

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Shariat Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.
Raja Saeed Akram Khan, J.

Criminal Appeal No.16 of 2018
(Filed on 07.08.2018)

1. Abdul Qayyum son of Ghulam Muhammad, caste Awan, r/o village Bring Ban, Tehsil and District Haveli (Kahuta).
2. Shabbir son of Mir Muhammad, caste Gujjar, r/o village Bring Ban, Tehsil and District Haveli (Kahuta).
3. Waseem son of Dulla, caste Gujjar, r/o village Bring Ban, Tehsil and District Haveli (Kahuta).

.... CONVICT-APPELLANTS

VERSUS

1. The State through Advocate General of Azad Jammu and Kashmir, Muzaffarabad.
2. Mehboob Iqbal son of Muhammad Nazir Khan (complainant/brother of both

- deceased), caste Rathore, r/o village Halan Shimali, Tehsil and District Haveli (Kahuta).
3. Muneeza Begum widow of Muhammad Nazir Khan (mother of both deceased), caste Rathore, r/o village Halan Shimali, Tehsil and District Haveli (Kahuta).
 4. Metloob Iqbal son of Muhammad Nazir Khan (brother of both deceased), caste Rathore, r/o village Halan Shimali, Tehsil and District Haveli (Kahuta).
 5. Mst. Mehnaz d/o Muhammad Nazir Khan (sister of both deceased), caste Rathore, r/o village Halan Shimali, Tehsil and District Haveli (Kahuta).
 6. Mst. Nazir d/o Muhammad Nazir Khan (sister of both deceased), caste Rathore, r/o village Halan Shimali, Tehsil and District Haveli (Kahuta).
 7. Pervaiz Iqbal son of Muhammad Nazir Khan (half brother of both deceased), caste Rathore, r/o village Halan Shimali, Tehsil and District Haveli (Kahuta).
 8. Mst. Naseem Iqbal d/o Muhammad Nazir Khan, w/o Karamat (half sister of both deceased), caste Rathore, r/o village

Halan Shimali, Tehsil and District Haveli (Kahuta).

9. Mst. Nageena d/o Muhammad Nazir Khan, widow of Altaf Hussain (half sister of both deceased), caste Rathore, r/o village Halan Shimali, Tehsil and District Haveli (Kahuta).
10. Mst. Tanweer Akhtar w/o deceased Mehboob Iqbal, r/o village Halan Shimali, Tehsil and District Haveli (Kahuta).
11. Mst. Mehreen Mehboob d/o deceased Mehboob Iqbal, r/o village Halan Shimali, Tehsil and District Haveli (Kahuta).
12. Mst. Saba Mehboob d/o deceased Mehboob Iqbal, r/o village Halan Shimali, Tehsil and District Haveli (Kahuta).
13. Afzaal Mehboob son of deceased Mehboob Iqbal, r/o village Halan Shimali, Tehsil and District Haveli (Kahuta).

....RESPONDENTS

(On appeal from the judgement of the Shariat Appellate Bench of the High Court dated 26.07.2018 in criminal appeals No.236 and 242 of 2017)

FOR THE APPELLANTS: Barrister Humayun
Nawaz Khan and
Ch.Ghulam Nabi,
Advocates.

FOR THE RESPONDENTS: Sardar Karam Dad
Khan, Advocate-
General and Raja
Muhammad Arif
Rathore, Advocate.

Date of hearing: 07.03.2019

JUDGMENT:

Raja Saeed Akram Khan, J.— Through the supra appeal the judgment of the Shariat Appellate Bench of the High Court (High Court) dated 26.07.2018, has been called in question, whereby, the appeals filed by both; the convict-appellants and the complainant, have been dismissed.

2. The facts necessary for disposal of the instant appeal are that a case in the offences under sections 302, 342, 147, 148, 149 and 34, APC was registered at Police

Station Kahuta on 28.08.2013 on the written application of one, Mehmood Iqbal son of Muhammad Nazir Khan. It was reported that on 17.02.2004, at about 07:00 am, the brothers of the complainant went to *Dhok Kalan*, to search for some herbs. They did not return home till 31.08.2013, whereupon, he himself started searching for the missing brothers but failed, and consequently the missing report was lodged. It was further alleged in the written report that on 28.08.2013, when the complainant's brothers went towards *Dhok Kalan* he, himself had seen Subedar Muhammad Bashir and Muhammad Sharif sons of Ghulam Muhammad, caste *Gujjar*, r/o *Halan Shimali* following them. It was averred that on lodging missing report when the police reached at *Dhok Kalan*, Ahmed Din Constable, had handed over a bag and other belongings of the brothers of the

