SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Kh. Muhammad Naseem, J.

Raza Ali Khan, J.

1. Criminal Appeal No. 15 of 2020

(PLA filed on 06.02.2020)

Farrah Ayyub d/o Muhammad Ayyub caste Awan resident of Naliyan District Pallandri Azad Kashmir, settled Chakari Road Rawalpindi Pakistan, presently confined in Central Jail Rara, Muzaffarabad.

VERSUS

1. State through Advocate-General having his office at Supreme Court Building, Muzaffarabad, Azad Kashmir.
2. Ch. Aurangzaib ASI Chowki Office Bararkot, Muzaffarabad.

……. RESPONDENTS

[On appeal from the judgment of the High Court dated 06.01.2020 in criminal appeal No. 54 of 2019]

Appearances:

FOR THE APPELLANT: Mr. Fazal Mehmood Baig, Advocate.

FOR THE RESPONDENTS: Mr. Sajid Malik, Ass. Advocate-General.

2. Criminal Appeal No. 16 of 2020
(PLA filed on 06.02.2020)

Arbaz Khan s/o Muhammad Riaz caste Janjua r/o Mandwaal, Police Station Chontrah, Rawalpindi at present detained in Central Jail Rarah, Muzaffarabad, Azad Jammu & Kashmir.

.....APPELLANT

VERSUS

1. The State through Advocate-General of Azad Jammu & Kashmir.
2. Orangzaib ASI Chowki Officer Police Bararkot, Muzaffarabad.

……. RESPONDENTS

[On appeal from the judgment of the High Court dated 06.01.2020 in criminal appeal No. 54 of 2019]

Appearances:

FOR THE APPELLANT: Mr. Fazal Mehmood Baig, Advocate.

FOR THE RESPONDENTS: Mr. Sajid Malik, Ass. Advocate-General.

Date of hearing: 05.11.2021.

ORDER:

Raza Ali Khan, J.– Both the appeals by leave of the Court have been directed against one and the same judgment of the High Court of Azad Jammu & Kashmir dated 06.10.2020, passed in Criminal Appeal No. 54 of 2019, hence, the same were heard together and are decided as such.

2. The brief facts forming the background of captioned appeals are that Ch. Aurangzeb ASI, Incharge Police Chowki Bararkot, reported on 17.03.2019, that he was on routine checking at Brarkot barrier when a Mehran Car No. LWA-771, approached from Garhi Habib Ullah side. A young boy was driving the car and a lady was sitting on the front seat. It was stated in the report that the driver of the car told his name as Arbaz son of Mohammad Ayub whereas, the lady sitting in the front seat disclosed her name as Farah Ayub d/o Mohammad Ayub. The car was stopped and searched whereupon a packet weighting 03 kg of charas was found under front seat of the car. The contraband was confiscated in front of the available witnesses, Mohammad Hussain, IHC and Attique Ahmed, Constable and 10 grams of charas was detached for chemical examination in a separate

parcel. It was further stated that rest of contraband weighting 2 kg and 990 grams was sealed in another parcel. The matter was forwarded to the SHO Police Station Saddar, Muzaffarabad, for registration of the case upon which an FIR No. 58/2019 in the offences under section 9(c) and 15 of the Control of Narcotic Substances Act, 1997, as adopted in Azad Jammu & Kashmir vide the Control of Narcotic Substances (Adaptation) Act, *(hereinafter to be referred as Act)* (ActX) 2001, on 12.12.2001, was registered at 05:10 PM on 17.03.2019. After formal investigation, the concerned police filed a report under section 173 Cr.PC, in the Court of Additional Sessions Judge/Special Court (hereinafter to be referred to special Court). The learned Judge Special Court after completion of the trial of the case, convicted the appellants, and sentenced each of them to seven

years simple imprisonment and Rs. 20,000/- as the fine, in the offence under section 9(c) of the Act, vide judgment, dated 10.10.2019. Against the aforesaid judgment, the appellants, herein, filed an appeal before the High Court. The learned High Court after necessary proceedings, has dismissed the appeal through the impugned judgment, dated 06.10.2020.

