SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:
Raja Saeed Akram Khan, CJ.
Muhammad Younas Tahir, J.

Cri. Appeal No.49 of 2020
(Instituted on 20.6.2020)

Aqsa Begum widow of Muhammad Rukhsar r/o Samlar, Post Office Khuiratta, Tehsil and District Kotli.

.... APPELLANT

v e r s u s

1. Muhammad Saleem s/o Muhammad Aziz, caste Jatt, r/o Samlar, Tehsil Khuiratta, District Kotli.
2. State through Advocate-General, AJ&K.
3. Advocate General AJ&K.
4. Additional Advocate-General AJ&K, Mirpur.

.... RESPONDENTS

5. Muhammad Azad s/o Muhammad Abdul,
6. Muhammad Abdul s/o Liaquat Ali,
7. Mst. Motiyan Begum w/o Muhammad Abdul,

8. Mst. Rukhsana Begum w/o Muhammad Faryad,
9. Mst. Zahida Bi w/o Muhammad Suleman,
10. Israr Ahmed,
11. Afraz Ahmed,
12. Afsaar Ahmed, sons,
13. Mst. Mamra Kausar d/o Muhammad Rukhsar, caste Jatt r/o Samlar, Tehsil Khuiratta, District Kotli.

.... PROFORMA RESPONDENTS

[On appeal from consolidated judgment passed by the Shariat Appellate Bench of High Court, dated 24.4.2020, in Cri. Appeals No.1 & 74/2013]

FOR THE APELLANT: M/s Yasir Hussain and Kamran Taj, advocates.

FOR THE RESPONDENTS: Mr. Muhammad Rafiullah Sultani, advocate.

FOR THE STATE: Mr. Mazhar Waheed Khan, Additional Advocate-General.

Date of hearing: 21.02.2022

JUDGMENT:

Muhammad Younas Tahir, J.—Through the captioned appeal by right, the judgment passed by the learned Shariat Appellate Bench of the High Court, dated 24.4.2020, has been called in question, through which the appeal filed by the appellant, herein, against the acquittal order of respondent No.1, Muhammad Saleem, in the charges under sections 302, 341, APC and 13 of the Arms Act, 1965, has been dismissed.

2. As per record, the complainant Muhammad Azad made a written report at the Police Station Khuiratta, on 4.12.2009, at about 9:30 pm, stating therein, that he is the resident of village Samlar. On the same night, at about 8:00 pm, his brother Muhammad Rukhsar left for the house of his maternal grandfather Muhammad Aziz. When he reached near Gorah graveyard, one Muhammad Saleem s/o Muhammad Aziz, who was waylaid and armed with firearm, opened fire with the lethal weapon.

The fire hit him at different parts of the body. Muhammad Rukhsar fell down and succumbed to injuries on the spot. The occurrence was stated to be seen by Muhammad Gulbahar, Muhammad Nazakat and other people of the locality. The motive behind the occurrence was alleged as a dispute over the piece of land. On this report, a case in the offences under sections 302, 341, APC and 13 of the Arms Act, 1965, was registered at the Police Station Khuiratta under FIR No.322/2009. After necessary investigation, challan was presented in the District Criminal Court, Kotli, on 29.12.2009. The accused-respondent pleaded innocence and the prosecution was directed to lead evidence. At the conclusion of the trial, the learned trial Court acquitted the accused-respondent of the charges and extended him the benefit of doubt through its judgment dated 29.12.2012. The complainant and the State filed the separate appeals against the acquittal order dated 29.12.2012 before the learned Shariat Appellate Bench of the High

Court. The learned fist appellate Court, after necessary proceedings, has dismissed both the appeals through the impugned judgment dated 24.4.2020. Feeling aggrieved from the impugned judgment, the complainant and the legal heirs of the deceased have filed the instant appeal by right.

