

Judgment Sheet
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Crl. Appeal No.10141-J/2022
(Asad Abbas alias Achoo vs. The State)

Murder Reference No.16/2022
(The State vs. Asad Abbas alias Achoo)

Crl. Revision No.13628/2022
(Mst. Ghulam Zohra vs. Asad Abbas alias Achoo, etc.)

JUDGMENT

Date of hearing:	03.06.2025
Appellant by:	Mr. Muhammad Irfan Malik, Advocate.
State by:	Ms. Nuzhat Bashir, Deputy Prosecutor General.
Complainant by:	Barrister Abdul Qadoos Sohal, Advocate.

ALI ZIA BAJWA, J.:- Through this single judgment, we intend to decide **Crl. Appeal No.10141-J/2022** titled: ‘Asad Abbas alias Achoo vs. The State’, **Murder Reference No.16/2022** titled: ‘The State vs. Asad Abbas alias Achoo’ and **Crl. Revision No. 13628/2022** titled: ‘Mst. Ghulam Zohra vs Asad Abbas alias Achoo etc.’ as these are arising out of the same judgment dated 24.01.2022 (hereinafter ‘*the impugned judgment*’), passed by the Additional Sessions Judge, Bhalwal, District Sargodha (hereinafter ‘*the trial court*’).

2. Asad Abbas alias Achoo son of Syed Sajjad Hussain Shah, caste Syed, resident of Turti Pur, Tehsil Bhalwal, District Sargodha (hereinafter ‘*the appellant*’) along with co-accused was implicated in a private complaint filed by Tasawar Hussain Shah complainant under

Sections 302, 324, 109, 148 & 149 PPC, arising out of case FIR No.301/2007, dated 14.10.2007, offenses under Sections 302, 324, 109, 148 & 149 PPC, registered with Police Station Bhera, District Sargodha. He was tried by the trial court for the afore-mentioned offenses. The trial court seized with the matter, vide the impugned judgment, convicted and sentenced the appellant as under:-

- Under Section 302(b) PPC, sentenced to death on two counts with direction to pay Rs.10,00,000/- for each deceased as compensation to the legal heirs of both the deceased in terms of Section 544-A Cr.P.C., to be recovered as arrears of land revenue.

3. The prosecution theory of the case, as set out in the FIR Ex.CW3/A, has been reproduced as below: -

"بیان کیا کہ میں طرطی پور کارہائشی ہوں اور زمیندارہ کرتا ہوں میری شادی حسنین حیدر ولد مراد شاہ سکنتہ نبی شاہ زیریں کی ہمشیرہ سے عرصہ قریب 23 سال قبل ہوئی تھی آج میں معہ صابر حسنین شاہ ولد سجاد حسنین شاہ قوم سید سکنتہ طرطی پور بھانجام عید کی وجہ سے میرے گھر آئے ہوئے تھے قریب 1 بجے دن حسنین حیدر شاہ ولد مراد شاہ 2- قیصر عباس ولد حسنین حیدر شاہ 3- ستار حسنین ولد مراد شاہ 4- مسماۃ غلام زہراء زوجہ حسنین حیدر شاہ اقوام سید سکنتہ نبی شاہ زیریں عید ملنے کے لیے میرے گھر آئے ڈیڑھ گھنٹہ ہم گھر میں بیٹھے رہے قریب 2:30 بجے دن حسنین حیدر شاہ معہ دیگران واپس گھر جانے لگے حسنین حیدر اور قیصر عباس ایک موٹر سائیکل پر جس کو قیصر عباس چلا رہا تھا جبکہ ستار حسنین شاہ اور غلام زہراء دوسرے موٹر سائیکل پر ان کے پیچھے تھے میں معہ صابر حسنین بھانجام ان کو الوداع کرنے کے لیے باہر سولنگ تک آئے جب بیٹھک ام کے صحن میں پہنچے تو اسی اثناء میں اچانک ملزمان مسمیان-1 سکندر حسنین ولد سید باغ علی قوم سید سکنتہ نبی شاہ زیریں مسلح پستل 30 بور 2- تنویر حسنین 3- اسد عباس عرف اچھو پسران سجاد حسنین شاہ اقوام سید سکنتہ طرطی پور مسلح ہائے پستل 30 بور اور ایک کس نامعلوم مسلح رائفل 222 بور سامنے آگئے آتے ہی سکندر ملزم نے لاکار کہ آج اپنے بھائے راجے شاہ کے قتل کا بدلہ لینے آگئے ہیں اور فائر پستل 30 بور کیا جو قیصر عباس کو بائیں چھاتی پر باہر کی طرف لگا دوسرا فائر سکندر نے کیا جو قیصر عباس کو دائیں بازو پر لگا اسد عباس عرف اچھو نے فائر پستل 30 بور کیا جو حسنین حیدر کو بائیں وکھی پر لگا دوسرا فائر پستل 30 بور اسد عباس نے کیا جو بھی حسنین حیدر کو ریڑھ کی ہڈی اور بائیں وکھی کے درمیان پشت پر لگا تیسرا فائر پستل 30 بور اسد عباس نے کیا جو بھی حسنین حیدر کو ریڑھ کی ہڈی کی بائیں طرف پشت پر لگا ہر دو موٹر سائیکل سے گر پڑے ہر دو گرے ہوؤں پر جملہ ملزمان نے اندھا دھند فائرنگ کی جو قیصر عباس کے پیٹ پر جبکہ حسنین حیدر کے خصیوں اور دائیں پیٹ پر لگے اسی دوران تنویر حسنین نے دو فائر پستل مسماۃ غلام زہراء پر کیے جو اسے دائیں گٹھنے پر باہر کی طرف لگے ملزمان فائرنگ کرتے اور لاکار تے ہوئے کہ آج ہم نے اپنے بھائی راجے شاہ کے قتل کا بدلہ لے لیا ہے جملہ ملزمان موٹر سائیکلوں پر سوار ہو کر جانب نبی شاہ زیریں بھاگ گئے وقوعہ ہذا میں نے ہمراہ صابر حسنین بھانجام یکٹم خود