3. Mr. Fazal Mehmood Baig, the learned Advocate for the appellants after narration of the necessary facts, submitted that both the impugned judgments of the Courts below are against law, the facts and the record of the case. He argued that the judgment of the trial Court is based upon surmises and conjectures. He further argued that the learned High Court while delivering the impugned judgment failed to analyze the facts and the record of the case

as the prosecution produced witnesses in support of the challan and there was material contradiction between the statements of all the witnesses which create doubts in the case in hand, benefit of which was to be given to the appellants. He further argued that the learned High Court on one hand in para 6 of the impugned judgment admitted that the parcel has been sent to chemical examiner after lapse of eight days but his important aspect has not been considered. He submitted that as per Control of Narcotic Substances (Government Analysis) Rules, 2001, the investigation agency must send the alleged contraband for forensic laboratory within 72 hours but the investigating agency in derogation of the rules sent the parcel to the chemical examiner after lapse of eight days. He emphasized on the point that the investigating agency took a version that they sent

10 grams of charas from 1 parcel for Chemical Examination but as per the report of chemical examiner, only 7.88 grams of charas was received. He added that the ASI Younas Butt, who allegedly submitted the parcel of contraband has not been associated as witness and the Mahrar of Police Station Saddar, Muzaffarabad who received the appellants and the allegedly confiscated contraband, has also not been produced as witness which is a clear mala-fide on the part of prosecution. All these factors have not been taken into consideration by the trial Court as well as the High Court, therefore, the impugned judgment of the learned High Court is liable to be set-aside. The learned Advocate in support of his submission placed reliance on the following reported cases: -

In a case reported as *Kamran Shah & others vs. State & others* [2019 SCMR 1217], safe custody of the recovered substance at the local police Station had not been established by the prosecution during the trial and Moharrir had been produced by the prosecution before the trial Court but he had said nothing about receipt of the case-property or its safe custody by him. It was held that where safe custody of the recovered substance was not established by the prosecution it could not be held that the prosecution had succeeded in establishing its case against an accused person. The conviction and sentences of the accused persons recorded and upheld by the Courts below were set-aside and they were acquitted for the charge by extending the benefit of doubt to them.

In other case reported as *Mst. Razia Sultana vs. The State & others,* [2019 SCMR 1300], the sample of narcotic was dispatched to the Government Analyst for Chemical Examination through an officer of the Anti-Narcotics Force, but the said officer was not produced to prove safe transmission of the sample from the police to the chemical examiner. It was held that in cases where the chain of custody was broken, the report of the

Chemical Examiner lost its reliability making it unsafe to support conviction, resultantly, it would be unsafe to rely on the report of the Chemical examiner. The conviction and sentence of accused was set-aside in the circumstances.

In the other case reported as *Zahir Shah vs. The State,* [2019 SCMR 2004], charas weighting 10 kilograms was recovered from accused who was convicted by the trial Court and was sentenced to imprisonment for ten years which was maintained by the High Court. In the said case, the prosecution did not produce that constable who delivered sealed parcel of narcotic substance to Forensic Science Laboratory. It was held that safe custody and safe transmission of drugs from the spot of recovery till its receipt by Narcotics Testing Laboratory must be satisfactorily established. Such chain of custody was fundamental as report of Government Analyst was the main evidence for the purpose of conviction. It was further held that the prosecution must establish that chain of custody was unbroken, unsuspicious, safe and secure and any break in the chain of custody i.e. safe custody or safe transmission would impair and vitiate the conclusiveness

and reliability of the report of Government Analyst thus rendering it incapable of sustaining conviction.

4. Conversely, Mr. Sajid Malik, the learned Assistant Advocate-General appearing for the State forcefully, defended the impugned judgments and submitted that both, the learned trial Court as well as the High Court has passed the impugned judgments after due deliberation and appreciation of the record of the case which do not call for any interference by this Court. He argued that the appellants have failed to point out any legal ground for interference by this Court in the impugned judgments, hence, the appeals have been filed to prolong the litigation and causing damage to the complainant party. He further argued that the prosecution has successfully proved its case beyond any shadow of doubt by producing the ocular, circumstantial and corroborative evidence,

whereas, the appellants have failed to point out any dent in the prosecution's story. He submitted that both the Courts below have concurrent recorded findings on all the aspects of the case and the appellants, herein, have failed to point out any illegality in the impugned judgment, therefore, these appeals are not maintainable which are liable to be dismissed.

