IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR

(Shariat Appellate Jurisdiction)

PRESENT:

MR. JUSTICE RAJA SAEED AKRAM KHAN, CJ.
MR. JUSTICE RAZA ALI KHAN

CRIMINAL APPEAL NO. 36 OF 2022

Crim. Misc. No. 48 of 2022

(Against the judgment dated 29.02.2022 passed by the Shariat Appellate Bench of the High Court, in Crim. Appeals No. 162, 167, 165, 164, 216, and Reference No. 163 of 2017)

Muhammad Saeed s/o Sher Ahmed caste Rais r/o Kharigam Tehsil Shardah District Neelum, Azad Jammu and Kashmir.

...Convict-Appellant

VERSUS

The State through Advocate-General of the State of Jammu and Kashmir, office situated at Supreme Court Building, Muzaffarabad and 12 others.

...Respondents

Appearances:

For the convict/appellant:	Sardar Karam Dad Khan, Advocate.
For the State:	Raja Mazhar Waheed Khan, Add. Advocate-

	General.
For the Complainant/ respondents:	Mr. Tahir Aziz Khan, Advocate.
Date of hearing:	04.07.2023

ORDER

Raza Ali Khan, J:- The captioned appeal is the outcome of the judgment of the Shariat Appellate Bench of the High Court *(hereinafter to be referred as High Court)* dated 29.09.2022, whereby, the appeals filed by the convicts have been dismissed and the reference sent by the trial Court for confirmation of death sentence awarded to the Ismail and Shabbir has been answered in affirmative.

2. The facts as alleged for the disposal of the captioned appeal indicate that Muhammad Zaheer, the complainant, submitted a written application at the Police Station Kahori, on 3rd of October, 2012. In his application, he stated that his uncle, Naseer Ahmed who was a Mason by profession, went to Tariqabad Muzaffarabad, on the 26th September, 2012 at the hour of 06:30 p.m. riding upon his owned carry Van bearing number 4456-LHA, but he didn't return home until 09:00 p.m. which prompted to complainant and others to commence a search for him, their efforts were in vain and thus they filed a complaint at the Police Station, Muzaffarabad. On this day, the 3rd of October, 2012, at the hour of 10:30, a.m. the complainant received tiding that a lifeless body had been found discovered on the HeerKotli road, near the Kahori bridge. He accompanied by other family members, on reaching upon the spot identified the deceased as none other than his uncle

Naseer Ahmed, his life had been taken by unknown perpetrators and his carry was nowhere to be found.

3. On this report, an FIR No. 56/2012, Ex.DF in the offences under section 302 APC and 20 EHA was registered at the Police Station Kahori on 03.10.2012. During the investigation, the convicts as well as acquitted persons were found involved and were arrested by the police. On completion of the investigation, challan was submitted before the trial Court on 12.12.2012. The statements of the accused persons were recorded under section 265-D, Cr.PC, on 28.12.2012, wherein, they pleaded not guilty, whereupon, the prosecution was directed to lead evidence in support of the allegations. Upon completion of the prosecution evidence the statement of the accused persons were recorded under section 342, Cr.PC, on 18.06.2016, they denied to certify prosecution evidence. However, opted neither to appear as witness under section 340(2), Cr.PC, nor to produce defence evidence. The learned trial Court at the conclusion of the proceedings convicted Ismail and Shabbir under section 302(b), APC, vide judgment dated 24.11.2016, by awarding them death sentence as Tazir with further sentence to 10 years rigorous imprisonment each under section 392, APC and fine of Rs. 200,000/-. Ismail, Shabbir, Farooq and Saeed were convicted under section 471 and 468, APC, by awarding 7 years simple imprisonment with fine of Rs. 50,000/- each. The accused Farooq and Saeed were also convicted under section 414, APC as one year simple imprisonment and two thousand rupees fine, along-with benefit of section 382(b)_Cr.PC. All the accused persons were acquitted of the charges in the offences under section 467 and 34 APC, The accused

Imran was acquitted from all the charges by extending him benefit of doubt. Against the aforesaid judgment of the trial Court, the convicts preferred separate appeals before the High Court. A reference for confirmation of death sentence was also moved by the trial Court before the High Court. The learned High Court consolidated all the appeals and references sent by the trial Court, and after necessary proceedings through the impugned judgment dated 29.09.2022, confirmed the reference sent by the trial court for confirmation of death sentence and dismissed the appeal filed by the convict-appellant. The instant appeal against the judgment of the High Court has been filed only to the extent of convict-appellant, herein.