complainant to the police. The complainant while nominating as many as 20 persons alleged that these persons murdered one of his brothers, Mehboob Iqbal and threw his dead-body at Karan hill while the other maybe in their illegal custody or they might have killed him. The motive behind the occurrence is stated to be a political rivalry. The police after conducting necessary investigation presented the *challan* against 14 accused (including the appellants, herein). The trial Court after recording the evidence, convicted and awarded sentence of life imprisonment to the convict-appellants, Abdul Qayyum and Muhammad Shabir in the offence under section 302 (b), APC, whereas, the sentence of 14 years' imprisonment was awarded to the convict-appellant, Muhammad Waseem in the offence under section 302 (c), APC and also ordered the convict-appellants to pay

Rs.25,00,000/- to the legal heirs of the deceased as compensation under the provisions of section 544-A, Cr.P.C. The trial Court acquitted the other accused of the charge while extending the benefit of doubt.

3. Feeling dissatisfied from the judgment of the trial Court, both the parties filed separate appeals before the High Court. The learned High Court vide impugned judgment dated 26.07.2018, dismissed both the appeals. Now only the convict-appellants have challenged the validity of the judgments of the Courts below by filing the instant appeal.

4. Barrister Humayun Nawaz Khan, Advocate, the learned counsel for the appellants argued that both the Courts below failed to appreciate the material made available on record in a legal manner. The trial

Court recorded the conviction in a case of no evidence and the learned High Court wrongly upheld the same. He added that it is a case of circumstantial evidence and the Courts below failed to adhere to the cardinal principle of law that in the case of circumstantial evidence, for recording the conviction every link of the chain should be interconnected, whereas, in the case in hand, the links in the chain are missing. He contended that according to the prosecution story, the occurrence took place on 28.08.2013, whereas, the report regarding the missing persons was made on 01.09.2013 and FIR was registered on 04.09.2013, after a considerable delay and no explanation in this regard has come on the record. He contended that originally the complainant nominated 20 accused in the FIR and later on, during the course of investigation some other persons were also apprehended. The police after usual

investigation discharged a number of accused under section 169, Cr.P.C. and presented the *challan* against 14 accused, out of whom, only 3 have been convicted which makes the story highly doubtful. He added that the seats of injuries receiving by the deceased are quite different from the story narrated by the prosecution. The learned counsel drew the attention of this Court towards the post-mortem report and submitted that according to the prosecution story the convict-appellant, Abdul Qayyum, caused the injuries to the deceased, Naeem Iqbal, with the blows an axe, whereas, during the post-mortem, no injury of sharp edged weapon was found at the body of the deceased. He added that the recovery was made after a considerable delay and the report of Forensic Science Laboratory also does not support the prosecution version. He contended that 33 witnesses were cited in

the calendar of witnesses, out of which, the prosecution produced and examined 27 witnesses, therefore, on the non-production of the other witnesses an inference can be drawn that had they been produced they might have recorded the statements against the prosecution. He forcefully contended that all the incriminating pieces of evidence were not put to the convicts while recording their statements under section 342, Cr.P.C., therefore, under law such evidence cannot be read against the convict-appellants, but this important aspect escaped the notice of the Courts below. He maintained that the prosecution established a specific motive but failed to substantiate the same and it is settled principle of law that in the case of circumstantial evidence once motive is established then the same must be proved. He further added that in the case in hand, the

prosecution changed the motive from time to time. He argued that a concocted story has been invented just to rope the convicts in the case and all the witnesses are interested and close relatives, therefore, testimony of their statements cannot be believed without strong corroboration. He submitted that the persons who allegedly saw the accused going towards the place of occurrence have not been produced. The learned counsel while referring to the statements of some witnesses submitted that these witnesses stated in their statements that some women met them who were aware of the whereabouts of the deceased, but none of them was produced before the Court. He added that the medical report is not in line with the ocular account. In the post-mortem report, the injuries attributed to the deceased have been shown to be caused by blunt weapon, thus, the possibility

cannot be ruled out that these injuries might have been caused due to fall from the hill. All the prosecution witnesses stated a hearsay story which cannot be believed. The learned counsel submitted that one of the witnesses of the recovery of dead body of the deceased, Talib Hussain, stated in his statement that he never went to the place of occurrence before or after the occurrence, thus, the person who never went to the place of occurrence can how be a witness of recovery of dead-body. The learned counsel referred to the statement of one of the investigating officers and submitted that he categorically stated in his statement that no credible evidence was found against the convicts till 20.09.2013, whereas, according to the prosecution version, the dead-body of deceased, Naeem Iqbal was recovered on 17.09.2013, on the pointation of the convicts. He further added that the dead-