5. We have heard the learned Advocate for the parties and have gone through the record of the case made available. The perusal of the record reflects that on report of one Ch. Aurangzeb, ASI In-charge Police Chowki Brarkot, an FIR No. 58/2019, was registered on 17.03.2019. It was stated in the FIR that In-charge Chowki Police Bararkot, was on routine checking at Brarkot barrier when a Mehran Car No.

LWA-771 approached from Garhi Habib Ullah side and a young boy was driving the car and a lady was sitting on the front seat. It was further stated that driver of the car told his name as Arbaz son of Mohammad Ayub whereas, the lady sitting in front seat disclosed her name as Farah Ayub d/o Mohammad Ayub. The car was stopped and searched whereupon, a packet weighting 03 kg of charas was found under front seat of the case. The contraband was confiscated in front of available witnesses Mohammad Hussain IHC and Attique Ahmed Constable and 10 grams of charas was detached for chemical examination in a separate parcel and rest of contraband weighting 2 kg and 990 grams was sealed in another parcel.

6. On registration of the FIR, the investigation was conducted and a complete challan under section 173 Cr.PC, against the convict-appellants was submitted before the special Court. After submission of the challan, statement of both the convict-appellants under section 265-D were recorded, whereby, they pleaded not guilty, hence the prosecution was ordered to produce evidence. The prosecution produced five witnesses i.e., Ch. Aurangzeb, ASI, Chowki Officer Bararkot, Mohammad Hussain IHC, Chowki Police Bararkot, Ateeq Ahmed SG-371, Chowki Police Brarkot, and Syed Shuja-ul-Hassan Gillani, Inspector/SHO, Police Station Saddar. After recording of the prosecution evidence, the statements of convict-appellants under section 342 Cr.PC, were recorded, whereby, they again pleaded not guilty. The learned trial/special Court after

completion of the trial and hearing the parties passed the judgment against the appellants in the following manner:-

> *"The nub of above discussion is that both accused persons named Arbaz Khan, s/o Mohammad Reaz and Farah Ayub, d/o Mohammad Ayub are declared guilty of offence punishable under section 9C of "Control of Narcotic Substance Act, 1997". Keeping in view peculiar circumstances of the case as mentioned above, both guilty person Arbaz Khan s/o Muhammad Reaz r/o Mandwaal, Police Station Chontrah, Rawalpindi Pakistan and Farrah Ayub d/o Mohammad Ayub r/o Naliyan District Palandri, Azad Kashmir, presently r/o Chakri Road, Rawalpindi Pakistan are sentenced to simple imprisonment of seven years and to fine of Rs. 20,000/- each. In case of non-payment of fine, both guilty persons shall further undergo simple imprisonment for six months. Benefit of section 382-B Cr.PC is also extended to*

guilty Arbaz Khan s/o Mohammad Reaz and Farah Ayub d/o Mohammad Ayub. Recovered charas be destroyed accordingly after lapse of period of limitation for filing appeal."

Against the aforesaid conviction order, the convict-appellants, herein, filed joint appeal before the High Court of Azad Jammu & Kashmir. The learned High Court after necessary proceedings, upheld the judgment of the trial Court and observed as under: -

"In the afore-discussed situation, the prosecution proved its case through cogent evidence. The convict-appellants are found connected with the offence under section 9 C (CNSA). The technicalities raised on behalf of the convict appellants are not sufficient to set-aside the impugned order of conviction. The Court below has already showed leniency while awarding sentence to the convict-appellants in view of tender age

> *and gender of the convict-appellants. The instant appeal against the conviction order is therefore, dismissed".*

