SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Shariat Appellate Jurisdiction]

PRESENT:
Kh. Muhammad Nasim, J.
Raza Ali Khan, J.

1. Cri. Appeal No.09 of 2020
(Filed on4.12.2020)

Mst. Nida Begum, widow of Muhammad Sohail, caste Sudhan r/o Soon Mera, Tehsil Rawalakot, District Poonch, presently detained in District Jail Rawalakot.

.... APPELLANT

VERSUS

1. State through Advocate General/Additional Advocate General, Rawalakot.
2. Zohaib Nazir s/o Muhammad Nazir caste Sudhan r/o Soon Mera, Tehsil Rawalakot, District Poonch.
3. Sohaib Nazir s/o Muhammad Nazir, caste Sudhan r/o Soon Mera, Tehsil Rawalakot, District Poonch.
4. Mst. Zahoora Begum w/o Muhammad Nazir, Caste Sudhan, r/o Soon Mera, Tehsil Rawalakot, District Poonch.

..... RESPONDENTS

(On appeal from the judgment of the Shariat Appellate Bench of the High Court dated 5.10.2022 in Criminal Appeal No. 06 of 2018 and Criminal Appeal/Revision No. 01 of 2019)

APPEARANCES:

FOR THE CONVICT APPELLANT: Mr. Imdad Ali Khan, Advocate.

FOR THE RESPONDENTS: Sardar Saeed Shafi, Advocate and Kh. Maqbool War, Advocate General.

2. Cri. Appeal No. 10 of 2020
(Filed on 5.12.2020)

Zohaib Nazeer s/o Muhammad Nazeer Khan, caste Sudhan, r/o Soon Mera, Tehsil Rawalakot, District Poonch.

.... APPELLANT

VERSUS

1. Mst. Nida Begum w/o Muhammad Sohail (Deceased), caste Sudhan r/o Soon Mera, Tehsil Rawalakot, District Poonch, Azad Kashmir, presently confined in District Jail Rawalakot.

.... RESPONDENT

2. State through Advocate General, Azad Jammu & Kashmir.
3. Mst. Zahoora Begum w/o Muhammad Nazir
4. Sohaib Nazir s/o Muhammad Nazir, caste Sudhan r/o Soon Mera, Tehsil Rawalakot, District Poonch.

..... RESPONDENTS

(On appeal from the judgment of the Shariat Appellate Bench of the High Court dated 5.10.2022 in Criminal Appeal No. 06 of 2018 and Criminal Appeal/Revision No.01 of 2019)

APPEARANCES:

FOR THE COMPLAINANT APPELLANT: Sardar Saeed Shafi, Advocate.

FOR THE CONVICT: Mr. Imdad Ali Malik Advocate.

Date of hearing: 30.5.2022.

JUDGMENT:

Raza Ali Khan, J.— The captioned appeals arise out of the consolidated judgment dated 05.10.2020 passed by the learned Shariat Appellate Bench of the High Court in Criminal Appeal No. 06 of 2018 and Criminal Appeal/Revision No. 01 of 2019. As both the appeals arise out of the single F.I.R. and involve common question of law and the facts, hence, the same were heard together and being decided through the proposed consolidated judgment.

2. The requisite facts forming the background of the captioned criminal appeals are that Zohaib Nazir, the complainant-appellant, filed a written report at Police Station Rawalakot on 18.04.2017 stating therein that today i.e. 18.4.2017, he was standing near his house at 01:45 p.m., when he heard the hue and

cry from his house, whereupon he rushed to his house and found Mst. Nida holding a 30 bore pistol in her hand. It was further alleged that Mst. Nida by targeting his brother, Sohail Nazir, fired the shot with 30 bore pistol, which hit him at his face and on his outcry, Muhammad Shafaat, Mst. Feroz and Zahoora Begum were attracted at the spot and witnessed the occurrence. It was further alleged that Sohail Nazir, the brother of the complainant died on the way to hospital. The motive behind the occurrence is stated to be a domestic dispute. On this report, F.I.R. No. 72/2017 was registered at Police Station Rawalakot on 18.4.2017 in the offences under sections 302, APC and 15(2) of Arms Act, 2016. On completion of required investigation, the Police presented the report under section 173, Cr.P.C. in the District Court of Criminal Jurisdiction, Rawalakot on 7.7.2017. The statement of the accused under section 242, Cr.P.C. was recorded on 17.7.2017, wherein she pleaded not