4. Sardar Karam Dad Khan, the learned counsel for the convict-appellant, herein, stated that the impugned judgment of the High Court is quite against law, the facts and the record of the case. He submitted that the convict-appellant before the High Court categorically took a stand that the judgment of the trial Court is no judgment in eye of law as the same is lacking the requirements of section 366, Cr.PC, but the High Court did not attend this important point. He submitted that to the extent of convict-appellant, herein, nothing has been recovered from him nor the thumb impressions of the convict-appellant have been obtained wherefrom, the vehicle was recovered on the pointation of convicts Ismail alias Salikheen and Muhammad Shabbir. The vehicle was recovered from Abbottabad and then brought to PS Kahori. During this time while the appellant was in police custody, he was compelled to provide thumb impression on the body of the vehicle just to implicate him in the case. This argument was also advanced before the High Court but

the High Court neither attended to the same nor recorded any findings. He argued that not a single piece of evidence is available on record which connects the convict-appellant with the commission of the offence. The call data relied upon by the police holds no evidentiary value, moreover, the said call data does not reveal the appellant's location at the time of the incident nor it contains any voice recording that could establish a connection with the alleged offence. The prosecution has also failed to prove that the alleged number plate has been recovered from the appellant but despite this, the impugned sentence has been awarded to the convict-appellant which is quite against the principle of administration of justice. The learned Advocate further argued that the High Court while dismissing the appeal has failed to appreciate the evidence regarding the sentence of the convict-appellant how and from whom they have prepared the fake number plates and from whom pointation, the number plates have been recovered. He contended that from the evidence, no premeditation or active participation of the appellant is proved therefore, while setting aside the judgment of the High Court to the extent of convict-appellant, he may be acquitted of the charges. In support of his submissions, the learned counsel for the convict-appellant placed reliance on the cases reported as *Azeem Khan and another vs. Mujahid Khan and others* [206 SCMR 274], *Javaid Akhtar vs. M. Zubair and others* [2015 SCR 533], *Akhtar Ali and others vs. The State* [2008 SCMR 6], *Muhammad Asif and another vs. The State* [2008 MLD 1385] and *M. Pervaiz vs. The State through Additional Advocate-General KPK and another,* [2019 YLR 2213].

4. On the other hand, Mr. Tahiz Aziz Khan, the learned counsel for the respondents strongly opposed

the arguments advanced on behalf of the learned counsel for the convict-appellant and submitted that the impugned judgment of the High Court is quite in accordance with law and the facts of the case. He submitted that the convict-appellant along-with co-accused with common intention and pre-planning committed the murder of the victim in a brutal way, hence, he does not deserve any leniency. The prosecution has proved its case beyond any shadow of doubt against the convict-appellant, therefore, the trial Court reached at the right conclusion and rightly convicted him. The learned counsel submitted that it is proved through cogent evidence that the convict-appellant with the other co-accused hatched the conspiracy and was active member of the gang. In furtherance to this, the convict-appellant along-with the accused Farooq prepared a forged, fake and fabricated number plate and applied with the vehicle which were recovered along-with the stolen vehicle. During the investigation the fingerprints of the convict-appellant were also matched with the fingerprints collected from the stolen carry van. The prosecution fully proved its case against the convict-appellant beyond any shadow of doubt, therefore, this appeal deserves dismissal. In support of his submissions, the learned counsel placed reliance on the cases reported as *Muhammad Akram vs. The State and others* [2015 YLR 116], *Anwar Shamim and another vs. The State* [200 SCMR 1791], *Haroon Rasheed and others vs. The State and another* [2005 SCMR 1568], *The State vs. Sheikh Manzar Masud* [PLJ 1984 SC (AJK) 83] and *Muhammad Babar vs. State through Advocate-General* [2014 SCR 1585].

5. Raja Mazhar Waheed, the learned Additional Advocate-General appearing for the State adopted the

arguments advanced on behalf of the learned counsel for the complainant-respondents and stated that the impugned judgment of the High Court is well-reasoned comprehensive and passed in accordance with law and facts of the case. He submitted that the convict-appellant has failed to point out any ground for interference by this Court in the impugned judgment hence the appeal is a futile exercise only to prolong the litigation for causing damage to the complainant party.