7. It has been forcefully, argued by the learned Advocate for the appellants that according to the prosecution version, one *Younis Butt,* ASI, carried a parcel of 10 grams charas for forensic examination but he has not been listed as prosecution witness. This argument of the learned Advocate has substance. It is not disputed that the narcotic substance recovered in the case had been recovered beneath the front seat of the vehicle which was driven by the convict-appellant in criminal appeal No. 16/20, herein. It was, thus, incumbent upon the prosecution to establish conscious possession of the contraband substance on the part of the present appellants but no evidence worth its name had been

brought on the record in that respect. The record of the case shows that the safe custody of the recovered substance at the local police Station had not been established by the prosecution during the trial. Even safe transmission of the samples of the recovered substance from the local Police Station to the office of the Chemical Examiner has not been established by the prosecution. The record further shows that the sample of the recovered substance was carried at the office of the Chemical Examiner by *Younis Butt,* ASI, but the said ASI has not been produced by the prosecution before the trial Court. It was enjoined upon the prosecution to ensure and establish before the Court that from the moment of seizure of the contraband till the delivery to the Chemical Examiner the same remained in secure and safe custody and was ensured not to be tempered at

any stage. Non-producing of the respective witnesses, to prove and establish the alleged fact of safe seizure, taking of sample, storage, transmission and dispatch to the Chemical Examiner leads to adverse conclusion against the prosecution case. Our this view finds support from the latest judgment of the Supreme Court of Pakistan in the case titled Mst. Sakina Ramzan vs. The State, [2021 SCMR 451], observed as under: -

> *"The letter of the Superintendent preventive service dated 27.11.2014 (Ex. 9/B) written to the chemical examiner stats that 43 sealed samples are being forwarded to the chemical examiner. The author of this letter was not produced as a witness. In the absence of the statement of the Wearhouse incharge and the statement on behalf of Muhammad Younas Sabir (PW-1) regarding the delivery of the samples of the*

narcotic drugs to the office of the chemical examiner, it cannot be ascertained whether the narcotic drugs and the representative samples were deposited in the warehouse by PW-1; when and who collected the representative samples from the warehouse; and who delivered them by hand to the office of the chemical examiner. The chain of custody or safe custody and safe transmission of narcotic drug begins with seizure of the narcotic drug by the law enforcement officer, followed by separation of the representative samples of the seized narcotic drug, storage of the representative samples and the narcotic drug with the law enforcement agency and then dispatch of the representative samples of the narcotic drugs to the office of chemical examiner for examination and testing. This chain of custody must be safe and secure. This is because, the report of the chemical examiner enjoys critical importance under CNSA and the chain of custody ensures that correct representative samples reach the office of the

> *chemical examiner. Any break or gap in the chain of custody i.e. in the safe custody or safe transmission of the narcotic drug or its representative samples makes the report of the chemical examiner unsafe and unreliable justifying conviction of the accused. The prosecution, therefore, has to establish that the chain of custody has been unbroken and is safe, secure and indisputable in order to be able to place reliance on the report of the chemical examiner."*

This above-said view is also fortified from the reported judgment of Supreme Court of Pakistan in the case titled *Mst. Razia Sultana vs. The State & another* [2019 SCMR 1300], wherein, it has been observed that: -

> *"At the very outset, we have noticed that the sample of the narcotic drugs was dispatched to the Government Analyst for chemical examination on 27.02.2006, through one Imtiaz Hussain, an office of ANF but the*

> *said officer was not produced to prove safe transmission of the drug from the police to the chemical examiner. The chain of custody stands compromised as a result it would be unsafe to rely on the report of the chemical examiner. This Court has held time and again that in case the chain of custody is broken, the report of chemical examiner loses reliability making it unsafe to support conviction."*

The same point came under consideration before the Apex Court of Pakistan in a reported case titled *Zahir Shah vs. The State*, [2019 SCMR 2004], wherein, it has been held that: -

> *"This Court has repeatedly held that safe custody and safe transmission of the drug from the spot of recovery till its receipt by the Narcotics Testing Laboratory must be satisfactorily established. This chain of custody is fundamental as the report of the Government Analyst is the main evidence for the purpose of conviction. The prosecution must*

> *establish that chain of custody was unbroken, unsuspicious, safe and secure. Any break in the chain of custody i.e., safe custody or safe transmission impairs and vitiates the conclusiveness and reliability of the Report of the Government Analyst, thus, rendering it incapable of sustaining conviction."*

In the other case titled *the State through Regional Director ANF vs. Imam Bakhsh and other* [2018 SCMR 2039], the Supreme Court of Pakistan has also declared that in a case where safe custody of the recovered substance or safe transmission of the samples of the recovered substance is not established by the prosecution there, it cannot be held that the prosecution had succeeded in establishing its case against an accused person.