دیکھا ہم نے دوڑ کر مضروبان کو سنبھالا تو قیصر عباس اور حسنین حیدر اپنے زخموں کی تاب نہ لاتے ہوئے موقع پر ہی جاں بحق ہو چکے تھے جبکہ مسماۃ غلام زہراء مضروب ہوئی وجہ عناد یہ ہے کہ حسنین حیدر شاہ نے 1989ء میں ملزم سکندر حسنین کے بھائی راہے شاہ کو قتل کیا تھا اور اب سزا پوری ہونے کے بعد رہا ہو کر باہر آیا ہوا تھا جملہ ملزمان نے وقوعہ ہذا 1- ظل حسنین ولد غلام عباس شاہ 2- خادم حسنین ولد مہتاب شاہ 3- شاہ سلطان ولد خادم حسنین شاہ 4- بہادر شاہ ولد حیدر شاہ 5- ابرار حسنین ولد امیر حسنین شاہ اقوام سید سکنائے نبی شاہ زیریں کی ایماء اور مشورہ سے کیا ہے اور جملہ ملزمان کو قربان حسنین ولد قادر شاہ۔ مکے شاہ ولد بہادر شاہ اقوام سید سکنائے نبی شاہ زیریں نے مورخہ 07-10-13 بوقت 8:00 بجے رات بیٹھک ازاں ملزم اسد عباس عرف اچھو ولد سجاد حسنین شاہ سکنہ طرطی پور میں مشورہ کرتے ہوئے اپنی آنکھوں سے دیکھا اور مشورہ کرتے ہوئے سنا تھا جنہوں نے مجھے آج بعد از وقوعہ بتلایا ہے جملہ ملزمان نے ہم صلاح و مشورہ ہو کر حسنین حیدر اور قیصر عباس کو ناحق قتل اور مسماۃ غلام زہراء کو مضروب کیا ہے ہر دو لغش ازاں حسنین حیدر اور قیصر عباس موقع پر موجود ہیں جن کی حفاظت کے لیے نصر عباس ولد حاجی نواب شاہ قوم سید 2 اور ناصر عباس ولد قادر شاہ قوم سید سکنائے نبی شاہ زیریں کو چھوڑ کر برائے رپورٹ تھانہ آیا ہوں کاروائی کی جائے"

4. After registration of the crime report, the investigating officer conducted the investigation and recorded statements of the prosecution witnesses under Section 161 of the Code of Criminal Procedure, 1898 (hereinafter 'Code'). After completion of the investigation, a report under Section 173 of the Code was prepared and submitted before the trial court in due course. The complainant, being dissatisfied with the investigation conducted by the investigation agency, filed a private complaint. After recording cursory evidence, the process was issued against the accused by the trial court. During the trial proceedings, the complainant produced as many as nine (09) prosecution witnesses. The trial court also recorded the evidence of three (03) court witnesses. After the completion of the evidence, the statement of the appellant under Section 342 of the Code was recorded by the trial court, who professed his innocence and refuted all the allegations leveled against him in this case. Upon the completion of the trial, the trial court convicted and sentenced the appellant as mentioned and detailed above.