3. Mr. Ysair Hussain, advocate, appearing on behalf of the appellant, vehemently argued that the accused-respondent has illegally been acquitted by the trial Court without appreciating the evidence in its true perspective and same illegality has been repeated by the learned first appellate Court while maintaining the judgment appealed from. The learned counsel submitted that the ocular evidence was corroborated and supported by various recoveries and other incriminating material. The presence of eye-witnesses was admitted by the defence and the case was proved beyond any shadow of doubt but both the Courts below have wrongly extended the

benefit of doubt while acquitting the accused-respondent. The learned counsel next submitted that the post-mortem report and the firearm expert report corroborate the statements of eye-witnesses and the recovery witnesses, but the Courts below have disbelieved the prosecution version without any justifiable reasons. The learned counsel contended that the occurrence was witnessed by two eye-witnesses, whose names are mentioned in the FIR, thus, only the statements of eye-witnesses are sufficient to convict the accused-respondent. The learned counsel further argued that the accused-respondent was nominated in the promptly lodged FIR and the guilt was proved through corroborative evidence but the Courts below have discarded the evidence under the wrong impression. He also submitted that recovery of the weapon of offence and four empties in the presence of witnesses, on the pointation of the accused-appellant himself, clearly implicates him with the commission of offence. The statement of

SHO affirms the prosecution story as well as the recovery. The prosecution has also sufficiently proved the motive from the record. On Court query, that the statement of the witness Muhammad Azad was recorded after a delay of two days from the occurrence despite the fact that he was available to Police, the learned counsel conceded the fact, however, he submitted that the prosecution evidence cannot be considered in piecemeal but the same shall be looked into as whole, while scrutinizing the same. He concluded that in this background, the accused-respondent is liable to be punished with the normal sentence of death provided for the offence.

4. Conversely, Mr. Rafiullah Sultani, the learned advocate for the accused-respondent, Muhammad Saleem, defended the acquittal of the accused-respondent while submitting that the same is based on sound and solid reasons recorded after due appreciation of prosecution evidence in a legal manner. The learned counsel

submitted that the accused-respondent has been acquitted by the trial Court after entire satisfaction that the prosecution story is full of doubts and the learned Shariat Appellate Bench of the High Court has concurred with the findings recorded by the trial Court, hence, double presumption of truth is attached to the acquittal, which cannot be interfered with by this Court at this stage. The learned counsel further submitted that re-appraisal of evidence is not the function of this Court and the impugned judgments have been delivered after detailed survey of the entire prosecution evidence brought on the record. The learned counsel added that the statement of Muhammad Azad, witness, was recorded after two days of the occurrence despite the fact the he was available to Police for recording of the statement but the Police purposely failed to record the statement within reasonable time. While referring to the statements of prosecution witnesses, the learned counsel added that there is major contradiction among the statements and

gross irregularities have been pointed out by the defence, hence, the prosecution evidence has been rightly disbelieved by the Courts below while extending the benefit of doubt in favour of the accused-respondent. The learned counsel pressed into service that the prosecution witnesses are closely related to the complainant and the deceased, who made improvements in their statements, which are even otherwise self-contradictory, therefore, their neutrality is not trustworthy and has rightly been discarded by the courts below. He submitted that testimony of the prosecution witnesses is not worth believing on the ground that they were not found *Aadil* during purgation, therefore, the same was rightly discarded. According to the learned counsel, the prosecution failed to produce independent witnesses of the occurrence and the recovery, despite alleged presence of the people of locality at the place of occurrence. He submitted that the prosecution story is negated by the fact that certain other persons were also arrested in

connection with the offence, but enlarged later on and this fact is proved from the record and the statements of the prosecution witnesses. The learned counsel further submitted that recovery of alleged weapon of offence has been made after 12 days of the occurrence, which is itself doubtful. Even otherwise, according to the learned counsel, the weapon has not been recovered from exclusive possession of the accused-respondent but alleged to have been recovered from an open place, which is easily accessible to anyone. He added that PW-2 Abdul s/o Kala, one of the recovery witnesses was not produced before the Court for recording his statement, which itself casts serious doubts regarding the prosecution story. The learned counsel contended that that the investigation was conducted by the Police prior to the registration of the case, which is not permissible under criminal law and makes the case further doubtful. The learned counsel submitted that there is mark difference between the statements