guilty, whereupon the prosecution was asked to lead evidence in support of the allegation. On completion of prosecution evidence, the statement of the accused under section 365-D, Cr.P.C. was recorded on 31.8.2018, wherein, the accused again pleaded not guilty and opted not to produce any evidence in defence except recording of her own statement. The learned trial Court on conclusion of trial after evaluation of the evidence, found the accused guilty of the offence, convicted her under sections 302/306(C), APC and sentenced to 14 year's imprisonment as tazir and ordered to pay *Diyat* amounting to Rs.20,55,936/- to the legal heirs of the deceased. Nida Begum, convict-appellant, herein, was further awarded three years' imprisonment and Rs.20,000/- as fine under section 15(2) of Arms Act. The convict was also extended the benefit of section 382-B, Cr.P.C. Feeling dissatisfied from the sentence awarded by the trial Court, Mst. Nida Begum, convict-appellant, herein, filed an appeal before the High

Court for acquittal, whereas a cross appeal was also filed by Zohaib Nazir, complainant, for enhancement of the sentence into death. The High Court dismissed both the appeals and maintained the conviction and sentence awarded by the trial Court vide impugned judgment dated 5.10.2020.

3. Mr. Imdad Ali Malik, the learned Advocate appearing for the convict-appellant, Mst. Nida Begum, argued that the whole prosecution story is based on alleged motive that due to domestic dispute the occurrence took place, whereas, the prosecution witnesses entirely denied the version of motive put forth by the prosecution and even the complainant himself refuted the fact of any domestic dispute while deposing in his Court statement that he did not disclose any such dispute before the police and negated the contents of F.I.R. The learned Advocate argued that it is a settled principle of administration of criminal justice that once the motive is set up then it is the duty

of the prosecution to prove the same by producing concrete evidence, but both the Courts below while handing down the impugned judgments have not taken into consideration this important aspect of the case. The learned Advocate in support of his contention has relied upon the cases reported as "*Muhammad Khalid & another vs. State & another*" (2018 SCR 356), "*Abbas Ali vs. The State*" (1998, P.Cr. LJ 943) and "*Astam Khan vs. The State*" (1995 P.Cr.LJ 459). The learned Advocate further argued that according to the prosecution-witnesses, two fire shots were attributed to the convict-appellant and two empty cartridges are shown to have been recovered from the scene of occurrence, but according to the Forensic Report two different pistols were used in the murder of the deceased, as such there is a serious conflict in the statement of the prosecution witnesses and the Forensic Report, but this material factor was oversighted by the Courts below. The learned Advocate further argued that

the complainant deposed in Court statement that on the date of occurrence, he neither informed the police or went to police station nor saw the police nor his meeting was taken place with S.I. Amjad Hussain, so the question arises as to how the complaint written by the complainant was taken to the police station and who signed the same. It was further argued by the learned Advocate that the S.H.O/Investigating officer in his Court statement stated that the complainant's application was brought to him by a constable, but the prosecution failed to produce such constable before the trial Court, so there is no evidence regarding the application of the complainant that how and who brought the same to the S.H.O, as such the registration of F.I.R. by the complainant is not proved. The learned Advocate has relied upon the cases reported as "*Ali Muhammad vs. Muhammad Akram and another*" (2014 SCR 351), "*Qurban Hussain alias Ashiq vs. The State*" (2010

SCMR 1592), "*Muhammad Ali and another vs. The State*" (2005 PCr.LJ 830), "*Nuzhat Bibi vs. Shabbir Hussain and 2 others*" (2006 SCR 58) and "*Muhammad Sadiq vs. The State*" (2017 SCMR 144). The learned Advocate argued with vehemence that in the F.I.R., only one fire shot was alleged, whereas, according to the statements of the prosecution witnesses, two shots are stated to have been fired. The learned Advocate further argued that both; the complainant and the Investigating officer, negated the version of each other as the Investigating officer in his Court statement deposed that he got recorded the statement of the complainant under section 161, Cr.P.C. on the scene of occurrence on 19.4.2017, whereas, the complainant stated that no meeting with the Investigating officer was ever took place and neither the police visited the spot nor prepared the site sketch in his presence. He relied upon the cases reported as *Qurban Husasin alias Ashiq vs. The State* (2010 SCMR 1592), *Ali Muhammad*

