IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR

(Shariat Appellate Jurisdiction)

PRESENT:

MR. JUSTICE KHAWAJA M. NASIM
MR. JUSTICE RAZA ALI KHAN

CRIMINAL APPEALS NO. 54 & 56 OF 2023

Crim. Misc. No. 18 of 2023
(Against the judgment dated 22.03.2023 passed by the Shariat Appellate Bench of the High Court, in Reference No. 06/2019 and Cri. Appeal No. 07 of 2019)

Muhammad Bashir and others.
(in crim. Appeal No. 54/23)
Muhammad Naveed Abbas
(*in crim. Appeal No. 56/23)*

...Appellants

VERSUS

Muhammad Naveed Abbas and others.
(in crim. Appeal No. 54/23)
The State and others.
(in crim. Appeal No. 56/23)

...Respondents

Appearances:

For the convict/appellant:	Raja Inamullah Khan, Advocate.
For the State:	Ch. Shakeel Zaman, Addl. Advocate-General.

For the Complainant/ respondents:	M. Saeed Khadim Chaudhary, Advocate.
Date of hearing:	15.06.2023

ORDER

Raza Ali Khan, J:- Both the appeals (supra) are outcome of one and the same judgment of the Shariat Appellate Bench of the High Court *(hereinafter to be referred as High Court)* dated 22.03.2023, whereby, the reference sent by the trial Court for confirmation of death sentence awarded to the convict-appellant has been answered in negative and the appeal filed by the convict-appellant has been partly accepted while reducing the punishment of death sentence to 14 years' simple imprisonment.

2. The facts necessary for disposal of the captioned appeals are that the complainant-Muhammad Bashir, presented a written report to S.H.O. Police Station Chowki on 25.06.2013, stating therein that he is the resident of Toneen Darhar. His son Abeel Raza, went to Sattara Market to buy some edibles and when he reached Kasar Bili at about 03:45 P.M, Muhammad Naveed Abbas s/o Muhammad Bashir caste Rajput r/o Toneen Darhar encountered him while armed with 30 bore pistol. The convict-appellant fired shot directly at Abeel Raza, which hit his left arm and left ribs, in the result whereof, he fell down on the ground. On hearing the hue and cry, he, along with his wife Shahjehan, Ulfat Bibi wife of Javaid Iqbal, Akhtar Hussain s/o Muhammad Anwar caste Rajput r/o Deh came at the scene of occurrence. The accused fled away from the spot. The motive behind the occurrence was stated to be a domestic resentment.

3. On this report, a case bearing *illat* No.73/13 in the offence under section 324 was registered against the convict-Muhammad Naveed Abbas on 25.06.2013. The injured victim was taken to Tehsil Headquarter Hospital (THQ) Hospital Samahani. The victim was referred to District Headquarter Hospital (DHQ) Hospital, Mirpur and later on the victim was referred again to Pakistan Institute of Medical Sciences (PIMS) whereon, the victim scumbled to the injuries on the same day. The dead body of victim was brought to THQ Hospital Samahni, where autopsy of the dead body was conducted by Civil Medical Officer. O the death of victim the offence under section 302, APC and section 13 of Arms Act, 1965 were added while omitting Section 324, APC. The police visited the spot and recovered two crime empties of 30 bore pistol and other material through different recovery memos in presence of the witnesses. The investigating agency after formal investigation presented the challan under Section 173, Cr.P.C. in the trial Court on 21.08.2013. The accused-convict was examined under Section 265-D, Cr.P.C., but he pleaded not guilty. The learned trial Court directed the prosecution to produce its evidence. The prosecution in support of its version produced as many as 17 witnesses out of 20 incorporated in the calendar of witnesses. After recording evidence, the statement of the convict was recorded under Section 342, Cr.P.C. on 20.12.2018, wherein, he desired to record his statement on oath in defence, however, on 18.01.2019, neither the convict produced evidence in defence nor got his statement recorded on oath. The learned trial Court at the conclusion of the trial vide judgment dated 10.04.2019, convicted the accused/convict and sentenced has as under: -