Thus, the learned trial Court has not taken into consideration this important aspect of the case

and the same has also been ignored by the learned High Court, hence, the prosecution has failed to establish the charge against the appellants beyond any shadow of doubt.

8. Furthermore, it is apparent from the record that the alleged contraband was sent to Forensic Science Laboratory after the delay of eight days, whereas, as per rule 4 of the Act, the samples should be dispatched for analysis not later than seventy-two hours. For better appreciation, the relevant rule is reproduced as under: -

> *"4. **Despatch of sample for test or analysts**. ---(1) Reasonable quantity of samples from the narcotic drugs, psychotropic substances or the controlled substances seized, shall be drawn on the spot of recovery and despatched to the officer in charge of nearest Federal Narcotic Testing Laboratory,*

> *depending upon the availability for test facilities, either by insured post or through special messenger duly authorized for the purpose.*
>
> *(2) Samples may be despatched for analysis under the cover of a Test Memorandum specified in Form-I at the earliest, but not later than seventy-one hours of the seizure. The envelope should be sealed and market 'Secret Drug Sample/ Test Memorandum".*

(Underlining is ours)

A cursory perusal of the abovesaid rule transpires that the sealed parcel should be deposited within seventy-two hours after seizure of the contraband substance with the Chemical Examiner, however, the record is quite barren to justify this delay on the part of the prosecution. Although, it is in judicial notice of this Court that no Forensic Laboratory is established in AJK, but delay in

dispatching the parcel within prescribed time is not justified. This leads to the possibility of tampering with the contents of sample parcel during this period of eight days. In this regard we are guided by the judgment titled Zeenat Ali vs. The State [2021 PCr.LJ 1294], wherein, it has been held that: -

> *"12. In FIR (Ex-PA) date and time of occurrence as 28.01.2018 at 12:45 pm. And date of report is mentioned as 28.01.2018 at 01:05 pm. but in the complaint (Ex-PC) the complainant/I.O has mentioned the time of occurrence as 12:5 p.m. but no explanation has been given regarding the contradictions in complaint (Ex-PC) AND FIR (Ex-PA).*
>
> *13. The contraband was recovered on 28.01.2018 and was sent for chemical examination on 06.02.2018 i.e. after unexplained delay of 9 days, though as per rule 4(2) of the Control of Narcotic Substances (Government Analysts) Rules, 2001, this exercise was required to be*

> *completed within 72 hours of the recovery and for his purpose, there is no plausible explanation from the prosecution side that whey such inordinate delay was caused in completion of this exercise by the Investigating Officer."*

Thus, we find force in the contention raised by the learned counsel for the appellants. It is also proved from the record that the sample was taken only from one of three allegedly recovered bundles and not from each bundle separately therefore, the prosecution has failed to connect the appellants with the recovery of 03 kilogram of charas for which the appellants were charged, thus, coupled with the fact that the sample was sent for the chemical examination after a delay of 08 days, create doubt in the prosecution version.

9. There is also another important factor which is to be taken into consideration in this case is the discrepancy in weight of sample. The learned Advocate for the appellants submitted that the parcel prepared for forensic examination and the quantity measured by the Lab are of different weight as the parcel containing 10 grams of charas was prepared for Lab examination which has been recorded as 07.88 grams by the Lab officials. It is also axiomatic from the record that the prosecution witness Aurangzeb, ASI, in his statement mentioned the color of contraband as yellow, whereas, Mohammad Hussain IHC, prosecution witness, stated the colour of the said contraband as green. This discrepancy in weight of sample and colour, casts serious doubt on the credibility of the prosecution case and this is enough to reject the case of the prosecution.