of chance witnesses, who have allegedly seen the accused prior to and after the commission of offence. The witness Adalat has not appeared before the Court to recover his statement. Moreover, the conclusion drawn by the doctor, who conducted the post-mortem report and the deposition of prosecution witnesses about the place where from the firing was made, negate each other. The report of forensic science laboratory was received after one year and the same was produced before the Court after four months of its receipt, which is sufficient to prove that the prosecution hatched the story against the accused-respondent. The learned counsel argued that the prosecution witnesses in their statements deviated from their stance regarding the motive of occurrence, whereas in fact litigation between the complainant and the deceased is admitted and proved from the record. On the other hand, some litigation is also shown between the prosecution witnesses with the accused and the complainant with the accused as

well. In this scenario, the prosecution has failed to establish any motive as alleged in the FIR whereas the prosecution witnesses, being related and interested and having motive against the accused, their testimony has rightly been discarded by the Courts below. While referring to Article 129 of the Qanoon-e-Shahadat Order, 1984, the learned counsel submitted that the prosecution deliberately abandoned the recovery witness. The learned counsel submitted that according to prosecution four crime empties were recovered from the spot, which were not sent to forensic science laboratory till the recovery of gun, which also makes the prosecution story doubtful. In support of his arguments, the learned counsel referred to and relied upon the following reports:

i. *Muslim Commercial Bank Limited Employees' Union, Islamabad, Rawalpindi and Wah Zones through its General Secretary vs. Muslim Commercial Bank Limited, Karachi & others* [1994 SCMR 1030],

ii. *Haji Rab Nawaz vs. Sikandar Zulqarnain & 7 others* [1998 SCMR 25]

iii. *Asia Bibi & 5 others vs. Ghazanfar Ali & 3 others* [2005 SCR 1],

iv. *Dr. Israrul Haq vs. Muhammad Fayyaz and another* [2007 SCMR 1427],

v. *Ali Sher and others vs. The State* [2008 SCMR 707],

vi. *Liaquat Ali vs. The State* [2008 SCMR 95],

vii. *Ali Muhammad vs. Muhammad Akram & another* [2014 SCR 351],

viii. *Wasim Hussain & 2 others vs. Muhammad Rafique & another* [2017 SCR 428] and

ix. *Zohra Bibi & another vs. Haji Sultan Mehmood & others* [2018 SCMR 762].

5. We have heard the learned counsel for the parties and gone through the impugned judgment and the other record made available with utmost care.

6. Muhammad Saleem, the accused-respondent was nominated in FIR No.222/2009, registered at Police Station Khuiratta, on

4.12.2009. It was narrated in the FIR that on the same night, he set up an ambush, waiting for Muhammad Rukhsar, who was on his way to the house of his maternal grandfather. It was alleged that the accused fired upon Rukhsar with lethal weapon, which hit him at different parts of the body. He fell down and succumbed to the injuries. It was further alleged that the occurrence has been seen by Muhammad Gulbahar and Muhammad Nazakat. The motive behind the occurrence is a dispute over a piece of the land. The trial Court, after detailed survey and scrutiny of the evidence, acquitted the accused-respondent and on appeal the learned Shariat Appellate Bench of the High Court has maintained the acquittal order. Before adverting to the case on merits, it may be observed here that the scope of interference in appeal against acquittal is much narrow and limited, because in an acquittal, the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence that an accused shall be presumed

innocent until proved guilty; in other words, the presumption of innocence is doubled after acquittal by the competent Court. The acquittal maintained by the first appellate Court carries another well accepted presumption that again, on first appeal, the court below confirmed the assumption of innocence. However, where the Courts below have disregarded the points having conclusive effect on the end result, committed misreading or non-reading of the material evidence or appreciated and scrutinized such evidence illegally, this Court would interfere for the safe administration of criminal justice. This Court would not interfere with acquittal merely by making the re-appraisal of the evidence, it comes to a different conclusion, provided both the conclusions are reasonably possible, however, this Court would interfere with a view only to avoid any grave miscarriage of justice and for no other purpose. It may also be observed here that an appeal against acquittal is altogether on a different footing, as compared to an appeal