body of the deceased, Mehboob Iqbal, was recovered on 04.09.2013, prior to the registration of FIR and the dead-body of the deceased, Naeem Iqbal was allegedly recovered from the same place (only a distance of 9 feet away) on 17.09.2013, whereas, the investigating officer stated in his statement that he searched for 50 to 100 feet area around the dead-body of Mehboob Iqbal but found nothing. In such scenario, all story narrated by the prosecution clearly appears to be fake. In respect of the statements recorded under section 164, Cr.P.C., the learned counsel submitted that both the persons were originally implicated as accused in the case but later on, their statements under section 164, Cr.P.C., were recorded when they were in police custody, moreover, while recording Court's statements they denied the stance taken in the statements recorded under

section 164, Cr.P.C. Thus, suchlike statements cannot be read against the convict-appellants without strong corroboration. He lastly submitted that this case is full of dents and doubts and it is settled principle of law that every possible benefit of slightest doubt must be extended to the accused. The learned counsel referred to and relied upon the case law reported as *Noor Ahmad and others v. The State* [1992 SCR 1], *Rehmat Ali v. Samundar Khan and another* [2009 SCR 252], *Muhammad Latif Butt v. Shehtab and 4 others* [2009 SCR 432], *Hashim Qasim and another v. The State* [2017 SCMR 986] and *Nadeem alias Kala v. The State and others* [2018 SCMR 153].

5. Ch. Ghulam Nabi, Advocate, while appearing on behalf of appellant No.3, only agitated the point that all the incriminating material was not put to the convict while

recording his statement under section 342, Cr.P.C., therefore, on the strength of such material conviction cannot be recorded. In this regard, he referred to and relied upon the case law reported as *Rasool Muhammad v. Asal Muhammad and 3 others* [1995 SCMR 1373], *Afzal Khan and 4 others v. The State* [1995 P.Cr.L.J. 1416] and *Rashid Hussain v. The State and another* [2018 SCR 260].

6. On the other hand, Sardar Karam Dad Khan, Advocate-General while appearing on behalf of the State strongly controverted the arguments advanced by the learned counsel for the convict-appellants. He contended that the trial Court after evaluating the evidence brought on record passed a well reasoned judgment and the learned High Court while assigning the strong reasons upheld the same, hence, interference by this Court is not warranted under law. He argued that 4 star-

witnesses of the case fully supported the prosecution story and remained consistent on the material points and the defence failed to shake their confidence. He added that mere relationship per se cannot be made a ground to discard the testimony of the witnesses when no enmity of the witnesses against the convicts to falsely implicate them in the case comes on the record, that is why, in the initial missing report no one was nominated and later on, after getting some clue FIR was lodged. He added that although motive is double edged weapon, however, if the case is proved through other strong evidence, it is not necessary for the prosecution to prove the motive. The learned Advocate-General referred to the statements of different witnesses in support of his contention. He contended that the recovery of dead-body of the deceased, Naeem Iqbal, on the pointation of the convicts

is a strong piece of evidence and the recovery of ID card of the deceased from the custody of one of convicts further strengthens the case. In respect of the authenticity of the statements recorded under section 164, Cr.P.C., the learned Advocate-General submitted that the same are admissible in evidence and can safely be relied on under the provisions of article 40 of the Qanoon-e-Shahadat, 1984. He lastly submitted that the concurrent findings of the Courts below can only be interfered with if the same are perverse or have been recorded arbitrarily, but no such eventuality is available in the case in hand. He referred to and relied upon the case law reported as *Bashir Khan v. The State* [1995 SCR 900], *Abdul Khaliq v. Jehangir and another* [1999 SCR 330], *Abdul Rashid and 3 others v. Abdul Ghaffar and 5 others* [2001 SCR 240], *Nasrullah v. Shamim Akhtar and 4*

others [2009 SCR 470] and *Muhammad Babar v. State through Advocate-General* [2014 SCR 1585] and prayed for dismissal of appeal.

7. Raja Muhammad Arif Rathore, Advocate, while appearing on behalf of the complainant/respondents adopted the arguments advanced by the learned Advocate-General and further added that the prosecution fully proved the case beyond reasonable doubt. The Courts below have already taken the lenient view while awarding the lesser punishment to the convicts, therefore, this appeal is liable to be dismissed.

8. In rebuttal, Barrister Humayun Nawaz Khan, drew the attention of this Court towards the statements of different witnesses and submitted that the dead-body was not recovered exclusively on the pointation of the convicts rather the same was already known to

the investigating agency and when the police along with the convicts reached the spot, a number of persons were gathered there, thus, in such state of affairs, it cannot be said that the dead-body was recovered on the pointation of the convicts.