"لہذا باثبات جرم 302 APC میں مجرم نوید عباس ولد محمد بشیر قوم راجپوت ساکن تونین کو جرم 302 (B) APC میں تعزیراً سزا موت دی جاتی ہے۔ اور زیر دفعہ 544-A ض ف مجرم پر (500,000) پانچ لاکھ روپے معاوضہ بھی بطور Compensate عائد کیا جاتا ہے۔ جو ورثاء مقتول کو ادا ہو گا اور یہ معاوضہ مالگزاری ایکٹ کے تحت قابل وصولی ہو گا عدم ادائیگی معاوضہ کی صورت میں مجرم مزید چھ ماہ قید محض برداشت کرے گا اور جرم 65-20-13 AA میں پانچ سال قید بامشقت اور (20,000) بیس ہزار روپے جرمانہ کی سزا دی جاتی ہے۔ عدم ادائیگی جرمانہ مجرم مزید چھ ماہ قید محض برداشت کرے گا اور مجرم کو دفعہ 382-B ض ف کا استفادہ بھی دیا جاتا ہے۔ آلہ قتل بحق سرکار ضبط کیا جاتا ہے دیگر مال منضبطہ بعد معیاد اپیل تلف ہو"

Feeling dissatisfied from the conviction and sentence awarded by the trial Court, the convict preferred an appeal before the learned High Court. The trial Court also sent a reference to the High Court for confirmation of death sentence. The learned High Court after necessary proceedings and hearing the learned counsel representing the parties partly accepted the appeal filed by the convict in the following manner: -

> "The logical inference of foregoing reasons is that while setting-aside the impugned judgment dated 10.04.2019, appeal No. 07 of 2019, filed by the convict-appellant is partly accepted in terms that the death sentence awarded to the convict-appellant, Muhammad Naveed Abbas, is reduced to 14 years simple imprisonment and rest of the same shall remain intact, however, if compensation is not paid, the same shall be recovered from the convict-appellant under the relevant provisions of Land Revenue Act, hence, a reference sent by the District Court of Criminal Jurisdiction, Bhimber, for confirmation of death sentence of convict-appellant is answered in negative."

3. Raja Inamullah Khan, the learned counsel for the convict-appellant after narration of the necessary facts submitted that the prosecution has failed to establish any case against the convict-appellant. The prosecution story was full of doubts, as such, no conviction could have been recorded on the

basis of the same. Almost, all the prosecution witnesses are interested and inimical towards convict and close relatives of the deceased and the complainant. The High court has rightly reached the conclusion that that case is not of direct evidence rather the same is of circumstantial evidence the chains of which are missing in the instant case. He argued that the convict-appellant was arrested soon after the occurrence in severe injured condition and was referred to the hospital but the entire prosecution case is silent on the fact that how the convict-appellant received injuries during the occurrence. The prosecution failed to bring any corroboratory evidence and also failed to produce the witnesses of recovery, in this way, the acquittal of convict was justified, but the High Court while ignoring this important aspect, only reduced the sentence. The occurrence was not occurred in the manner as narrated in the FIR hence, the same is shrouded in mystery. It was enjoined upon the trial Court as well as High Court to give benefit of doubt to the convict-appellant keeping in view the circumstances of the case but the benefit has not been extended in favour of the convict-appellant. The law is settled on the point that benefit of slightest doubt must go in favour of the accused. The learned Advocate submitted that as per law all the punishments imposed on the convict has to run concurrently but both the Courts below failed to record any findings in this regard. Moreover, the convict-appellant has already served more than 14 years of imprisonment. In support of his submission, the learned counsel referred to and relied upon the cases reported as Javaid Shaikh vs.The State [1985 SCMR 153], Muhammad Ittefaq vs. The State [1986 SCMR 1627] Khan Zaman and others vs. The State [1987

SCMR 1382] and submitted that while accepting the appeal filed by the convict-appellant, he may be acquitted of the charges and the cross appeal filed by the complainant may be dismissed.

4. On the other hand, Mr. Muhammad Saeed Khadim Chaudhary, the learned counsel representing the complainant submitted that the impugned judgment of the High Court is based on mis-reading and non-reading of evidence. The prosecution proved its case through cogent and reliable evidence that is why the trial Court had awarded death sentence to the convict but the High Court did not bother to appraise the evidence in its true perspective. The learned counsel submitted that the High Court on one hand observed in the impugned judgment that the prosecution has proved its case on the basis of circumstantial evidence but amazingly on the other hand reduced the sentence awarded by the trial Court, which is against the principles of administration of justice. The judgment of the High Court is self-contradictory and is not maintainable. He argued that it is a settled principle of law that minor contradictions creeping in the statement of the witnesses are pretty much natural which cannot shatter the prosecution's case as a whole but the High Court while taking into account these minor contradictions reduced the death penalty to 14 years simple imprisonment. The trial Court had rightly held in its judgment that these minor discrepancies cannot be termed as contradictions. He contended that the convict is nominated in the FIR and has also been specifically attributed with the role and thereafter, the recovery of empties, handkerchief and pistol on his pointation further strengthens the case against him. In the case in hand, not a single mitigating factor was