vs. Muhammad Akram and another (2014 SCR 351), *Akhtar Ali and others vs. The State* (2008 SCMR 6), *Muhammad Ali and another vs. The State and another* (2005 PCr.LJ 830), *Nuzhat Bibi bibi vs. Shabbir Hussain and 2 others* (2006 SCR 58), *Muhammad Sadiq vs. The State* (2017 SCMR 144), *Ali Muhammad vs. Muhammad Akram and another* (2014 SCR 351) and *Ibrar Hussain and others vs. The State* (2007 SCMR 605). The learned Advocate further argued that the statements of the complainant and Patwari, Ghazanfar Asghar, P.W. also run counter to each other. The complainant time and again appears to be negating his earlier statement by the later one and it is a settled principle of law that if a part of evidence of a witness is proved false, his statement as a whole would be discarded. In this regard the learned Advocate has relied upon the cases reported as *Ali Muhammad vs. Muhammad Akram and another* (2014 SCR 351), *Ibrar Hussain and another vs. The State* (2007 SCMR 605), *Tariq Pervaiz vs.*

The State (1995 SCMR 1345), *Muhammad Sattar vs. State* (PLJ 2019 Cr.C. 264) and (2020 MLD 136). The learned Advocate further argued that the dead body of the deceased, according to the record of the Court, is shown to have been received by the complainant from the Hospital, whereas, the complainant in his statement deposed that he had not received the dead body and the witnesses of such receipt of dead-body were not incorporated in the Challan, as such the whole proceedings conducted by the police appears to be fabricated and fraudulent, but this fact was not taken into account by the Courts below. In this regard the learned Advocate placed reliance on the case reported as *Ali Muhammad vs. Muhammad Akram and another* (2014 SCR 351). The learned Advocate added that the story of recovery of alleged crime weapon is also a planted one, which was negated by the recovery witnesses and their statements are totally different to this effect. In this regard the learned Advocate placed reliance on the case

reported as 2014 SCR 351. The learned Advocate further argued that the P.W. Muhammad Shafaat deposed in his statement that on 18.4.2017 at 01:45p.m. exactly at the time of occurrence, he collected the electricity bill in the name of Sohail Nazeer (deceased), from the official of the Electricity Department, but the police and the complainant did not produce him as a witness. The learned Advocate further added that P.W.2, Muhammad Shafi, is the uncle of the complainant and despite availability of the independent witnesses he was chosen as a witness of the alleged occurrence, recovery of pistol, recovery of empties and blood-stained clay as well. His statement creates serious doubts and variations, hence, the same was not liable to be believed, but this aspect of the case also escaped the attention of the Courts below. The learned Advocate maintained that the time of registration of F.I.R. is mentioned as 03:15p.m, whereas P.W.2, Muhammad Shafi stated in his Court statement that the time of

the alleged recovery of pistol, empties and blood-stained clay was 02:30.p.m., 45 minutes prior to lodging of F.I.R. Similarly, P.W. 5, Muhammad Naseem, in his Court statement stated the time of recovery of alleged empties and blood-stained clay as 01:45.p.m. one and half an hour prior to the time of actual registration of the F.I.R., whereas the recoveries are the part of the investigation and under the specific provisions of law there can be no investigation in a cognizable offence without registering F.I.R. The learned Advocate further argued that the learned High Court has failed to appreciate that the police with mala-fide intention just to enrope the convict-appellant, herein, in the offence submitted its report and the prosecution itself admitted that this was not at all the case falling under section 302, APC, therefore, the impugned judgment is not liable to be sustained. The learned Advocate further argued that the prosecution evidence is a pack of lies. The presence of the prosecution witnesses at the

place of occurrence at the relevant time is quite unnatural and unbelievable. The witnesses are chance, interested and closely related to the complainant and a false and pre-planned story and evidence has been invented as the evidence brought on record is either self-contradictory or is not supported by other corroboratory evidence. The learned Advocate while arguing the case, referred to the different parts of the statements of the prosecution witnesses and stated that there are glaring discrepancies in their statements, which create serious dent and make the prosecution case doubtful. He further argued that under law each ingredient of the offence must be proved and the prosecution has failed to prove the case beyond any shadow of reasonable doubts. The learned Advocate argued that both the Courts below have not even bothered to peruse the evidence produced by the convict-appellant, herein, in its true perspective. The learned Advocate further argued that the impugned

judgments of the Courts below are result of non-reading and misreading of the evidence. He requested that while accepting the appeal, the impugned judgments passed by the High Court as well as that of the trial Court may be set aside and the convict-appellant be acquitted of the charge.