9. We have heard the arguments and gone through the record with utmost care. It is a case of circumstantial evidence and in suchlike cases all the evidence brought on record is equally important, hence, while keeping in mind two golden principles of law; firstly, in the case of circumstantial evidence the evidence must be inter-linked to make out a single unbroken chain and; secondly, the benefit of a slightest doubt, shaking the roots of the case must be extended to the accused; we appreciated the whole record of the case. According to the prosecution story, the deceased on 28.08.2013, went towards *Dhok*

Kalan, to search for some herbs, but did not return to home, whereupon, on 01.09.2013, the complainant lodged a report at police station Kahuta. It will be useful to reproduce here the said report which reads as under:-

"سائل موضع ہالن شمالی کا سکونتی ہے۔ سائل کے دو بھائی محبوب اقبال بعمر 35 سال و نعیم اقبال بعمر 20 سال اقوام راٹھور ساکن ہالن شمالی مورخہ 28.08.2013 کو بوقت سات بجے صبح گھر ڈھوک سندر مار سے ڈھوک کلاں جو دیہہ برنگ بن کے ساتھ واقع ہے میں جڑی بوٹیاں ادویات کے لئے لانے گئے تھے جو واپس گھر نہ آئے۔ اس پر سائل و دیگر رشتہ داران نے ڈھوک کلاں، کٹھناڑ و دیگر ملحقہ ڈھوک ہاء میں پتہ براری کی مگر برادران کا کوئی پتہ نہ چل سکا۔ سائل و دیگر رشتہ داران اپنے اپنے طور پر تلاش کر رہے ہیں۔ بذریعہ پولیس بھی سراغ رسائی کروائی جائے۔ پتہ برادران بذیل ہے۔ محبوب اقبال ولد محمد نذیر خان بعمر 35 سال قد 5 فٹ 7 انچ، رنگ گندمی، درمیانہ جسم، تعلیم مڈل، کپڑے زیب تن رنگ نسواری پہنے ہوئے تھے اور بوٹ سروس برنگ سفید ہاف پہن رکھتا تھا کے پاس دو عدد تیشے، چادر برنگ سبز، بیگ سیاہی رنگ، بیگ میں کھانے کے لئے روٹی اور ہمراہ چٹنی تھی۔ نمبر 2 نعیم اقبال ولد محمد نذیر خان بعمر 20 سال قد پانچ فٹ چھ انچ، تعلیم پرائمری، رنگ سفید، کپڑے زیب تن قدرے سفید، پاؤں میں نیلون کی سفید جوتی پہنی ہوئی تھی۔ کپڑوں پر ٹالی رنگ کی کوئی پہنی، چادر برنگ سیاہ، تہوتی مختلف رنگ و چھاتہ سیاہ رنگ ہمراہ تھے اور محبوب اقبال کے پاس زر نقدی مبلغ -/2000 روپے جڑی بوٹیوں کی خرید کے لئے ہمراہ رکھے ہوئے تھے۔ لہذا بذریعہ رپورٹ ہذا

استدعا ہے کہ برادران سائل کی گمشدگی کی رپورٹ درج کرتے ہوئے بذریعہ پولیس بھی تلاش کروائی جائے۔ سائل اور دیگر رشتہ داران ملحقہ دارڈھوک بھی اپنے اپنے اثر و رسوخ اور تلاش جاری رکھے ہوئے ہیں۔ تاہم علم نہ ہے کہ برادران کس جگہ یا کس کے پاس یا کس حال میں ہیں۔"

It appears from the record that later on, after the recovery of dead-body of one of the deceased, Mehboob Iqbal, from Karan Hill, FIR was registered on the written report of the complainant in which he took the stance that on 28.08.2013, when his brothers (deceased) were going toward *Dhok Kalan*, he himself found Subedar Muhammad Bashir and Muhammad Sharif, sons of Ghulam Muhammad heading towards *Dhok Kalan* while following the deceased. The relevant portion of the report reads as under:-

"سائل کے بھائی جب گھر سے ڈھوک کلاں گئے تھے تو صوبیدار محمد بشیر و محمد شریف پسران غلام محمد قوم گجر ساکن ہالن شمالی اُن کے پیچھے پیچھے ڈھوک کلاں جاتے ہوئے سائل نے خود دیکھے تھے۔"

The complainant while recording his statement also deposed that Subedar Bashir, Sharif and

others had earlier been extending threats to Mehboob Iqbal (deceased) to do away with his life. For better appreciation, the relevant portion of his statement is reproduced here which reads as under:-