against conviction. In an appeal against acquittal where the presumption of innocence in favour of the accused is reinforced, the appellate Court would interfere with the order of acquittal only when there is perversity of facts and law, as has been held above. The principal consideration of the Court is to do substantial justice and avoid miscarriage of justice, which might have resulted into acquitting an accused, who is guilty of an offence or otherwise convicting an innocent. While dealing with an identical case, this Court recently in the case titled *Liaquat Jan & another vs. Muhammad Ilyas & others* (Cri. Appeal No.11/2019, decided on 23.02.2022), has observed as under:

> ".....This Court on appeal can only interfere with the acquittal orders passed by the Courts below, if the interpretation of law or the constitution is involved or any miscarriage of justice is pointed out. Reliance can be placed on the case reported as *Muhammad*

Ashfaq vs. Muhammad Ashiq & 5 others [2005 SCR 341], wherein, in was observed as under:

> '7. The two Courts below have recorded concurrent findings acquitting the accused respondents which raise double presumption of innocence in their favour. The learned Advocate for the appellant was not able to point out any illegality committed by the Courts below. The Supreme Court, in its appellate jurisdiction, can interfere only when interpretation of law or the constitution is involved or when the miscarriage of justice done by any Court or where illegal or irregular practice is done or adopted.'"

Similarly, in the case reported as *Javed Iqbal vs. Fayyaz Ahmed & another* [2014 SCR 1441], it has been observed by this Court, as under:

> "10. After century's deliberation, there is a universal unanimity among the Courts administering criminal justice that the benefit of doubt always goes to the accused. It is

also settled that for setting aside an acquittal order there must be strong reasons supported by evidence on record. Even otherwise, after acquittal, the accused enjoys double presumption of innocence. In this regard reference can be made to a latest judgment in the case reported as Muhammad Saleem vs. Abid Hussain & others [2013 PSC (Crl.) 346], wherein this Court has enunciated the principle of law on the subject in the following manner:

> '12. It is by now settled principle that to get an acquittal order converted into conviction, is a difficult job for the prosecution; it is like a liberated bird who had flown away towards the limitless space and free air, but now prosecution wants to get him back again into the cage. In the light of principle of law enunciated by the superior courts of the country, an acquittal order can only be interfered with when it is proved that it has been delivered with

> foolish appreciation of evidence, with perverse actions and where the reasons adduced for the release of an accused were not acceptable to the mind of a prudent man.'"

7. Now, adverting to the merits of the case, the main contention raised by the learned counsel for the appellant is that it is a case of direct evidence; the accused-respondent was nominated in the promptly lodged FIR; specific motive was alleged and the prosecution has proved the stance through corroborative evidence but the Courts below have failed to consider the same while acquitting the accused-respondent. Although, re-appraisal of evidence is not the function of this Court and standard of assessment of evidence in an appeal against the acquittal is different from that of the appeal against conviction, however, for the ends of criminal justice, we have re-examined the evidence. It may be observed that there is always natural possibility of minor discrepancies in the evidence, however, under law, it is settled

principle of law that once a specific motive is alleged, the prosecution is bound to prove the same by producing confidence-inspiring and reliable evidence. The occurrence took place at 8:00 pm and the single nominated accused was arrested after two hours. The complainant has not witnessed the incident. He was informed by Gulbahar, witness. Muhammad Azad, complainant, Muhammad Rukhsar, deceased, Muhammad Gulbahar and Muhammad Nazakat, eye-witnesses, are real cousins. The motive alleged by the prosecution is a dispute over the piece of land. However, none of the prosecution witnesses has deposed that there was any kind of litigation between the deceased and the accused. During cross-examination, litigation between the complainant and the deceased as well as the eye-witness Gulbahar and the accused has been proved from the record. It has been brought on the record through documentary evidence that the father of the complainant and the deceased gifted a piece of land to the complainant