available but the High Court reduced the sentence awarded by the trial Court, which is against the norms of justice. He further prayed that while accepting the appeal filed by the complainant, and setting aside the judgment of the High Court, the judgment passed by the trial Court may be restored.

5. Ch. Shakeel Zaman, the learned Additional Advocate-General appearing for the State adopted the arguments advanced on behalf of the learned counsel for the compliant and stated that the impugned judgment of the High Court is quite against law and facts of the case, whereas, the learned trial Court after detailed deliberation of the record and evidence produced by the proseuction handed down the judgment which is liable to be restored.

6. We have gone through the record and the arguments advanced on behalf of learned counsel for the parties assiduously. The cumulative appreciation of judgments of the Courts below reveals that the trial Court has awarded death sentence to the convict on the ground of ocular account, whereas, the High Court while modifying the judgment of the trial Court has observed that the case is not of direct evidence rather is of circumstantial evidence. As there is a difference of opinion between the Courts below, therefore, it would be in the best interest of justice to reappraise the evidence brought on record. Although, it is a settled practice that this court does not go into re-appraisal of evidence, when the first appellate court and the trial court have properly appraised the same and reached a plausible conclusion, however, this is not a hard and fast rule and this court does not hesitate to re-examine the evidence, where gross misreading or non-reading of evidence, any error of law and sheer disregard of

principles from appraisal of evidence, which may result into miscarriage of justice, is found to be committed by the Courts below. Our view find support from the case reported as *Shahzad and 8 others vs. Rana Qamar & 4 others*[1], wherein, it has been observed that: -

> "This Court normally does not go into the re-appraisement of evidence which has been admitted by the Courts below. But it is well-settled law that if in case the Shariat Court is found to have committed an error of law or has disregarded the well-known principles relating to the appraisal of evidence, resulting into miscarriage of justice, then this Court has no reluctance to reappraise the evidence for doing complete justice. The appraisal of evidence especially in a murder case, has always seemed to be the most difficult undertaking which in the nature of things has come to rest on the shoulders of a Judge."

7. According to FIR, besides the complainant allegedly, there are three eye-witnesses of the occurrence i.e. Shahjahan Begum wife of Muhammad Bashir, Ulfat Bibi wife of Muhammad Iqbal and Akhtar Hussain. We have gone through the statements recorded by the alleged eye-witnesses and found major contradictions and discrepancies among them. In examination-in-chief, the complainant stated that he was not present at the place of occurrence rather his son (victim) called him up that he has been assaulted by the convict. He further stated that he was sitting in the corridor of his house and on hue and cry he rushed to the place of occurrence along-with his wife, Shahjahan Begum and Akhtar Hussain. However, another alleged eye-witness, Muhammad Akhtar, in his cross-examination deposed that he had not gone to the scene of occurrence together with Adeel Bashir,

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[1] [2019 YLR 2508]

Shahajahn, Ulfat Begum and Javaid rather at the time of alleged occurrence he was carrying a bag (flour bag) and it took him 2 to 3 minutes to reach the spot where he found Shahjahan Begum, Adeel Bashir and Ulfat Begum, present there. Therefore, it is quite evident that pw.2 is not the eye-witness of the occurrence. Moreover, Adeel Bashir (pw5) being an important eye-witness was not produced before the Court which further strengths the presumption that the occurrence was not witnessed by him, therefore, the learned High Court has rightly observed that the case is of circumstantial evidence.