"قبل ازیں بھی صوبیدار بشیر اور شریف وغیرہ محبوب کو دھمکیاں دیا کرتے تھے کہ یہ جذباتی آدمی ہے اس کا کام کر دیں گے۔"

In the initial report submitted regarding the disappearance of the deceased, the complainant has not taken the above mentioned stance despite the fact that the same could be helpful to trace out the deceased. There is a conspicuous contradiction in both the reports and it appears that the story narrated in the FIR, has been invented to enrope some persons in the case. It may be observed here that although, FIR is not a substantive piece of evidence and the main object of the same is to bring the law into motion, but in the case of circumstantial

evidence such clear contradiction which creates a doubt in the prosecution story cannot be ignored lightly.

10. In the FIR, the complainant nominated as many as 20 persons as accused and motive behind the occurrence was stated to be the political rivalry. The relevant portion of the FIR reads as under:-

"وجہ عناد سیاسی کشیدگی ہے۔"

During investigation, the investigating agency established another motive, i.e. that the convicts along with other killed the deceased to gain the costly herbs from them. One of the investigating officers, Munir Ahmed Inspector, while recording his statement stated an altogether different motive that "مظہر کی رائے کے مطابق وجہ

" . عناد رسہ گیری ہے۔"

that in the case of circumstantial evidence the

motive plays a vital role and once motive is established it is the duty of the prosecution under law to prove the same, whereas, in the case in hand, in view of the afore-stated facts the motive appears to be shrouded in mystery.

11. The strong evidence in the case in hand as per prosecution version, is the recovery of dead-body of the deceased, Naeem Iqbal, allegedly made on the pointation of the convicts. The complainant stated in his statement that when they reached the spot to recover the dead-body, 100/200 persons were gathered there. The relevant portion of the statement reads as under:-

"فوٹو آرٹیکل P/7 تا P/25 مظہر کی موجودگی میں لئے گئے تھے۔ اس وقت وہاں بہت سے لوگ تھے۔ سو دو سو آدمی موجود تھے۔ البتہ پولیس نے باقی لوگوں کو قریب نہ جانے دیا تھا۔"

The other recovery witness, Zafar Iqbal, who also allegedly went on the spot along with police for recovery of dead body, stated in his

statement that when they reached the spot 50 to 100 persons were already present there. The relevant portion of his statement reads as under:-

"نغش کے پاس پچاس / سو آدمی سے زیادہ تھے۔ کیا علم تھا نہ کون کون لوگ تھے۔ یہ سارے لوگ ہمارے وہاں پہنچنے سے پہلے اکٹھے تھے۔"

After going through the afore reproduced statements, it is clear that the convicts were not the only persons who knew about the dead-body of the deceased rather the investigating agency and the people of the locality were also very much aware of the same, hence, in such a situation, it cannot be said that the dead body was recovered on the sole pointation of the convicts. As the prosecution case mainly based on the recovery of dead-body on the pointation of the convicts and when the prosecution failed to prove the same then ultimate consequence thereof, is the serious dent in the prosecution story.

Another amazing aspect of this part of the story is that the complainant and other star-witnesses stated in their statements that at the time of recovery of dead body of Mehboob Iqbal, deceased, they searched out the whole area but failed to find out Naeem Iqbal. In this regard, the complainant stated as under:-

"نعش دریافت ہونے والی جگہ سے سو پچاس گزارد گرد مظہر نے اور پولیس نے دیکھا تھا اور پڑتال کی تھی۔"

The other alleged star-witness, Muhammad Shabir, stated in his statement that at the time of recovery of dead-body of Mehboob Iqbal they searched out the area but failed to find out the dead-body of Naeem Iqbal and it is correct that later on, the same was recovered just at a distance of three to four meter from the place where the dead-body of Mehboob Iqbal was recovered. For better appreciation the relevant portion of his

statement is reproduced here which reads as under:-

"یہ درست ہے کہ محبوب اقبال کی نعش ملنے کے بعد ہم نے درکنہ ڈھوک کی تلاش کی تھی کہ ممکن ہے کہ نعیم اقبال کی نعش بھی یہیں کہیں ہو۔ اس روز تلاش کے باوجود اس ڈھوک سے نعیم اقبال کی نعش دستیاب نہ ہوئی۔ یہ درست ہے کہ 17.09.2013 کو جب نعیم اقبال کی نعش دستیاب ہوئی تو وہ محبوب اقبال کی نعش کے $\frac{3}{4}$ گز کے فاصلہ کے اندر تھی۔"