4. Conversely, Sardar Saeed Shafi, the learned Advocate appearing for the complainant-respondents argued that the occurrence is proved from the statements of eye witnesses and the guilt of the convict-appellant is also proved through reliable corroborative evidence, hence, it was enjoined upon the Courts below to award major punishment to the convict-appellant, but the Courts below awarded lesser punishment, which is liable to be enhanced. The learned Advocate further argued that it is a broad day light murder, which has been witnessed by four eye witnesses. He submitted that as per law settled by this Court, in presence of ocular evidence, corroborative evidence in criminal

cases becomes immaterial. The learned Advocate maintained that the prosecution is not always bound to prove the motive because in presence of direct evidence, it is not necessary to prove the motive. In this regard, the learned Advocate has placed reliance on the case reported as (2011 SCMR 503), (1994 MLD 1278) and (2006 CRC Lah. 94). The learned Advocate added that the recovery of alleged crime weapon from the convict-appellant, herein, is also proved by the recovery witnesses, which is corroborated by the post mortem report and in this regard the statement of the Doctor further strengthened the prosecution story. The learned Advocate further argued that the prosecution has proved his case beyond any shadow of doubt, therefore, while modifying the judgment of the High Court the sentence awarded to the convict-appellant may be enhanced. The learned Advocate next argued that the convict-appellant failed to produce any cogent and reliable evidence, hence, the appeal filed by her may be dismissed.

5. Kh. Muhammad Maqbool War, the learned Advocate General appearing on behalf of the State argued that the judgment of the trial Court as well as that of the High Court is quite in accordance with law, which has been passed after due appreciation of record as well as analysis of the evidence led by the prosecution. The leaned Advocate General submitted that recovery of pistol from the convict-appellant as well as shot with the recovered pistol fired by the convict-appellant is proved by the statement of eye-witnesses. The learned Advocate General further argued that although there are minor discrepancies in the case in hand, but these discrepancies do not make any difference as their presence or absence does not affect the conclusion arrived at by the Courts below. He submitted that as the case has been proved through ocular evidence and in presence of such ocular evidence, technicalities can be overlooked in a criminal case. He further argued that the convict-appellant has failed to point out any misreading or non-reading of evidence in the

impugned judgments passed by the Courts below, hence, the same warrant no interference by this Court. The learned Advocate General finally argued that the convict-appellant has failed to make out any case for acceptance of the appeal, hence, the appeal filed by her may kindly be dismissed.

6. We have heard the learned counsel representing the parties as well as the learned Advocate General and perused the evidence available on the record with their able assistance. The matrix of the prosecution version is that on 18.7.2017 at 1:45p.m., when the complainant was standing near his house, he heard some hue and cry in the house, whereupon he rushed towards the house, wherein he found Nida Begum, (wife of the deceased) (convict-appellant, herein), carrying in her hand a 30 bore pistol. She fired a shot upon the victim (brother of the complainant), which hit the face of the deceased and he fell down and at the outcry of the complainant, Muhammad

Shafaat, Mst. Feroz and Zahoora Begum attracted and witnessed the incident. The deceased succumbed to the injury when he was being taken to Rawalakot hospital. The motive behind the occurrence as set up by the prosecution was some domestic dispute. The proceedings conducted after the incident up to the conviction of the appellant, herein, have been incorporated above in detail, the upshot of which is that the learned trial Court on the completion of trial held the appellant, herein, guilty of the offence of murder and sentenced her to 14 years' imprisonment and ordered her to pay *Diyat* amounting to Rs.20,55,936/-. She was further convicted under section 15(2) of Arms Act, 2016 and awarded three years' imprisonment along with fine of Rs.20,000/-. The argument of the learned counsel for the convict-appellant is that the whole prosecution story is false and fabricated and there are glaring discrepancies and contradictions in the statements of the prosecution witnesses, which create a serious

dent and make the prosecution case doubtful, but this fact was neither taken into consideration by the trial Court nor by the High Court while handing down the impugned judgment, hence, the impugned judgment is result of misreading and non-reading of evidence. We felt the necessity to dive deep into the evidence and record with thorough surveillance.