Muhammad Azad, which gift-deed was challenged by the deceased Muhammad Rukhsar on the ground that the same has been obtained by practicing fraud. The fact of litigation between the complainant, Muhammad Azad, and his brother Muhammad Rukhsar, deceased, has been proved from the record. Moreover, the enmity between the complainant and the accused, Muhammad Saleem is also established on the ground that he was the attorney on behalf two persons, namely Sayeen and Muhammad Ali, who have filed separate cases against the accused, Muhammad Saleem over the property disputes. During cross-examination, the complainant has admitted the fact by deposing that;

> "---یہ درست ہے کہ ملزم سلیم کے ساتھ مطہر کی سائیں والے دیوانی دعویٰ اور محمد علی والے دعوٰی کی وجہ سے ناراضگی چلی آ رہی ہے۔"

It further transpires from the record that Sayeen is the father of Gulbahar, prosecution witness, but he has not executed the power of attorney in his favour nor in favour of

his two real sons, rather Muhammad Azad, complainant, is his attorney in a case filed against the accused, Muhammad Saleem. On the contrary, nothing has been brought on the record to establish and believe that the deceased and the accused had some previous enmity, rather enmity between the complainant and the accused as well as the eye-witnesses and the deceased, due to litigation regarding the property, has been proved from the record. Likewise, Gulbahar, prosecution witness, also appears to be inimical towards the accused, as is evident from the portion of his statement whereby he has deposed that;

> "ملزم کی درخواست پر مظہر، ظہیر اور فاضل گرفتار ہوئے تھے اور ہماری درخواست پر ملزم گرفتار ہوا تھا۔ یہ درست ہے کہ SDM کی عدالت میں ہمارے خلاف مقدمہ پیش ہوا تھا جس میں ہم نے ضمانتیں کروائی تھیں۔ ملزم نے بھی ضمانت کروائی تھی۔ "

The said witness further deposed as under:

> "یہ درست ہے کہ زمین کے تنازعہ کہ وجہ سے مظہر اور سلیم کے درمیان دشمنی چلی آ رہی ہے۔ از خود کہاکہ ملزم ہم سے زمین چھیننا چاہتا تھا۔ یہ بھی درست ہے کہ زمین کے تنازعہ کی وجہ سے مستغیث اور ملزم کی دشمنی چلی آ رہی تھی۔ مظہر کو علم نہ ہے کہ مقتول اور مستغیث کی بھی آپس میں دشمنی چلی آ رہی تھی۔ یہ درست ہے کہ مظہر اور مستغیث ملزم سلیم کو اپنا مشترکہ دشمن سمجھتے تھے۔"

The intensity of animosity between the prosecution witness Muhammad Azad (complainant) and the accused Muhammad Saleem multiplies on the pretext that not only he was himself a party in the litigation against the accused Muhammad Saleem but he has filed cases on behalf of two other persons, after obtaining the power of attorney on their behalf. On the other hand, the defence has sufficiently proved that the eye-witnesses being related witnesses, are not only ordinarily interested witnesses but inimical to the accused having motive against him due to previous enmity. keeping in view the facts and circumstances of the case and the material available on record, we are of the view that the prosecution failed to prove the motive against the accused-respondent beyond any reasonable doubt rather the accused has established the case that the eye-witnesses and the complainant being interested witnesses and inimical towards the accused, had a motive to falsely implicate him in the case. The testimony

of the eye-witnesses cannot be relied upon safely without corroboration by the other evidence brought on record. It is settled principle of law that where the witnesses are interested, partisan or inimical towards the accused, their deposition cannot be accepted unless corroborated by such unimpeachable independent evidence, which by itself may be sufficient to record conviction. Our this view is fortified from the case reported as *Muhammad Yaqoob vs. The State & 2 others* [2014 SCR 121], wherein this Court has observed as under:

> "8. Of course, if the witness is interested, partisan or inimical towards the accused, his deposition cannot be accepted unless corroborated by such unimpeachable independent evidence which by itself may be sufficient to record conviction."