In the site-plan, the distance of points from where allegedly the dead-bodies were recovered has been shown as only 9 feet. No answer of this question that how it could be possible that the police and other persons at the time of recovery of dead-body of Mehboob Iqbal, searched the area but failed to trace out the dead-body of Naeem Iqbal and later on, on the pointation of the convicts they recovered the same only from a the distance of 9 feet, especially when the convicts were already in the police custody. The recovery of alleged hatchet is also not helpful to the case of the

prosecution as no sharp edged injury during the postmortem was found at the bodies of the deceased. The story narrated by the prosecution, i.e. the convict, Muhammad Shabir killed Mehboob Iqbal by inflicting an injury at the head of deceased and thereafter just for throwing the dead-body in the bushes, they arranged for a cot (چارپائی) and bedding etc., also does not appealing in nature.

12. The second alleged strong evidence of the prosecution is the statements of two persons, namely, Abdul Shakoor and Muhammad Farooq, recorded under section 164, Cr.P.C. The said persons later on, were also produced before the Court by the prosecution and while recording their statements they categorically stated that they were in police custody when their statements were recorded; the police badly tortured them and due to the pressure of the police they had

got recorded the false statements. They were declared hostile by the prosecution and cross-examined, but the prosecution failed to shake the confidence of the said witnesses. The Magistrate who recorded the statements of the witnesses under section 164, Cr.P.C., also appeared before the Court and admitted that he did not make any query to the witnesses to ascertain that at the relevant time they were brought from the police custody or the judicial lockup. The relevant portion of his statement reads as under:-

"مظہر نے روبرو گواہان سے یہ دریافت نہ کیا تھا کہ انہیں پولیس حراست سے لایا گیا ہے یا کہ جوڈیشل لاک اپ سے لایا گیا ہے۔"

After going through the Court's statements of the witnesses, who got recorded their statements under section 164, Cr.P.C., it appears that their statements under section 164, Cr.P.C., were recorded when they were in the custody of police and they remained under

the pressure of the police and the prosecution failed to rebut their version. Thus, under law such statements which have been got recorded under the pressure of the police, cannot be read against the accused and the Courts below wrongly relied upon the same. It is also well settled principle of law that statement under section 164, Cr.P.C., when retracted by the deposer, then strong corroboration and extraordinary care is required for awarding conviction on the basis of such statement, whereas, in the instant case situation is quite otherwise as neither strong corroboration is available nor the Courts below took the extraordinary care while relying upon the statements. Reliance may be placed to a case reported as *Falak Sher & others v. The State and another* [2016 SCR 1467], wherein it has been held that:-

“9. Another important piece of evidence on which the whole prosecution story has been built up, are the statements of convicts allegedly recorded under section 164, Cr.P.C. Although, according to the celebrated principle of law, for such like pieces of evidence when retracted by the deposer, strong corroborative evidence and extraordinary care and caution is required for awarding conviction.”

12. The perusal of the statements of the alleged star-witnesses also shows that there are material contradictions in the same. The complainant in his statement stated that in the search for the missing persons on 30.08.2013, he along with Muhammad Shabir Khan, Javed Khan, Pervaiz Khan, Matloob Khan and Zaheer Khan, went to *Dhok Kalan*. The complainant in his statement after narrating the story stated that they met with one Khan Muhammad who extended threats to them and thereafter they

met Ahmed Din who disclosed that on 28.08.2013, two persons were found at the top of hill, whereupon, 5 persons of the locality went there to know about them and the name of one of the persons of locality was Tahir, moreover, the persons who were found at the hill were stated to be thieves and they fled-away while throwing their belongings. It will be useful to reproduce here the relevant portion of statement of complainant which reads as under:-

"جب ڈھوک کلاں کی پچھلی جانب پہنچے تو وہاں ایک آدمی بھینسوں کے ساتھ بیٹھا ہوا تھا جس کا نام خان محمد تھا۔ جاوید بھائی نے خان محمد کو بلایا اور اپنا تعارف کروایا اور پھر کہا کہ ہمارے دو لڑکے جڑی بوٹی کے لئے آئے تھے جو واپس گھر نہ آئے ہیں۔ آپ کو ان کے بارہ میں کوئی علم ہے تو خان محمد انکار ہو گیا کہ مجھے کوئی علم نہیں تو جاوید بھائی نے کہا کہ جو عورتیں زیارت پر گئی ہیں یہ آپکی کیا لگتی ہیں تو خان محمد نے کہا کہ وہ ہماری رشتہ دار ہیں اور ہماری ڈھوک سے گئی ہیں۔ تو جاوید بھائی نے کہا کہ ان عورتوں نے بتایا تھا کہ ڈھوک کلاں سے آپکو خود بخود علم ہو جائے گا۔ تو خان محمد نے کہا کہ وہ غلط کہتی ہیں۔ اسی اثناء میں ڈھوک کے اندر شور شرابہ تھا کہ ان کو پھینکو، مار دو اس طرح کی آوازیں آرہی تھیں تو جب جاوید بھائی نے خان محمد سے پوچھا کہ یہ شور شرابہ کیسا ہے تو وہ کہنے لگا کہ بھینس گری ہے۔