8. As, it is established and clear to our satisfaction that the case is not of direct evidence rather is of circumstantial evidence; now it needs to be ascertained, whether the prosecution case stands on the standard required to prove the case based on circumstantial evidence or not. There is no bar on recording conviction on the basis of the circumstantial evidence and even death penalty can also be awarded on its basis but for that purpose the principles settled by the superior Courts must be kept in mind while analyzing the evidence and the prosecution case must be proved beyond the shadow of any doubt which is the golden principle of criminal jurisprudence. All the facts established should be consistent only with the hypothesis of guilt of the accused and the chain of facts connecting the offence with the accused must be unbroken, indispensable and interweaved. The circumstantial evidence in a murder case should be such a well-knit chain that one end of which touches the body of the deceased and the other the neck of the accused. The similar proposition came under consideration of this Court in the latest case titled

Mst. Nida Begum vs. State & other,[2] wherein, it has been held that: -

> 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 32 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 33 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".

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[2] Crim. App. No. 09 & 10 of 2020, decided on 17.06.2022

09. In cases of circumstantial evidence, the Courts have to take extraordinary care and caution before relying on the same. Circumstantial evidence, if corroborated by defective or inadequate evidence, cannot be made basis for punishment. More particularly, when there are indications of design in the preparation of a case or introducing any piece of fabricated evidence, the Court should always be mindful to take extraordinary precautions, so that the possibility of it being deliberately misled into false inference and patently wrong conclusion is ruled out, therefore, rules of criminal justice should be applied carefully and narrowly to examine the circumstantial evidence. To justify the inference of guilt of an accused, the circumstantial evidence must be of a quality to be incompatible with the innocence of the accused. If such circumstantial evidence is not of that standard and quality, it would be highly dangerous to rely upon the same for awarding capital punishment. The better and safe course would be not to rely upon it in securing the ends of justice. Our view is fortified from the case reported as *Wazarat Hussain vs. Nazir Akhtar & another*[3], wherein, it has been held by this Court as under: -

> "6. Before dealing with the testimony of the witnesses it may be observed that circumstantial evidence means evidence afforded by testimony other than the eye witnesses which bear upon a fact or other subsidiary facts which are relied upon as consistent that no result other than truth of principal fact and facts shall be so proved that they shall not leave any possibility of innocence of accused. And this possibility shall be of such a high degree and standard that a

[3] [2009 SCR 273]

> prudent man after considering all the facts and circumstances is able to reach at the conclusion that he is justified in holding the accused guilty and from the evidence no other inference can be drawn except the guilt of accused. The circumstances from which the inference adverse to accused is sought to be drawn must be proved beyond all doubts.

10. Although there are certain contradictions in the statements of the witnesses, however, on the basis of same the convict cannot be acquitted rather these can be considered as a mitigating circumstance and the benefit of the same has already been extended in favour of the convict-appellant. In the FIR, a specific role has been attributed to the convict and he was the only person nominated in the FIR with a specific role of shooting at the deceased which is corroborated by the recoveries of pistol on the pointation of the convict. The crime empties were also recovered from the place of occurrence. A handkerchief of orange colour belonging to convict was also recovered from the place of occurrence vide recovery memo Ex-PD which further strengthens the story of the prosecution. All the prosecution witnesses are unanimous on the point that the convict was the person who shot the victim dead. The report of FSL is also on record according to which the sealed items i.e. soil recovered from the place of occurrence, Trouser of Abeel Raza, Stained section from Trouser, Shirt of Abeel Raza, Stained section from Shirt, Bunyan of Abeel Raza and Stain section from Bunyan, were deposited by Muhammad Ramzwan on July 09, 2013, which was proved to be stained with human blood. Furthermore, the 30 bore pistol and two crime empties bearing 03 seals of AM recovered from the place of occurrence were sent to FSL for chemical

examination which matched with the crime empties. The result and opinion of the National Forensic Agency is as under: -

> **"Results:**
> C_1-06A0012 and C_2-06A are positively matched with the test empties. T_1-06A0012, T_2-06A0012 and $T_3$06A0012
> The points of similarities in crime empties and test empties are following:
> i. Shape and size of firing pin mark
> ii. Position and angel of firing pin mark
> iii. Firing pin drag mark
> iv. Linear striations on eh edge of firing pin mark
> v. Cut mark at 11o' clock
> vi. Breech face mark
> **Opinion:**
> The crime cartridges C_1-06A0012 and C_2-06A0012 belong to one group and had been fired from the pistol F06A0012."

