Act, 1997, therefore, after recording the appellant's conviction and sentence for an offence under section 302(b), PPC the trial court could not separately and additionally convict and sentence the appellant under section 7(a) of the Anti-Terrorism Act, 1997. We have examined this argument with reference to the record of the case and have observed that at no stage of his trial the appellant had ever raised any objection in the above mentioned regard or had ever claimed that he had been misled or prejudiced on the basis of any irregularity in the Charge framed or on account of any misjoinder of charges. In view of such conduct of the appellant before the trial court the provisions of section 537, Cr.P.C. provide

a complete answer to the argument advanced by the learned counsel for the appellant in this regard. Apart from that this Court has clarified in many cases that the offences of murder and terrorism are distinct and separate offences and a person found guilty of committing murder while committing the offence of terrorism is to be convicted and sentenced separately for the said offences. In the present case the trial court had followed the law declared by this Court in that respect and, thus, no legitimate exception can be taken to the course adopted by the trial court in that regard.

22. As regards the sentences passed or to be passed against Malik Muhammad Mumtaz Qadri appellant both the learned counsel for the appellant have argued with emphasis that in the peculiar circumstances of this case the appellant does not deserve a sentence of death either for the murder committed by him or for indulging in terrorism. In this regard it has been argued that the appellant had no personal enmity with Mr. Salman Taseer and his only motivation for committing the murder of Mr. Salman Taseer was religious. It has also been argued that the appellant had been provoked firstly by the Mst. Asia Bibi related blasphemous utterances of Mr. Salman Taseer and secondly by his verbal exchange with the appellant immediately before his murder and, thus, the case in hand was a case of a continuing provocation as well as of grave and sudden provocation offered to the appellant at the spot. It has further been argued that the motive set up in the FIR had not been proved by the prosecution and lack of proof of motive set up by the prosecution is a valid ground for reduction of a sentence of death to imprisonment for life on a capital charge. It has lastly been pointed out in this context that according to the record of the case the appellant had acted under the influence of some religious speakers on the basis of whose inciting, provocative and instigating speeches made in a religious meeting the appellant had made up his mind to kill Mr. Salman Taseer and, thus, his conduct in the matter was not that of a free agent acting on his own. As against that the learned Advocate-General, Islamabad has

maintained that the appellant was a trained police officer who was deputed to guard Mr. Salman Taseer against any physical harm but while performing that duty the appellant had allowed his personal emotions and feelings to overtake his official responsibility and, therefore, the treachery committed and the deception resorted to by the appellant had rendered him undeserving of any sympathy in the matter of sentence.

23. We have carefully attended to the above mentioned contentions of the learned counsel for the appellant and the learned Advocate-General, Islamabad with reference to the record of the case. As regards the asserted religious motivation of the appellant we note that even if the appellant had entertained an impression about commission of blasphemy by Mr. Salman Taseer and even if he was motivated by any religious sentiment in that regard still the appellant could not kill Mr. Salman Taseer at a time when the appellant was performing the duties of a guard of Mr. Salman Taseer and was performing official functions, wearing an official uniform, using an official weapon and possessing officially supplied bullets. The learned Advocate-General, Islamabad has termed such conduct of the appellant to be treacherous because he had killed a person given under his protection and he had employed deception for the purpose which amounted to dishonourable conduct. We have been told that the appellant was born in a religious family and had been brought up in religious traditions. If that were so then the appellant would have been aware that a person given in his protection, whatever be the credentials of such person, could not be deprived of his life by the appellant himself and that committing such person's murder by the appellant would offend against religious precepts or traditions. The appellant's grooming in religious traditions would also have taught him to distinguish between the requirements of his job for which he was paid from the public exchequer and acting on the basis of his personal sentiments. The appellant's religious training would also have guided him in the matter of discerning between hearsay and fact and he would have been conscious that, as

referred to in the opening lines of this judgment, Almighty Allah has warned against believing hearsay or conducting oneself on the basis of unverified news or information. In this backdrop the self-serving argument based upon religious motivation of the appellant has been found by us to be unacceptable, particularly when this argument is squarely based upon an alleged commission of blasphemy by Mr. Salman Taseer which assertion had never been proved before the trial court through any lawfully adduced evidence at all.

24. What has been observed by us in the preceding paragraph can also be said about the argument that the appellant was provoked by some earlier utterances attributed to Mr. Salman Taseer and by the verbal exchange taking place at the spot as it has already been concluded by us above that none of those two events had been proved by the appellant before the trial court in accordance with the law and the onus of proof in that respect was on the appellant. We have also concluded above that the story advanced by the appellant about an exchange of words between him and Mr. Salman Taseer at the place of occurrence was nothing but an afterthought. It has been argued before us that great number of injuries caused by the appellant to his victim showed that the appellant had received grave provocation but this aspect of the matter again stems from the story belatedly advanced by the appellant about a verbal exchange between him and the victim at the spot which story had never been proved by the appellant through any positive evidence at all. A ground for mitigation of sentence cannot be pressed into service on the basis of something which had never been proved on the record.