Credibility of the recovery proceedings is eroded if the quantity found by the analyst is less than the quantity sealed and sent for examination. It creates doubt that it was not the same sample of charas which was recovered from the accused-appellants and was sent to the Forensic Science Laboratory for chemical examination. From the above discussion we are of the opinion that it casts doubt to the alleged assertion by the prosecution that the sample sent to the Chemical Examiner, was drawn from the charas allegedly recovered from the accused. The accused cannot be linked with the sample of charas which was allegedly recovered and the sample sent to the Forensic Examination was the same sample as allegedly drawn at the time of seizure of the charas. In this regard, we rely on judgment of the Supreme Court of India in the case titled *Noor Aga vs. State of*

Punjab 2008 16 SCC 417, wherein, the Court held the case of the prosecution to be not trustworthy when the discrepancy in the weight of the samples is found at the time it was taken and, in the laboratory, when it was examined. It has been observed by the Court as under: -

> *"The fate of these samples is not disputed. Although two of them were kept in the malkhana along-with the bulk, but were not produced. No explanation has been offered in this regard. So far as the third sample, which allegedly was sent to the Central Forensic Science Laboratory, New Dehli is concerned, it stands admitted that the discrepancies in the documentary evidence available have appeared before the Court, namely:*
>
> *(i)While original weight of the sample was 5 gm, as evidence by Exts. PB, PC and the letter accompanying Ext. PH, the weight of the sample in the*

laboratory was recorded as 8.7 gm.

(ii)Initially, the colour of the sample as recorded was brown, but as per the chemical examination report, the color of powder recorded as white"

In a case reported as *Kamran Shah & others vs. State & others* [2019 SCMR 1217], this Court observed as under: -

"This Court has repeatedly held that safe custody and safe transmission of the drug from the spot of recovery till its receipt by the Narcotics Testing Laboratory must be satisfactorily established. This chain of custody is fundamental as the report of the Government Analyst is the main evidence for the purpose of conviction. The prosecution must establish that chain of custody was unbroken, unsuspicious, safe and secure. Any break in the chain of custody i.e. safe custody or safe transmission impairs and vitiates the conclusiveness and reliability of the Report o the

Government Analyst, thus, rendering it incapable of sustain conviction".

10. After deep scrutiny of the record and detailed discussion made hereinabove, we are of the view that we have found plenty of contradiction in the statement of the witnesses and discrepancies in the proceedings conducted by the police which created serious doubts in the prosecution story and the learned Courts below had enough material to reject the story of prosecution. It is the settled principle of law that a slightest doubt must go in favour of the accused, therefore, we are of the opinion that the appellants deserve the benefit of doubt because on careful consideration of the evidence on record, it cannot be said that the prosecution has been able to prove its case beyond reasonable doubt. In criminal cases, the rule is that

the accused is entitled to the benefit of doubt, if the Court is of the opinion that on evidence two views are reasonably possible, one that the appellants are guilty, and the other that they are innocent, then the benefit of doubt goes in favour of the accused. This view is fortified from the judgment of this Court in the case titled Sudheer Shah alias Kaka Shah vs. The State & another [2016 SCR 1653], wherein, it has been observed that: -

> *"It is well established principle of law that even a slightest doubt in the prosecution story or evidence always goes in favour of the accused…."*

In the other case titled Muhammad Rafique vs. Aurangzeb & others [2015 SCR 974], this Court observed that: -

> *"It is settled phenomena of law that the benefit of every possible*

> *doubt should be extended in favour of the accused. Even a slightest doubt is sufficient to acquit the accused."*

This Court in the other case titled State through Advocate-General vs. Talib Hussain & others [2013 SCR 192], held that: -

> *"It is now more emphasized on the principle of law that the benefit of doubt always goes in favour of the accused."*

The same was taken in the judgment of the apex Court of Pakistan titled *Wazir Muhammad vs. The State* [1992 SCMR 1134], wherein, it has been held that: -

> *7. We have considered the defence taken up by the appellant in the light of the prosecution evidence and we find that the learned appellate Court did not pay any attention to the defence taken up by the appellant. In the criminal trial whereas it is the duty of the prosecution to prove*