11. From the perusal of the statements of the witnesses and the corroboratory evidence, there is no doubt that the prosecution has successfully proved its case beyond any shadow of doubt, however, we have found certain contradictions in the statements of the witnesses and other dents in the prosecution story which can be taken as a mitigating circumstance and can benefit the convict in mitigation of his sentence. Following are the dents found in the prosecution story.

i. Non-production of prosecution witness (pw5) namely Adeel Bashir, who is alleged to be the eye witness of the occurrence;
ii. Contradiction in the statements of witnesses regarding presence of the witnesses at the place of occurrence and the distance between the place of occurrence and house of the complainant;
iii. Non-production of recovery witness namely Adeel Bashir and the statement of the other recovery witness namely Muhammad Zameer,

contradicting the version of prosecution to the extent of crime weapon;

iv. The Report of FSL has not been put to the convict at the time of recording statement under section 342, Cr.PC, hence, the same cannot be read against him, and;

v. The mystery regarding the fact that convict was brought to the hospital with severe injuries soon after the occurrence and the record being dead silent regarding the same.

12. The first dent in the prosecution case as pointed out by the learned counsel for the convict-appellant is regarding the non-production of the material witness (pw5) Adeel Bashir, who is also alleged to be the eye-witness of the occurrence. The perusal of all the statements of the witnesses reveals that he was the only person who was present at the spot and has seen the occurrence. The other eye-witnesses as stated above failed to prove their presence on spot, but the pw5 was allegedly present at the place of occurrence who has not been produced by the prosecution before the Court. It is a settled principle of law that when prosecution withholds some evidence, an adverse inference can be drawn that if it was produced, it would have been against the prosecution. This view is fortified from the case reported as Raqiba Begum and 2 others vs. Javed Iqbal and 8 others[4], wherein, it has been held as under: -

> "Thus, according to the statutory provisions of Qanoon-e-Shaadat Order, 1984, inference can be drawn against the prosecution that such evidence has been withheld being non-supportive to the prosecution case."

[4] [2015 SCR 1335]

In another case reported as Imran Khan and another vs. Sarfraz alias Pallo and 3 others[5], the same proposition has been dealt with by this Court in the following terms: -

> "The non-production of these witnesses, especially when the case is one of circumstantial evidence lacking the direct evidence creates serious dent in the prosecution case. There is no other evidence, which certainly connects the accused with the commission of alleged offence".

Identical point has been resolved by this Court in the case reported as Qamar Shehzad and 3 others vs. The State[6], wherein, it has been held as under: -

> "If a material witness is not produced in the Court and the prosecution withheld him without any explanation then the Court is justified to draw inference against the prosecution that the witness was not ready to support the prosecution version."

13. As stated in the preceding paragraphs, that there are material contradictions among the statements of the witnesses regarding the presence of the alleged eye-witnesses at the place of occurrence, therefore, the benefit of the same should go in favour of the convict. Moreover, there is also contradiction between the statement of the witnesses regarding the distance of the place of occurrence from the house of the complainant where they all were present together at the fateful day. The complainant, during his cross examination deposed that the Sitara Chowk is at a distance of 1 kilometer from his house whereas, the prosecution witness Shahjahan Begum, deposed in his statement that the place of occurrence is at distance of hardly 2 to 3

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[5] [2014 SCR 1564]
[6] [2010 SCR 113]

minutes away from his house. According to site plan Ex-PG, available at page 28 of the file of trial Court, the Patwari has reported that the point No. 5 is the place where the complainant and others were present at the time of occurrence and they rushed to the point No. 1 i.e. place of occurrence, which is 20 feet away from point No. 5. Relevant explanation of site map reads as under: -

> **"5: یہ مقام یہاں پر بوقت وقوعہ مدعی مقدمہ محمد بشیر کھڑا تھا جو فائر کی آواز سن کر فوری طور پر موقع پر پہنچنا بیان ہوا یہ مقام نمبر 1 سے جانب شامل 20 فٹ پر واقع ہے۔"**

The above contradictions pointed out cannot be lightly ignored and it was enjoined upon the High Court to extend the benefit of the same to the convict.

14. As per recovery memo, Ex-PQ, the weapon of offence, i.e. pistol was recovered on the pointation of the convict in presence of two recovery witnesses i.e. Muhammad Zameer and Adeel Bashir, however, as stated earlier, the pw.5 has not been produced by the prosecution. The other recovery witness Muhammad Zameer, appeared before the Court and stated that he along-with police reached at the place of occurrence on 29.06.2013, and in his presence, pistol 30 bore along-with magazine was recovered from the convict. During his statement, he identified the pistol from which the victim was shot dead, however, he deposed that the magazine which was recovered from the convict was bearing a number 4778 on its back but the magazine shown to him in the Court does not bear the aforementioned number.