For the above reasons, we are constrained to agree with the findings recorded by the Courts below that that ocular account

furnished by the prosecution cannot be relied upon, furthermore, on that the ground that the star witness Gulbahar was not found *Aadil* during purgation (تزکیہ الشہود).

8. It is an admitted position that the statements of eye-witnesses; Muhammad Gulbahar, PW-2 and Muhammad Nazakat, PW-3, under section 161, Cr.P.C., have been recorded after inordinate delay of two days. Despite availability of the said witness to Police in the circumstances that ASI Ayaz visited the place of occurrence soon after registration of FIR but the needful was not done. The statements of eye-witnesses having vital importance in the prosecution case, but no explanation has been furnished for the delay in recording the same and inference can be gathered that the eye-witnesses were allowed to improve the story inordinately and deliberately, which creates further suspicions about the prosecution story.

9. Examining the prosecution story from another angle, it reflects from the statements of witnesses that the deceased on the fateful night proceeded to the house of his maternal grandfather Muhammad Aziz with the intention to pay back the borrowed amount. The accused waylaid the deceased, Rukhsar Ahmed, and murdered him. The story narrated by the prosecution witnesses is that prior to leaving for the house of his maternal grandfather, he inquired about availability of his maternal grandfather at home. Muhammad Aziz, pw, has stated that he resides at a distance of half an hour from the house of the deceased. The chance witnesses Rehmat and Adalat are stated to have seen the deceased before and after the occurrence. Rehmat s/o Ch. Fateh Ali, pw, has deposed in his statement as under:

"شام کو مظہر گھر سے آ رہا تھا۔ جب مظہر گالہ بازار سملار پہنچا تو اس وقت سات بجے کا وقت تھا۔ مظہر بازار سے گزر رہا تھا۔ مظہر سلیم سے ملاقی ہوا اور پوچھا کہ وہ کدھر جا رہا ہے۔ سلیم نے کہا وہ گھر جا رہا ہے۔ سلیم نے سفید کپڑے پہن رکھے تھے اور کالا کوٹ تھا جس میں نیلی دھاریاں تھیں اور اس کے دائیں کندفھے

پر رائفل تھی۔ اس کے ایک گھنٹے بعد شور ہوا کہ سلیم
نے رخسار کو گولی مار کر قتل کر دیا ہے۔"

The question arises that the how is this possible that the deceased was unaware about availability or unavailability of his maternal grandfather, who otherwise resides at a distance of mere half an hour walk and in this modern time of communication, he did not contact on telephone, rather inquired the eye-witnesses in this regard. The prosecution has shown the deceased going to the house of Muhammad Aziz, his maternal grandfather, without any exorbitant exigency, only to pay back the lent amount, while he had to cross a dangerous nullah at night time and he was wearing only *shalwar qamees* in a winter night. According to Rehmat, prosecution witness, the accused, Muhammad Saleem was roaming in Gaala bazaar in the evening with a Kalashnikov openly, which is also not acceptable to a prudent mind. The entire statement of the said witness is full of discrepancies and suspicions. The other witness, Muhammad Adalat s/o Ch. Abdul, who is alleged to have seen

the accused after commission of offence, has not appeared for getting his statement recorded. All the above-narrated facts and circumstances suggest the missing links of the chain of prosecution story, which is otherwise not corroborated by the reliable evidence.