جاوید بھائی نے کہا کہ آپ ڈھوک سے ہمارے آدمیوں کے بارہ میں پتہ کروادیں تو خان محمد کہنے لگا کہ ڈھوک میں تو کوئی آدمی ہی نہیں ہے۔ جبکہ ڈھوک میں 18/20 آدمی تھے جو شور شرابہ کر رہے تھے تو پھر جاوید بھائی نے کہا کہ ہم خود ڈھوک جاتے ہیں تو خان محمد کہنے لگا میں نے آپ کو منع کیا ہے تصادم ہو جائے گا۔ بہتر ہے آپ واپس چلے جائیں۔ تو وہاں سے ہم تھوڑا آگے گئے تو ایک مرد اور تین چار عورتیں بھینسوں کے ساتھ تھے۔ مطلوب اور ظہیر کو اس آدمی کے پاس بھیجا کہ نعیم اور محبوب کے بارہ میں اس سے کوئی معلومات لیں تو اس آدمی نے جذباتی ہو کر آواز دی کے نیچے آئیں۔ تو مظہر اور شریف خان، جاوید خان، پرویز خان اس آدمی کے پاس گئے اس کو اپنا تعارف کروایا اس سے نام پوچھا اس نے اپنا نام احمد دین بتایا تو ہم نے اس سے محبوب اور نعیم کے بارے میں پوچھا تو وہ کہنے لگا کہ 28 تاریخ کو 4 بجے اوپر پہاڑی میں دو آدمی نظر آئے تو ہم نے ان آدمیوں کا پتہ لگانے کے لئے دو آدمی بھیجے پھر کہنے لگا چار آدمی بھیجے پھر کہنے لگا پانچ آدمی گئے۔ ہم نے ان افراد کو اس لئے بھیجا کہ پتہ کرو جڑی والے افراد ہیں یا مال مویشی چوری کرنے والے ہیں۔ میں نے پوچھا کہ ان آدمیوں کے نام کیا ہیں جو ان کی طرف گئے تھے تو اس نے ایک آدمی کا نام طاہر ولد ایوب بتایا اور باقیوں کے نام اس نے نہ بتائے اور کہنے لگا کہ جب یہ آدمی شام کے بعد واپس ڈھوک میں آئے تو کہنے لگے کہ ان آدمیوں نے بیل پکڑا ہوا تھا وہ آدمی ہمیں دیکھ کر بھاگ گئے اور اپنا سامان بھی وہیں پھینک گئے۔ میں نے پوچھا کہ سامان کیا ہے وہ کہنے لگا ایک چھاتا ہے، بیگ ہے اور بیگ کے اندر دو تیشے، روٹی اور چیٹنی، ایک سیاہ رنگ کا گرم کھیس ہے۔ یہ وہ پھینک کر چلے گئے۔ مظہر نے پوچھا کہ یہ سامان کس کے پاس ہے تو احمد دین کہنے لگا کہ یہ سامان احمد دین پولیس والے کے پاس ہے۔"

Whereas, the witnesses, Shabir, Matloob and Zaheer stated in their statements that when Khan Muhammad asked them that they cannot go towards *Dhok Kalan* then they had come back. The witness Shabir in cross-examination deposed that:

"خان محمد کے علاوہ کوئی اور نہ ملا تھا۔"

The witness, Matloob stated as under:-

"اس پر خان محمد نے کہا کہ آپ ڈھوک میں نہیں جاسکتے اور نہ ہی کسی بندے سے پوچھ سکتے ہیں اور اس نے بد تمیزی کی۔ پھر ہم وہاں سے ہتھرہ اور ستھرہ ڈھوک والی جانب چلے گئے پھر پولیس نے اطلاع دی کہ محبوب اقبال کی نعش پڑی ہوئی ہے۔"

The other witness, Zaheer, stated in his statement that:-

"ہم نے خان محمد سے عورتوں کی بات کا ذکر کیا تو وہ بے عزتی پر اتر آیا اور کہنے لگا کہ آپ ڈھوک میں نہیں جاسکتے نہ ہی کسی سے بات کر سکتے ہیں۔ ہم وہاں پر دو حصوں میں تقسیم ہو گئے اور ستھرہ ڈھوک وغیرہ میں تلاش شروع کی۔"