5. We have carefully heard the arguments advanced by the learned counsel representing both sides with due attention and

consideration. In addition, we have thoroughly examined the entire record available on the file to arrive at a just, and reasoned determination of the matter at hand.

6. The prosecution has relied upon ocular testimony, medical evidence, recovery of the alleged weapon of offense, the asserted motive, and the abscondence to establish its case against the appellant beyond a reasonable doubt. To evaluate the legal validity of the conviction and sentence imposed by the trial court, it is essential to thoroughly reassess the entire evidence on record to determine if it satisfies the required standard of proof in criminal law.

7. The occurrence in the present case is stated to have taken place on 14.10.2007 at 2:30 p.m., whereas the FIR was lodged at 3:20 p.m., the same afternoon, suggesting that the matter was reported with extraordinary promptitude. The ocular account in the present case was furnished through the testimony of Tasawar Hussain (PW-6)/complainant and Mst. Ghulam Zohra/injured (PW-2). According to the contents of the crime report, the appellant has been specifically attributed with firing three gunshots. The first struck the left flank of Hasnain Haider (deceased), the second hit his back, between the backbone and left flank, and the third impacted near the side of the backbone. Additionally, the appellant has been assigned a general role of firing alongside his co-accused, which resulted in a gunshot wound to the abdomen of Qaiser Abbas (deceased), and injuries to the right thigh and testicular region of Hasnain Haider (deceased).

8. Subsequently, after a delay of six months, the complainant instituted a private complaint in which the role attributed to the appellant was materially altered. In this complaint, both the locale and number of injuries were changed, assigning the appellant specific injuries to the left thigh, testicular region, and other parts of the body of Hasnain Haider (deceased). The pictorial diagram prepared by the Medical Officer,

exhibited on record as Exh.PG/1, indicates that Injury No. 3-B, located on the left flank at the back of the deceased, is an exit wound. Hence, it is clearly established that the medical evidence is in direct conflict with the ocular account. It is a well-settled principle of criminal law that where a material contradiction arises between the ocular account and the medical evidence, and such discrepancy cannot be reconciled, the benefit of the doubt must be afforded to the accused.

9. While referring to the testimony of Mst. Ghulam Zohra, the injured prosecution witness, learned counsel for the complainant argued that her presence at the scene of occurrence could not be doubted, considering that she sustained injuries during the incident. A perusal of her Medico-Legal Certificate (MLC) reveals that she was medically examined on 14.10.2007 at 6:00 p.m., approximately three hours and thirty minutes after the occurrence. However, in the column pertaining to the probable duration of injuries, the examining doctor recorded 'within one day.' The Supreme Court of Pakistan, in the case of a co-accused (Sikandar Hussain), noted that while the initial entry stated 'one day,' additional wording appeared to have been subsequently inserted. The Court further held that the medical evidence relied upon by the prosecution with respect to this witness failed to inspire confidence.

10. The most pivotal aspect of the case is that, in the private complaint, Sikandar Hussain, co-accused along with the appellant, was attributed not only with raising a *lalkara* but also with repeatedly firing at Qaiser Abbas (deceased). Although he was convicted by the trial court, and this Court upheld his conviction regarding the injuries to the deceased, albeit with a modification of the death sentence to life imprisonment, his appeal before the Supreme Court of Pakistan was allowed. Consequently, he was acquitted of the charge vide order dated 22.08.2019. It is a well-settled law by now that if a set of witnesses is disbelieved to the extent of some accused, it cannot be believed to the extent of the rest of the accused

facing the same trial without their being any independent and strong corroboration.¹ Moreover, in the reported judgment titled PERVAIZ KHAN and another vs. The STATE – 2022 SCMR 393 the Supreme Court ruled as under:-

“So there is nothing on record to distinguish the role of the present appellants from the role of those accused who have been acquitted by the trial Court and their acquittal has been maintained by the High Court and further their acquittal was never challenged before this Court. Due to the above circumstances, the conviction and sentence of appellants is not sustainable on the same set of evidence, which was found doubtful to the extent of three acquitted co-accused.”