> *its case against the, accused to the hilt, but no such duty is cast upon the accused, he has only to create doubt in the case of the prosecution. The case set up by the appellant has certainly created doubt in our mind about the truthfulness of the case of the prosecution. The explanation given by the appellant is quite plausible and the possibility cannot be ruled out that the heroin was owned by the passengers who ran away from the spot.*
>
> *8. In the circumstances, we accept the appeal and set aside the conviction and the sentence of the appellant. He has already been ordered to be released as per the short order, dated 24-8-1991.*

The Peshawar High Court in the case titled titled *Fazal Dayan vs. The State, etc.* Criminal Appeal No. 975-P/2019, decided on 23.02.2021, (https://peshawarhighcourt.gov.pk/PHCCMS/judgments/CrA-975-19-

302-ppc-with-murder-reference-allowed.pdf), accessed on 10.11.2021) it has been held that: -

> *12. It is primary and legal duty of prosecution to prove its case beyond reasonable doubt and the standard of evidence shall be at par with the punishment provided for a capital offence. It is a well settled principle of law that one who makes an assertion has to prove it. Thus, the onus rests upon the prosecution to prove guilt of the accused beyond reasonable doubt throughout the trial. Presumption of innocence remains throughout the case until such time the prosecution on the evidence satisfies the Court beyond reasonable doubt that the accused is guilty of the offence alleged against him. There cannot be a fair trial, which is itself the primary purpose of criminal jurisprudence, if the judges have not been able to clearly elucidate the rudimentary concept of standard of proof 12 that prosecution must meet in order to obtain a conviction. Two concepts i.e., "proof beyond reasonable*

doubt" and "presumption of innocence" are so closely linked together that the same must be presented as one unit. If the presumption of innocence is a golden thread to criminal jurisprudence, then proof beyond reasonable doubt is silver, and these two threads are forever intertwined in the fabric of criminal justice system. As such, the expression "proof beyond reasonable doubt" is of fundamental importance to the criminal justice: it is one of the principles which seeks to ensure that no innocent person is convicted. Where there is any doubt in the prosecution story, benefit should be given to the accused, which is quite consistent with the safe administration of criminal justice. Further, suspicion howsoever grave or strong can never be a proper substitute for the standard of proof required in a criminal case, i.e. beyond reasonable doubt. The lacuna occasioned in evidence of prosecution, creates serious doubt not only qua mode and manner of the occurrence; but also a big question mark on the

alleged dying declaration of deceased then injured. Needless to mention that while giving the benefit of doubt 13 to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused; then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession; but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted".

Therefore, the finding of the learned High Court that the contradiction in weight does not affect the prosecution version, was not according to law. Moreover, it is not only the discrepancy in the weight which led this Court to reject the case of the prosecution but we have taken into consideration several other discrepancies to come to the said

conclusion. We are not oblivious of the fact that a slight difference in the weight of the sample may not be held to be a crucial as to disregard the entire prosecution case; as ordinarily an officer in a public place would not be carrying a perfect weighting scale with him. But coupled with the other huge dents and contradictions in the statement of the prosecution witnesses change the scenario and reverse the case to the other way which cannot be ignored while convicting the accused. A large number of discrepancies in the treatment and disposal of the physical evidence and the contradictions and non-examination of the witnesses do not lead to the conclusion of the appellants' guilt. The findings on the discrepancies, although, if dividually examined, may not be fatal to the case of the prosecution but if cumulative view of the scenario is taken, the

prosecution's case must be held to be lacking in credibility.

In the light of what has been stated above, we are unanimous in our view that the prosecution has not proved its case beyond any shadow of doubt against the appellants, herein, and the learned trial Court has not properly appreciated the evidence and other material produced before it while awarding conviction and sentence to the appellants. The said judgment has also wrongly been affirmed by the learned High Court through the impugned judgment which is not sustainable in eye of law. As such, these appeals are allowed, the impugned judgments of both the Courts below are set-aside and the appellants, herein, are acquitted of the charges

levelled against them. They are in custody, be released forthwith, if not wanted in any other case.

JUDGE JUDGE

Muzaffarabad,
11.11.2021.