15. The learned counsel for the convict also taken the stance that the Report of FSL has not been put to the convict at the time of recording of his

statement under section 342, Cr.PC, hence, the same cannot be read against him. This argument of the learned counsel for the convict has substance. After going through the statement of convict recorded under section 342, Cr.PC we have felt that the same was not recorded properly. All the possible material brought on record in evidence against the accused should have been put to him for the fair administration of justice. It is also against the norms of justice that an accused be convicted on the basis of evidence not put to him during trial. Evidence and questions should be properly, specifically and clearly put to the accused to make sure that he is aware of the case against him, for the purpose of fair trial. In the case in hand, it is an admitted fact that the report of FSL was not put to the convict while recording his statement under section 342, C.rpC which is a major dent in the prosecution case. This view is fortified from the case reported as Fazal Ellahi vs. Muhammad Yaqub and 17 others[7], wherein, it has been held as under: -

> "Even otherwise, the provisions of section 342, Cr.PC are mandatory in nature and if the incriminating material is not put to accused under section 342, Cr.PC, the same cannot be read against the accused; in such an eventuality either that piece of evidence is to be excluded from consideration or the case is to be remanded to the trial Court for re-examining the accused under section 342, Cr.PC.

In another case reported as Muhammad Mushtaq vs. State[8], it has been held by this Court as under: -

> "20. We have carefully perused the police diaries as well. It appears that the trial Court sought the explanation of the accused

[7] [2003 SCR 234]
[8] [2001 SCR 286]

> under section 342 Cr.P.C. on the basis of report submitted by police under section 173 Cr.P.C. and not on the basis of material brought on record of the trial Court by the prosecution. This way of examining the accused under section 342 Cr.P.C. is not recognised by any canons of law or justice.
> Even the report of Ballistic Expert which, according to the prosecution version, tallies with the empty recovered from the accused and was fired from the same gun which was recovered from the accused was also not put to the accused. The Serologist report, according to the prosecution version, was destroyed due to ablaze of fire, the same was not thus brought on record. However, the version of defence is that the same does not corroborate the prosecution story and for this very purpose it was withheld by the prosecution. The statement of convict-appellant even under section 242 Cr.P.C. so far as the main part of the prosecution story is concerned, is to the similar effect as was put to him under section 342 which also does not form part of record of the prosecution evidence. The law on the point stands settled that the explanation of accused-convict is to be sought only on the incriminating material which is brought on record by the prosecution. The extraneous circumstances which do not form part of the evidence of prosecution are not material for the purpose of conviction and those cannot be taken into consideration."

16. It is also apparent from the statement of the prosecution witness, Dr. Tariq Tabasum, Civil Medical Officer, that an injury form of the convict was brought by the police to him on 25.06.2013, who thereafter had issued medico-legal opinion. The convict was brought to the Hospital in a state of unconsciousness with severe injury but the prosecution's case is throughout silent in this regard that how the convict sustained the injuries. There is no evidence available on record through which it may be ascertained that how the convict got injured. It indicates that the incident did not occur in the

manner as is narrated by the prosecution in FIR, hence, the same seems to be shrouded in mystery. Another contradiction in the case is visible from the medical report which demonstrates that the deceased was shot by one fire however, the version of the complainant is that two fires were shot at the deceased; which further creates doubt in the prosecution case.

17. After going through the entire record, evidence produced by the prosecution and the flaws as pointed out in the prosecution story coupled with other grounds mentioned hereinabove, we are of the opinion that the learned High Court has not passed the judgment in accordance with law. The learned High Court although, observed that the case is not of direct evidence and on the basis of contradictions in the statements of the witnesses, reduced the sentence to 14 years' simple imprisonment but has not taken into consideration the material dents/flaws in the prosecution story. It is also on record that the convict has almost served out the sentence of 14 years' simple imprisonment as awarded by the learned High Court, therefore, while modifying the judgments of the Courts below, the sentence imposed by the High Court is converted into the sentence already undergone. The other appeal filed by the complainant being meritless, is hereby dismissed. The convict-appellant shall be released forthwith, if not required in any other case.

JUDGE **JUDGE**

Muzaffarabad.
23.06.2023.
To be reported