11. We shall now proceed to examine the evidence on record to ascertain whether any strong and independent corroborative material exists that would warrant distinguishing the case of the appellant from that of the co-accused who has been acquitted by the Supreme Court. The first piece of corroborative evidence is the recovery of a .30-bore pistol (C-1) at the instance of the appellant. However, in the absence of any crime empties recovered from the place of occurrence, this recovery becomes wholly inconsequential and fails to advance the prosecution case. The motive attributed to the occurrence was a prior enmity stemming from previous murders. However, the Supreme Court of Pakistan, while acquitting the co-accused, held that the motive advanced by the prosecution was equivocal in nature and could plausibly cut both ways.

12. Next is the prolonged abscondence of the appellant, who was statedly declared a proclaimed offender. The learned counsel for the complainant, as well as the learned Deputy Prosecutor General, vehemently argued that the appellant remained an absconder for a period of eleven years, which, in their view, constitutes a corroborative circumstance suggestive of his nexus with the offense alleged against him. It is pertinent to outline the legal process for declaring an accused person a proclaimed

¹ Altaf Hussain vs. The State – 2019 SCMR 274

offender. This procedure, governed by the provisions² of the Code is not a mere formality but a substantive judicial act that significantly affects the fundamental rights of the individual concerned. In the context of this judgment, the legal procedure regarding the declaration of an accused as a proclaimed offender has been duly examined. It is also pertinent to note that any individual, not necessarily an accused, may be declared a proclaimed offender if a process has been issued against him by the court and he fails to appear in compliance with the same process.

13. The act of declaring an accused person a proclaimed offender is a coercive measure, employed to compel his arrest and ensure that he is brought within the fold of the law. It signifies the resolve of the State to address the deliberate abscondence of an accused and to uphold the administration of justice by affecting his arrest, thereby ensuring his submission to the due process of law. Sections 75, 77, and 87 of the Code are most pertinent to the matter at hand and are reproduced hereinafter for ready reference.

75. Form of warrant of arrest: (1) Every Warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer, or in the case of a Bench of Magistrates, by any member of such Bench; and shall bear the seal of the Court.

(2) Continuance of warrant of arrest. Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.

77. Warrants to whom directed: (1) A warrant of arrest shall ordinarily be directed to one or more police-officers, but any Court issuing such a warrant may, if its immediate execution is necessary and no police-officer is immediately available, direct it to any other person or persons; and such person or persons shall execute the same.

(2) Warrants to several persons. When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more, of them.

87. Proclamation for person absconding. (1) If any Court is satisfied after taking evidence that any person against whom a warrant has been issued by it

² Sections 75 to 87 of the Code.

has absconded or is concealing himself so that such warrant cannot be executed, such court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows:-

(a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village; and

(c) a copy thereof shall be affixed, to some conspicuous part of the Court-house.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day."

14. The aforementioned provisions of the Code reflect that the Code sets forth a clear, self-contained, and structured procedure for declaring an accused person a proclaimed offender. It is pertinent to note that the entire process of declaring an individual a proclaimed offender, commencing from the issuance of arrest warrant to the publication of a proclamation, remains under the exclusive control of the Court. The statutory framework unequivocally establishes that the investigating agency is not empowered to undertake this process on its own. This legislative construct reflects a conscious intent to safeguard fundamental rights, recognizing that the issuance of warrant of arrest and the declaration of abscondence carry serious legal consequences. Judicial control is, therefore, imperative to prevent arbitrary or unlawful infringement upon such rights. The procedure to declare an accused proclaimed offender may be explained as follows: -

Issuance of Warrant of arrest

15. Upon the registration of a criminal case, if the accused seeks to evade arrest, or, after the issuance of process by the Court, fails to appear before the Court, a warrant of arrest may be issued by the Court to

secure his arrest for ensuring his attendance before the Court. The issuance of a warrant of arrest under Section 75 of the Code is a serious judicial function. The Court must exercise this power with due circumspection, carefully weighing the necessity of securing the arrest of an accused. Where a warrant of arrest is sought by the investigating agency, the request must be supported by cogent material demonstrating reasonable cause for the issuance of such warrant. It must reflect that the accused is deliberately evading arrest and that the police have made bona fide and diligent efforts to secure his apprehension through less coercive means before invoking the authority of the Court to issue a warrant of arrest. This requirement ensures that the process is not invoked mechanically, but only upon a justified showing of necessity, in line with the principles of fairness and due process. The requisites of a valid warrant of arrest are as follows:-

- i. The warrant must be in writing (oral orders are not valid for arrest).
- ii. It must bear the name and designation of the person who is to execute it.
- iii. It must give the full name and description of the person to be arrested.
- iv. It must state the offense charged.
- v. It must be signed by the presiding officer of the Court or by any member of the Bench in case of a Bench of Magistrates.
- vi. It must bear the official court seal, indicating its authenticity.