25. The argument based upon the motive set up by the prosecution having remained unproved has also failed to impress us. The motive asserted in the FIR was that Mr. Salman Taseer had his own point of view in respect of various important national issues and for that reason different religious and political groups were indulging in serious propaganda against him and were also

issuing threats that he would be murdered. The prosecution might have remained unable to establish involvement of any religious or political group in the murder of Mr. Salman Taseer but it had certainly succeeded in proving that the appellant's motivation for the murder of Mr. Salman Taseer was nothing but some of his views although the contents of those views and those views being blasphemous had never been established by the appellant in accordance with the law as the onus for proving the same was exclusively on him. The place of motive in a case of murder is to establish as to who would be interested in killing the person murdered and such factor is to provide corroboration to the ocular account furnished by the prosecution but where the accused person admits killing the deceased there the primary purpose of setting up the motive stands served. According to Article 21 of the Qanun-e-Shahadat Order, 1984 a motive set up by the prosecution may be proved even by the conduct of the accused person and the conduct of the appellant in the present case had gone a long way in proving the motive set up by the prosecution. Apart from that Article 2(4) of the Qanun-e-Shahadat Order, 1984 provides that "A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists." In the circumstances of this case the motivation of the appellant was so obvious that only an imprudent man could conclude that his motivation was other than what the prosecution had asserted. Considering the prosecution's case regarding the motive in juxtaposition with the appellant's stance and conduct we have felt no hesitation in concluding that the prosecution had succeeded in proving the motive set up by it and, therefore, the argument that the sentence of death may be withheld in this case on account of lack of proof of motive has no legs to stand upon.

26. The contention that the appellant had acted under the influence of some others and, thus, his culpability stood diminished on that score has been found by us to be a contention

which is not based upon any evidence whatsoever. Although it had been alleged in the FIR that the appellant had committed the murder of Mr. Salman Taseer at the behest of some political and religious groups and in his confessional statement recorded by a Magistrate under section 164, Cr.P.C. the appellant had said something about his inspiration for the murder coming from the speeches made by some persons during a religious meeting yet none of those factors carried any evidentiary value at all. An FIR is not a substantive piece of evidence and the prosecution had not brought even an iota of evidence on the record regarding the appellant acting at the behest of anybody else. The appellant's statement recorded under section 164, Cr.P.C. was inadmissible in evidence because it had unlawfully been recorded on oath. Apart from that in his written statement submitted before the trial court under section 265-F(5), Cr.P.C. and also in his statement recorded by the trial court under section 342, Cr.P.C. the appellant had abandoned the above mentioned stand taken by him in his statement recorded under section 164, Cr.P.C., he had declined to make his own statement before the trial court on oath under section 340(2), Cr.P.C. and he had also failed to produce any witness in his defence. In these circumstances the claim that the appellant had acted under the influence or at the behest of somebody else was a claim which was based upon no evidence at all. It may be pertinent to observe in this context that at the time of the present occurrence the appellant was not a child of an impressionable age but was a fully grown up and trained police officer and, thus, his acting under the influence of somebody else has appeared to us to be a contention which is even otherwise difficult to accept.

27. There are some other aspects of this case which are relevant to the issue of sentencing of the appellant and they must also be stated for the record. The law of the land does not permit an individual to arrogate unto himself the roles of a complainant, prosecutor, judge and executioner. The appellant was a trained police officer who knew the importance of recourse to the law. The

appellant was very well aware of the case of Mst. Asia Bibi who was alleged to have committed the offence of blasphemy and through the course of law she had been convicted for that offence by a trial court. If the appellant had suspected Mr. Salman Taseer to have committed the offence of blasphemy then he should also have adopted the legal course knowing that the embargo contained in the provisions of Article 248 of the Constitution against criminal proceedings against a serving Governor of a Province was only temporary in nature and not permanent. Apart from that the appellant had acted in this case on the basis of nothing but hearsay and he had murdered the serving Governor of his Province without making any effort whatsoever to get his information about commission of blasphemy by Mr. Salman Taseer verified or confirmed. Throughout the world a police officer committing a crime is dealt with more sternly in the matter of his sentence than an ordinary person because an expectation is attached with a police officer that in all manner of circumstances he would conduct himself strictly in accordance with the law and under no circumstances he would take the law in his own hands. If the asserted religious motivation of the appellant for the murder committed by him by taking the law in his own hands is to be accepted as a valid mitigating circumstance in this case then a door shall become open for religious vigilantism which may deal a mortal blow to the rule of law in this country where divergent religious interpretations abound and tolerance stands depleted to an alarming level. It may also be relevant in the context of the appellant's sentence that in the execution of his design he had riddled his victim's body with as many as twenty-eight bullets causing thirty-two grievous injuries which clearly showed that the appellant had acted cruelly and brutally in the matter and such cruelty and brutality demonstrated by the appellant detracts from any sympathy to be shown to him in the matter of his sentence. Having said all that it is difficult to ignore that in his statement recorded under section 342, Cr.P.C. the appellant had also maintained that Mr. Salman Taseer used to indulge in different kinds of immoral activities. This part of the appellant's statement

had opened a window to the appellant's mind and had clearly shown that it was not just the alleged commission of blasphemy by Mr. Salman Taseer which prompted the appellant to kill him but there was some element of personal hatred for Mr. Salman Taseer which too had played some part in propelling the appellant into action against him. Such mixture of personal hatred with the asserted religious motivation had surely diluted, if not polluted, the acclaimed purity of the appellant's purpose. For all the reasons detailed above no occasion has been found by us for reducing the appellant's sentence from death to imprisonment for life for the offences of terrorism and murder committed by him. The usual wages for the crimes of the nature committed by the appellant is death and in the circumstances of this case the appellant deserves no less.

28. As a sequel to the discussion made above Criminal Appeal No. 210 of 2015 filed before this Court by Malik Muhammad Mumtaz Qadri convict is dismissed, Criminal Appeal No. 211 of 2015 preferred before this Court by the State is allowed and consequently the convictions and sentences of Malik Muhammad Mumtaz Qadri recorded by the learned Judge, Special Court-II, Anti-Terrorism, Rawalpindi Division & Islamabad Capital Territory on 01.10.2011 are restored.

(Asif Saeed Khan Khosa)
Judge

(Mushir Alam)
Judge

(Dost Muhammad Khan)
Judge

Islamabad
October 07, 2015

Approved for reporting.