After going through the statements, it appears that the complainant reticulated a net to

One of the investigating officers stated that till 20.09.2013, no evidence was found against the convicts, whereas, according to the prosecution story, the dead-body of the deceased, Naeem Iqbal, was recovered at the pointation of the convicts on 17.09.2013. The other investigating officer, Yaseen Baig DSP, stated that investigation of the case was entrusted to him on 14.09.2013. If it is admitted as correct that investigation was entrusted to the other officer on 14.09.2013, even then a question arises that when the investigating officer who initially investigated the case failed to find out any evidence against the convicts within a reasonable time how the other investigating officer in a couple of days collected all the material against them. In the case in hand, even not an iota of such evidence is available on record which may be free from doubt. A number of persons have

been discharged by the police under section 169, Cr.P.C. and a large number of accused have been acquitted by the trial Court, moreover, some important witnesses have not been cited as witness in the calendar of witnesses and some of the witnesses cited in the calendar of witnesses, have not been produced. Furthermore, it is clear from the statements of the witnesses that much dishonest improvement has been made just to strengthen the case. The statements of the star-witnesses appear to be tutored as they narrated the story in the manners that they have witnessed the scene of occurrence live. It may be observed here that when it is proved that dishonest improvement has been made by the witnesses then reliance cannot be placed on their statements. In this regard, reference may be made to a case reported as

Muhammad Mansha v. The State [2018 SCMR 772], wherein, it has been held that:-

“Once the Court comes to the conclusion that the eye-witnesses had made dishonest improvements in their statements then it is not safe to place reliance on their statement. It is also settled by this Court that whenever a witness made dishonest improvement in his version in order to bring his case in line with the medical evidence or in order to strengthen the prosecution case then his testimony is not worthy of credence.”

14. From the record it transpires that there are many other dents/flaws and contradictions in the prosecution case, however, as we have arrived at the conclusion that the prosecution failed to prove even the main pillars of its story without reasonable doubtful, therefore, there is no need to discuss the other dents/flaws and contradictions. In

view of the facts and circumstances discussed in the preceding paragraphs, we are of the considered view that in the case in hand, neither the links of the chain of evidence are interconnected nor the prosecution succeeded to prove the case beyond the reasonable doubt, thus, in such scenario the acquittal of the convicts is the requirement of law. The case law referred to by the learned Advocate-General is not applicable in the case in hand; being discernible facts and circumstances, therefore, no need to discuss the same.

15. For the reasons noted in the preceding paragraphs, we accept this appeal and while setting aside the convictions and sentences recorded and upheld by the Courts below, the appellants are acquitted of the charge by extending the benefit of doubt. They shall be released from the custody forthwith if

not required to be detained in connection with any other case.

Before parting with the judgment, we may observe here that investigation is the backbone of every Criminal Justice System. The prosecution is responsible to prove the guilt of the accused beyond reasonable doubt and accused is presumed to be innocent and cannot be convicted in absence of trustworthy, confidence inspiring evidence. This high standard of proof can only be achieved if evidence is properly collected, secured and documented at the stage of investigation, so that it can later on, be produced in the Court to prove charges against the accused. Its importance can be estimated from the fact that any evidence either not collected by investigating officer or not collected in accordance with the prescribed law and rules can directly affect the result of litigation. The

officials who indulge in dishonest and mal-investigations, at one hand, create obstacles in the way of justice and on the other hand, are stigma on the performance of the police department. The department should have tried to get rid from such like black sheeps. We with heavy-heart observe that in spite of the fact that in a number of cases the inefficiency and mal-investigation of the police officials brought into the notice of high-ups but they did not take it seriously and no action has been taken against such officials which is very unfortunate. In the case in hand, dishonest investigation is obvious from the record and it is not difficult to form an opinion that who is the responsible for such illegal practice, but for the sake of justice, we once again throw the ball in the court of concerned authorities, i.e. Chief Secretary and Inspector General of Police with the direction to conduct an inquiry

through some independent/honest senior officer not below the rank of DIG and Inspector General of Police shall also supervise the proceedings, against the investigating officers, who investigated the case, while suspending them, if they are in service. The concerned authorities after fixing liability and taking action against the delinquent investigating officer shall submit the report before this Court through Registrar within a period of 3 months positively from the communication of the judgment of this Court. The office shall send a copy of this judgment to Chief Secretary and Inspector General of Police forthwith.

Muzaffarabad, **JUDGE** **CHIEF JUSTICE**

_.03.2019