The issuance of a warrant is a judicial function, whereas its execution is an executive function. A warrant of arrest is normally directed to one or more police officers, but if urgent execution is required and no police officer is available, the court may authorize any other person to execute it. If a warrant is directed to multiple officers or persons, it may be executed by any one or more of them. Under Section 79 of the Code, a warrant directed to a police officer may be executed by another officer if his name is endorsed on it by the designated officer. Under Section 75(2) of the Code, a warrant of arrest is always perpetual in nature, meaning it remains in

force indefinitely until it is either executed or cancelled by the Court that issued it. It does not lapse with time and continues to be legally enforceable unless withdrawn by judicial order. In the spirit of Section 555 of the Code, Schedule V provides the prescribed form of a warrant of arrest, which has been reproduced hereinafter: -

II.—Warrant of Arrest

(See section 75)

To (name and designation of the person or persons who is or are to execute the warrant.)

WHEREAS _____ of _____ stands charged with the offence of (*state the offence*), you are hereby directed to arrest the said _____, and to produce him before me. _____ Herein fail not.

Dated this day of , 18

(Seal)

(Signature)

Issuance of proclamation

16. The issuance of a warrant of arrest is a *sine qua non* for declaring an accused a proclaimed offender. Under Section 87 (1) of the Code, if the Court, upon taking evidence, is satisfied that a person against whom a warrant of arrest has been issued, has absconded or is hiding to avoid execution of the warrant, it may issue a written proclamation requiring the person to appear at a specified place and time, which must be at least thirty days from the date of publication. A proclamation is a judicially sanctioned public notice issued by a Court when an accused, against whom a warrant of arrest has been issued, is found to be absconding or concealing himself to evade arrest. Through this proclamation, the person is formally required to appear before the Court at a specified place and time. The phrase 'upon taking evidence, is satisfied' means that the Court must base its decision on proper and reliable evidence, not just on claims or assumptions. Under Section 87 of the Code, this means that before the Court issues a proclamation against an accused, it must examine the relevant material, such as statements of the witnesses, police reports, or affidavits, to ensure that genuine and reasonable efforts were made to execute the warrant of arrest, but the accused is absconding

and deliberately concealing himself to evade arrest. Only after considering this evidence can the Court lawfully issue the proclamation. This requirement ensures that the Court acts fairly and follows proper legal procedure, protecting the rights of the accused. The procedural requirements for issuing an order of proclamation are as follows:-

- i. The pendency of a non-bailable warrant of arrest is a *sine qua non* for initiating proclamation proceedings;
- ii. All reasonable efforts must have been made to execute the said warrant;
- iii. The unexecuted warrant must be returned to the Court along with a report detailing the steps taken for its execution;
- iv. The Court must be satisfied, based on the material before it, that the accused is either concealing himself or is absconding in such a manner that the warrant could not be executed, thereby justifying the issuance of a proclamation under Section 87 of the Code.

In the spirit of Section 555 of the Code, Schedule V provides the prescribed form of a proclamation, which has been reproduced hereinafter:

IV.—Proclamation Requiring the appearance of a person accused
(See section 87)

WHEREAS complaint has been made before me that (*name, description and address*) has committed (*or is suspected to have committed*) the offence of, punishable under section of the Pakistan Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found, and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or is concealing himself to avoid the service of the said warrant*);

Proclamation is hereby made that the said of is required to appear at (*place*) before this Court (*or before me*) to answer the said complaint ⁵[on the day of].

Dated this day of , 18

(Seal) (Signature)

Publication of proclamation

17. Section 87(2) of the Code clearly and expressly sets out the procedure for the publication of a proclamation. Notably, the three prescribed modes of publication are conjunctive, not disjunctive, meaning

all must be complied with collectively. The use of the imperative term ‘*shall*’ highlights the mandatory nature of this requirement, thereby leaving no room for selective or partial compliance by the executing authority entrusted with the duty to publish the proclamation.