7. First of all, we would like to deal with the contradictions pointed out by the counsel for the convict-appellant in the ocular evidence. In the case in hand, it would be proper to cautiously scrutinize the evidence of the eye-witnesses who claimed their presence at the time of occurrence with juxtaposition with other evidence and material on record to assess whether the evidence of prosecution witnesses is of such impeccable quality that a conviction for the offence of murder can safely rest on their testimonies. From the perusal of the Court statement of the complainant, it reveals that the

complainant in the earlier part of his statement deposed that on the fateful day of occurrence, he, along with his mother was going to market when they heard the sound of the fire shot from the house. He, at once rushed back to home and saw the accused, Mst. Nida, carrying a pistol in her hand and she fired a shot at the deceased, which hit his face near the right eye. His statement recorded under section 161, Cr.P.C, was that:-

161 "

"

This reveals that he did not witness the accused firing at the deceased. Secondly, according to the postmortem report, the death of the deceased was caused by two bullet injuries, whereas, the Forensic Science Laboratory opined that one of the empties do not match with the alleged weapon of offence as cartridge C-2 could not have been fired from the recovered pistol. If the recovered empty does not match with the recovered pistol, then the question arises as who

fired this shot at the deceased and from which kind of pistol this shot was fired? It remained shrouded in mystery that who had caused the second fatal injury to the deceased. The learned High Court in the impugned judgment observed that all the four eye-witnesses are unanimous on the point that the second fire was shot by the convict-appellant in their presence. If for the sake of argument, it is presumed to be true that the second shot was fired by the convict-appellant in the presence of the eye-witnesses then the fact remains unclear that who fired the first shot at the deceased? The statement of the complainant, who claimed himself to be an eye-witness of the first fire-shot (according to the contents of F.I.R.) appears to be confused as the assertion made by him in the F.I.R. is entirely different than that of his Court statement. Over and above, the report of Forensic Science Laboratory also does not corroborate the ocular evidence, as has been discussed hereinabove. The recovery of crime empties from the spot is a

corroborative piece of evidence and both the corroborative and ocular testimony has to be read together and not in isolation as the purpose of corroborative evidence is to test the veracity of ocular account. In the matter in hand, the ocular evidence produced by the prosecution, being full of major contradictions and variations cannot be believed true and where the prosecution fails to produce reliable eye-witnesses in evidence, then there is nothing left for the corroboration of such evidence. Our this view finds support from the case reported as Noor *Muhammad vs. The State and another* (2010 SCMR 97), wherein it has been held as under:-

> "…It was held in the case of Asadullah Muhammad Ali PLD 1971 SC 541, that corroborative evidence is meant to test the veracity of ocular evidence. Both corroborative and ocular testimony is to be read together and not in isolation. In case of Saifullah v. The State 1985 SCMR 410, it was held that when there is no eye-witness to be relied upon, then there is nothing

> which can be corroborated by the recovery. In the present case, we have already discarded the ocular testimony as such there is no substantive piece of evidence which requires to be corroborated through the recoveries. Thus, the recoveries in the present circumstances of the case have no weight..."

From the above, it is quite evident that the observation made by the High Court that the second bullet as fired by the convict in presence of eye-witnesses is not correct.

8. The prosecution in support of its version, besides the complainant, produced Zahoora Begum, Firdous and Muhammad Shafaat as eye witnesses of the occurrence. From the perusal of record, the registration of F.I.R. on behalf of the complainant is not proved as in the F.I.R. it is stated by the S.H.O. that on the report of the complainant, he along with others reached C.M.H. Rawalakot, wherein the complainant presented the compliant about the incident, whereas in Court statement he deposed that the written report was not brought

to him by the complainant rather the same was brought by Amjid, ASI, while the complainant in his Court statement, stated that he has not intimated the police neither he went to the police station nor he is aware of police arrival at C.M.H. Rawalakot. He further deposed that he neither recognizes Amjid Hussain, ASI, nor he met him. He denied his meeting with any police officer/official at C.M.H. Rawalakot. Amjid Hussain, ASI, does not appear to have uttered a single word to support the statement of S.H.O. Moreover, nowhere from the record any such report ascribed by the S.H.O. to Amjid Hussain, is found to have been exhibited. This contradiction in the statements of P.Ws. and the prosecution itself, makes the prosecution story doubtful. This Court is mindful of the settled principle of law that where discrepancies or contradictions are found in evidence to be serious or grave, it will result to rejection of evidence.