10. There is no cavil with the proposition that prosecution or a party to a lis is at liberty to abandon a witness but after getting his statement recorded under section 161, Cr.P.C., non-recording of evidence before the trial Court may cast otherwise inference against the prosecution. By withholding the evidence of recovery witness namely Muhammad Abdul s/o Kala and Muhammad Adalat s/o Ch. Abdul, inference can be drawn that the evidence is not favorable to the prosecution, perhaps to suppress the true facts. Our this finding is strengthened from the case-law reported as *Muhammad Rafique & others vs. State & others* [2010 SCMR 385], whereby it was opined as under:

> "It is also well settled principle of law that if any party with holds the best piece of evidence than it can fairly be presumed that party had some sinister motive behind it. The presumption under article 129 (g) of Qanoon-e-Shahadat Order 1984 can fairly be drawn that if said PW would have been examined, he would not be unfavorable to prosecution. Be that as it may, the prosecution examined Muhammad Ramzan, PW-14, to prove the conspiracy. The learned High Court examined this aspect of the case and rightly reached the conclusion that the prosecution failed to prove this piece of evidence."

11. It is by now settled law that where the court has disbelieved the ocular account, the recovery cannot rehabilitate the prosecution case. Even otherwise, the prosecution in the FIR has not specifically mentioned as to which weapon was used. Later on, after a delay of 12 days the crime weapon is stated to have been recovered in

the presence of Muhammad Aziz and Abdul, witnesses. As stated above, Abdul did not appear to get his statement recorded. Despite inordinate delay of 12 days, abundance of the recovery witness, the recovery is doubtful, further on the ground that Muhammad Aziz in the cross-examination stated that he is an illiterate person and does not know about the contents of statement, on which he was asked to sign, however, the police told him that it is a recovery memo. It may also be mentioned here that alleged crime weapon has been recovered from an open place, not from the exclusive possession of the accused, which is itself suffice to be ignored. There is also no explanation regarding sending the alleged four crime empties after 12 days of occurrence, for forensic expert report and inference can be drawn that the same have been substituted before recovery of alleged crime weapon. In this regard, the learned counsel for respondent has rightly relied upon the case reported as [2008 SCMR 707], which has been

made basis for recording relevant findings by the Court below.

In this background, it can safely be held that the prosecution has failed to satisfy about the aforementioned major contradictions and discrepancies found in the prosecution evidence, due to which the benefit of doubt has been extended to the accused-respondent. Even otherwise, law is settled that if two views are possible in the light of evidence brought on the record, one favoring the accused has to be adopted and benefit of every single doubt must go to the accused. This Court, while dealing with an identical case reported as *Waseem Hussain & 2 others vs. Muhammad Rafique & another* [2017 SCR 428], has observed as under:

> "…. It is also an admitted position that in the locality there are many houses of the relatives of the complainant party, in such a situation, it does not appeal to the prudent mind that even after lapse

of such a long time no one from the locality came forwarded to enquire about the incident. All these aspects of the case create doubt in the prosecution story and it is well established principle of law that benefit of every possible doubt should be extended to the accused and even a slightest doubt is sufficient to acquit the accused of the charge. Reliance may be placed on a case reported as *Muhammad Rafique v. Aurangzeb & another* [2015 SCR 974], wherein this Court held as under:

> '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, whereas, it is a case of number of doubts.'

In another case reported as *State v. Faisal Munir* [PLJ 2009 FSC 284], it has been held that:

> '11. The accused, as a matter of right and not the complainant, is entitled to benefit of doubt. A genuine doubt even on one

> crucial point can secure acquittal of the accused.'"

12. The other facts and circumstances considered, discussed and resolved by the Courts below also indicate that there are many other flaws as in the FIR, a specific motive has been established that litigation between the parties is pending in the Courts but during trial the prosecution failed to prove the same. There are also some material contradictions in the statements of the eyewitnesses. Despite nominating a single person in the FIR, the arrest of some other persons creates serious doubts. Despite the fact that the place of occurrence is situated in a populated area, no independent witness has been cited. Delay in recording the statements of eye-witnesses under section 161, Cr.P.C., has also not been explained by the prosecution. After due reappraisal of evidence and careful analysis of the whole material available on the record, no perversity, illegality,

irregularity, arbitrariness or capriciousness is found in the impugned judgment.

The result of the above discussion is that finding no force in this appeal the same stands dismissed.

JUDGE **CHIEF JUSTICE**

Mirpur