- i. The proclamation shall be publicly read in some conspicuous place within the town or village where the person ordinarily resides.
- ii. The proclamation shall be affixed to some conspicuous part of the house or homestead in which the person ordinarily resides, or to a prominent place within the town or village; and
- iii. A copy of the proclamation must be affixed to some prominent part of the courthouse.

We have observed that the modes of publication of a proclamation prescribed under the law were introduced over a century ago, at a time when technological advancements were limited. In the present era, where modes of communication have significantly evolved, it is imperative that these traditional methods be harmonized with modern means of dissemination, such as electronic media, print media, and social media platforms. Incorporating contemporary tools of communication would not only enhance the effectiveness of such proclamations but also ensure broader public awareness and compliance in a more efficient and timely manner. The Government ought to consider introducing appropriate amendments to the relevant law in order to enhance its effectiveness and ensure its compatibility with contemporary modes of communication and enforcement.

Written statement of Court

18. Section 87(3) of the Code stipulates that a written statement by the Court issuing the proclamation, certifying that the proclamation was duly published on a specified date in the manner prescribed under Section 87(2) of the Code, shall serve as conclusive evidence that the requirements of the above provision of law have been fulfilled and that the proclamation

was in fact published on the stated date. While Section 87(3) of the Code declares the written statement of the court to be *conclusive evidence* of publication of a proclamation, this presupposes that the Court has scrutinized and satisfied itself that:

- All three mandatory modes of publication under Section 87(2) of the Code have been strictly complied with,
- The proclamation was published on the specified date.

The term '*conclusive evidence*' denotes such evidence which, by its probative force and legal character, precludes contradiction and is regarded by the Court as determinative of the fact in issue. It was ruled in Smt. Somavanti and Others vs. The State of Punjab and Others – AIR 1963 SC 151 as infra: -

'Once the law says that certain evidence is conclusive it shuts out any other evidence which would detract from the conclusiveness of that evidence., In substance, therefore, there is no difference between conclusive evidence and conclusive proof.'

Therefore, before recording the written certification under Section 87(3) of the Code, the Court must ensure that the entire process is legally followed. This not only safeguards the rights of the accused but also upholds the integrity and legality of further coercive steps, such as attachment of property under Section 88 of the Code.

19. It would also be appropriate at this stage to discuss the distinction between an '*absconder*' and a '*proclaimed offender*'. According to **Black's Law Dictionary 12th Edition by Baryan A. Garner Page No. 8.** the term abscond means 'The act of secretly leaving one's usual place of abode or business, esp. to avoid arrest, prosecution, or service of process.' Whereas, according to **Black's Law Dictionary, 11th Edition by Bryan A. Garner, at Page No. 1459**, the term '*proclaim*' is defined as 'to declare formally or officially.' The act of declaring an accused a proclaimed

offender constitutes a judicial declaration affirming that he is an absconder. It is a formal pronouncement by the Court, based on due process, that the accused has willfully evaded arrest or failed to appear before the Court despite the issuance of process. This declaration carries significant legal consequences and serves to trigger further coercive measures aimed at securing the arrest of the accused declared proclaimed offender. Every proclaimed offender is, in essence, an absconder but every absconder is not a proclaimed offender.

Divergence between an absconder and a proclaimed offender

Legal Aspect	Absconded Person	Proclaimed Offender
Definition	An accused person who willfully evades arrest or conceals himself to avoid execution of a warrant.	An accused person who, after being declared absconding and upon issuance of a public proclamation by a Court, fails to appear before the court within the stipulated time.
Legal Status	Merely a factual condition; not formally declared by a court.	A formal legal status of an absconder, declared by the Court under Section 87 of the Code.
Authority Involved	Identified and reported by the police/investigating agency.	Declared solely by the court after satisfying legal prerequisites.
Procedure Involved	Police report to the Court that the accused is not traceable or is absconding, therefore, a warrant of arrest should be issued.	The Court first issues a warrant of arrest and, upon being satisfied with non-execution due to the hiding of the accused or abscondence, publishes a proclamation requiring the accused to appear before the Court. If the accused fails to comply, the Court may formally declare him a proclaimed offender.
Applicable Provision	Issuance of a warrant and its execution as provided under Sections 75 to 86-A of the Code.	Explicitly governed by the Section 87 of the Code. Further proceedings can be carried out under Section 88 of the Code.
Evidentiary Value	Serves as a factual basis for initiating proclamation proceedings.	Once an accused person is declared a proclaimed offender following due process, such declaration may be used against him to prove guilt.