9. The motive in the F.I.R. is portrayed as domestic dispute, which is negated by Zohaib Nazir, complainant himself in his statement. The other P.Ws., namely Zahoora Begum (mother of deceased) and Firdous also did not mention any such motive in their statements. The complainant in his statement deposed that there was no dispute between the deceased and the convict and he has not given any such statement regarding the motive. Zahoora Begum P.W, deposed in her statement that relationship between Nida and the deceased was cordial and on the day of occurrence no quarrel between them was happened. Similarly, Firdous P.W. deposed that it is correct that Nida is a noble lady and the deceased never made any complaint about his wife. This make the fact clear that there was no dispute between the couple, whereas, the contents of F.I.R. show a quite otherwise situation. It may be observed here that when motive is alleged but not proved then the ocular evidence is required to be taken

into consideration with great care and caution. If this be the situation, without any further material to show any proximate and immediate motive for the crime, it would be difficult to accept the cited motive, to support the conviction. Although, the prosecution is not bound to advance motive, but once it has set up the motive, then the prosecution is bound to prove the same. The Supreme Court of Pakistan while dealing with the identical proposition has taken the same view in the case reported *as Noor Muhammad vs. The State and another* (2010 SCMR 97), wherein it has been held as under:-

> "…Thus, the prosecution has failed to prove motive. It has been held in the case of Muhammad Sadiq vs. Muhammad Sarwar 1979 SCMR 214 that when motive is alleged but not proved then the ocular evidence required to be scrutinized with great caution. In the case of Hakim Ali vs. The State 1971 SCMR 432, it has been held that the prosecution though not called upon to establish motive in every case, yet once it has set up a motive and failed to establish it, the prosecution must suffer consequence and not the defence…."

Similar view was reiterated in the case reported as *Ali Bux and others vs. The State* (2018 SCMR 354), wherein it has been held that:-

> "...The law is settled by now that if the prosecution asserts a motive but fails to prove the same then such failure on the part of the prosecution may react against the sentence of death passed against a convict on the capital charge..."

10. Moving ahead to the statement of recovery witness, Muhamad Shafaat, who deposed that:-

" "

In another place the said witness deposed that:-

"

"

The other recovery witness, Muhammad Banaras deposed that:-

"

"

Whereas, S.H.O. Noman Khan, deposed that:-

"

This witness further deposed that:-

"

"

The above referred depositions of the recovery witnesses clearly indicate the variations regarding the recovery of pistol, hence, we are not satisfied that the standard and credibility of these statements justify the punishment awarded by the Courts below.

11. Apart from the contradictions pointed out hereinabove, we have also found variations in the Court statements of the Patwari and the complainant. According to the statement of the Patwari, the whole proceedings were conducted by him at the instance of the complainant, Zohaib, the relevant portion of his statement is reproduced as under:-

01 01 "

05 03

"

Whereas, as per statement of complainant, Zohaib, site plan of the place of occurrence was not prepared by the Patwari in his presence and

at that time he was not present at home. This witness deposed that:-

3/4 "

"

Thus, in this state of affairs and in presence of such variations and major discrepancies in the statements of prosecution witnesses, punishment awarded by the Courts below is not justified.

12. A bare reading of judgments of trial Court as well as the High Court depicts that their approach was rather casual and no effort was made to apprise the evidence according to settled principle of administration of criminal justice. It is noted that both the Courts below have not examined the evidence of complainant and the eye-witnesses with required care rather ignored the major contradictions, variations, inconsistencies and improvements made in their statements. Even both the subordinate Courts did not consider the report of Forensic Science Laboratory and post-mortem report, which contradicted the ocular evidence. It is settled

principle of Criminal Jurisprudence that standard of proof required is not proof to absolute certainty. Nonetheless the prosecution evidence should be of such standard as to leave no other logical explanation to be derived from the facts except that the accused committed the offence in determining a case. The Court has also to bear in mind the duty to evaluate all the evidence on record, both for prosecution and defence and arrive at its own findings as to whether the offence for which the accused was alleged has been proved to the required standard.

13. We might reiterate the established principles in criminal law which propagates that if two views are possible on appraisal of evidence adduced in a case, one pointing to the guilt of the accused and the other to his/her innocence, the favourable to the accused should be adopted. The two concept, “proof beyond reasonable doubt” and “presumption of innocence” are so closely interlinked that they

must be presented as one unit. If the presumption of innocence is golden thread to Criminal Jurisprudence, then proof beyond reasonable doubt is silver, and these two threads are forever entertained in the fabric of criminal justice system. As such the expression "beyond reasonable doubt" is of fundamental importance to the Criminal Justice, it is one of the principles which seek to ensure that no innocent person is convicted and if there is any doubt in the prosecution story, benefit should be given to the accused, which is quite consistent with the safe administration of justice, further suspicion however grave or strong, can never be a proper substitute for the standard of proof required in a criminal case. The lacunas occasioned in evidence of prosecution creates serious doubts not only qua mode and in manner of the occurrence but it is also a big question mark on the prosecution case. Needless to mention, that while giving the benefit of doubt to an accused, it is not necessary that there

should be many circumstances which create reasonable doubt in a prudent mind about the guilt of the accused rather a single major circumstance may be considered for acquittal of accused. The accused would be entitled to the benefit of 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 then one innocent person be convicted”.

14. This Court is highly disappointed in the poor and inefficient working of the investigating authorities. Criminal matters require due care and diligence which lacks in the case in hand. It has been observed that the standard of our investigation is reducing drastically which is a situation of great concern. It should be kept in mind that the duty of the investigating officers is not merely to bolster up a prosecution case with such evidence as may enable the Court to record a conviction but also to bring out the real unvarnished truth. The

matters of police investigation are of critical importance and many lives are somehow involved and let alone the accused himself. Fabricated and suspicious record is the biggest hurdle in the road to justice and unfortunately, our investigating authorities do not understand the sensitivity of it. It is high time that the importance of investigation and the role of effective administration of justice, fair and proper investigation should be conducted in order to enable the Court to arrive at a just conclusion. If we analyze the instant case, the report of F.S.L. clearly says that two bullets were fired from the different weapons; one of which was fired from the recovered weapon while the other is unknown till date. It is a big question mark on the whole investigation process that why this point was not investigated further or why it was handled with such negligent and casual attitude? Who authorized the investigating authorities to conceal facts? Does their duty include producing and investigating

the facts of their own choice and neglecting the others?

15. After examining the case under deep scrutiny, the reasons and discussions in the preceding paras of this judgment create the following summarized points intelligible:-

i) Contradictions, improvements and variations in the statements of the prosecution i.e. complainant and other P.Ws.

ii) There was alleged motive to a domestic dispute mentioned in the F.I.R. while the prosecution stated quite otherwise, consequently, the reason behind the occurrence remained shrouded in mystery.

iii) Analysis of the statements of the recovery witnesses of the weapon of offence are not satisfying and sufficient to prove the recovery beyond reasonable doubt.

iv) The report of F.S.L. depicts that out of two cartridges, one was fired from a different weapon which was neither recovered nor investigated into, so the fact remained uncanvassed.

v) Grave negligence on behalf of the investigating authorities during the registration of F.I.R. and investigation process and improper investigation makes the case doubtful and unclear.

The above-mentioned discrepancies create a serious dent in the prosecution story, which provide rightful opportunity to the accused to avail the benefit of doubt as a matter of right.

With the above understanding of law and the related discussion on the infirmities in the prosecution evidence, the convict-appellant has made out a case for interference. Appeal No. 9 of 2020 filed by the convict-appellant is, therefore, allowed and the judgment of the trial Court as well as that of the High Court is set aside. Resultantly, appeal No. 10 of 2020 filed by

the complainant-appellant stands dismissed. Consequently, the conviction and sentence awarded to the convict-appellant is recalled and she is acquitted of the charge. She will be set at liberty, if not required in any other offence.

JUDGE JUDGE

Muzaffarabad.
17.6.2022