Under the Punjab Police Rules, 1934, separate registers are maintained for absconders and proclaimed offenders. The District Register of Absconders³ records individuals who evade arrest, while the Register of Proclaimed Offenders⁴ contains the names of those formally declared offenders by a Court. This distinction ensures efficient monitoring and supports lawful enforcement. Rules 23.21, 23.24, and 23.25 of the Punjab Police Rules, 1934, lay down the procedural framework for proceeding against absconders and proclaimed offenders.

20. Returning to the legal aspects concerning the declaration of the appellant as a proclaimed offender in the present case, it is observed that the warrant of arrest (Ex-CW3/F) was not addressed to any specific police officer for execution, which reflects a violation of a mandatory requirement of law, as earlier discussed. The execution report of the warrant of arrest (Ex-CW/1-2) also fails to disclose the details of the steps undertaken by the police officer to effect the arrest of the appellant. No written statement of the Court is available on the record to confirm that the proclamation was duly published on a specified date, as mandated under Section 87(3) of the Code. In view of the foregoing, it can be safely concluded that the due process of law, as prescribed under the relevant legal provisions, was not duly followed in declaring the appellant a proclaimed offender.

21. Even otherwise, and irrespective of the foregoing discussion, abscondence, by itself, does not amount to proof of the guilt of the accused. Although it may arouse suspicion, such suspicion remains speculative and cannot substitute concrete evidence. Reliance may be placed on a consistent body of judgments delivered by the Supreme Court of Pakistan.⁵ In criminal cases, a conviction must be based on substantive evidence and not merely on suspicious circumstances. The standard of

³ 23.20 of the Punjab Police Rules, 1934

⁴ 23.22 of the Punjab Police Rules, 1934

⁵ Iftikhar Hussain Alias Kharoo vs. The State – 2024 SCMR 1449, Tajamal Hussain Shah vs. The State – 2022 SCMR 1567 and Khalid Mahmood alias Khaloo vs. The State – 2022 SCMR 1148,

proof in criminal law requires the prosecution to establish the guilt of the accused beyond reasonable doubt through clear, credible and legally admissible evidence. Suspicious circumstances, such as abscondence may raise doubt but does not amount to proof of guilt of an accused.

22. The foregoing discussion undoubtedly reflects that the prosecution has miserably failed to prove its case against the appellant beyond the shadow of reasonable doubt, thereby giving rise to serious doubts which, under the settled principles of criminal jurisprudence, must be resolved in the favour of the accused. The moment a reasonable doubt arises in the prosecution's case, its benefit must go to the accused, not as a matter of grace, but as a legal right rooted in the fundamental principle that no one can be convicted unless proven guilty beyond a reasonable doubt. It is better for ten guilty persons to be acquitted than for one innocent person to be wrongfully convicted.⁶

23. In consequence of the aforementioned discussion, **Crl. Appeal No.10141/2022** filed by the appellant is **allowed**. Resultantly, conviction and sentence passed by the virtue of impugned judgment are **set aside** and the appellant is **acquitted** of the charge. He is directed to be released forthwith if not required in any other case.

24. **Murder Reference No.16/2022** forwarded by the trial court in terms of Section 374 of the Code for confirmation of the death sentence awarded to the convict fails, which is answered in the **negative**. The death sentence is **not confirmed**.

25. As far as **Crl. Revision No.13628/2022** filed by the complainant seeking enhancement in compensation amount is concerned, for the afore-stated reasons, as we have already disbelieved the prosecution

⁶ Tariq Pervez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Muhammad Akram v. The State (2009 SCMR 230), Muhammad Zaman v. The State (2014 SCMR 749), Khial Muhammad vs. The STATE – 2024 SCMR 1490 & Najaf Ali Shah vs. The State – 2021 SCMR 736.

story, the same is without any legal substance, which is accordingly dismissed.

(FAROOQ HAIDER)
JUDGE

(ALI ZIA BAJWA)
JUDGE

Approved for Reporting

JUDGE

JUDGE

The judgment was pronounced & written on 03.06.2025 and after completion it was signed on 19.06.2025.

Riaz