6. We have gone through the record and the arguments advanced on behalf of learned counsel for the parties assiduously. Indeed, it is admitted that the case in hand is built upon circumstantial evidence for there is no direct evidence available on record. Nonetheless, it is well-established that conviction can be recorded based on circumstantial evidence in severe cases, such as those meriting the death penalty, it can be rightfully awarded 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 reasonable 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 same proposition came under the consideration of this Court in the latest case titled *Mst.*

Nida Begum vs. State & other[1], 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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[1] Criminal Appeals No. 09 & 10 of 2020, decided on 17.06.2022

7. In cases of circumstantial evidence, the Courts are to take extraordinary care and caution before relying on the same. Circumstantial evidence, if supported by defective or inadequate evidence, cannot be made basis for conviction on a capital charge. 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 to be ruled out, therefore, rules of criminal justice should be applied to carefully and narrowly examine the circumstantial evidence in such cases because chances of fabrication always exists. To justify the inference of guilt of an accused person, 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 by awarding the 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 *The State vs. Mst. Falawat Jan and another*[2], in which, it has been held as under: -

> "It may be stated here that in case of circumstantial evidence, the evidence should be of such a degree and character that it should exclude the possibility of 25 innocence of an accused. Besides, it should link together all the chains of the prosecution story so as to convince the Court to reach an irresistible conclusion that the accused person was the culprit beyond any reasonable doubt. The evidence in the instant case is not only insufficient but the same is of such a nature that conviction is not sustainable upon the same: for instance,

[2] [1992 SCR 366]

> the garments which allegedly belong to the accused-respondent were not found blood-stained. Thus, mere production of the clothes of the respondent, Muhammad Khaliq, by his wife, is no evidence against him. Similarly, the recovery of knife is not only suspicious, as indicated above, but it was also not proved to have been stained with human blood."

Same view was expressed by this Court in a case titled *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 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.

Similar view prevailed in a case titled *Muhammad Latif Butt vs. Shehtab & others*[4], this Court observed that: -

> "7. …….No doubt the conviction can be recorded on the basis of circumstantial evidence in the absence of direct evidence because a man can tell lie but circumstance never tell lie. The conviction can only he based on circumstantial evidence, if it excludes, all hypothesis of innocence of the accused. The circumstantial evidence must be incompatible with that of innocence of the

[3] [2009 SCR 273]
[4] [2009 SCR 432]

> accused. It should be incapable of any other hypothesis than that of guilt of the accused. Rule as to quality of circumstantial evidence is that the facts proved must be incompatible with innocence of the accused and incapable of any other explanation upon any other reasonable hypothesis than that of guilt."

8. According to the prosecution story, convicts Muhammad Ismail, Muhammad Saeed, Muhammad Shabbir, Muhammad Imran and Muhammad Farooq having common intention planned to snatch a vehicle for making money and for that purpose on 26.09.2012, Muhammad Ismail, Muhammad Shabbir and Muhammad Imran hired a vehicle (van) No. 4456/LHJ owned and driven by the victim from CMH Stop Muzaffarabad at 09:00 pm for Heer Kutli. At Plate, Muhammad Imran got off from the vehicle. From Neelum Petrol Pump one Maqsood Ahmed who was known to Naseer Ahmed got on to the said vehicle but departed at Chehla Chowk. When they reached at link road Heer Kotli, the convict Ismail and Muhammad Shabbir murdered Naseer Ahmed by strangulating him with a handkerchief and also took Rs. 2500/-, National ID Card of deceased, Mobile Nokia 1200 along-with SIM Zong No. 03157926660, which was under the use of deceased, driving license of deceased and original registration Book of stolen vehicle. Later on, they went to Muzaffarabad in the stolen vehicle driven by Ismail and in the meantime Ismail called to Muhammad Saeed that they have murdered the driver and have snatched the vehicle. Muhammad Saeed informed them that accused Farooq will be available at Domel Bridge and he will meet them in Abbottabad. The convict Ismail and Muhammad Shabbir picked Muhammad Farooq from Domel Bridge who took registration book of the stolen vehicle from co-accused. Via Rara, Pulher, Pattan they

reached at Abbottabad and on third day the convict-appellant also joined them. The convict-appellant and Muhammad Farooq broke the original number plate of stolen van, installed fake plate Number 445/J, Lahore by parking vehicle at Mirpur Chowk link Road and started searching customer to sell the same.

9. In the whole prosecution story, the allegations levelled against the convict-appellant is that after the murder of the victim and snatching the vehicle, he was called by M. Ismail and then he joined him on the third day at Abbottabad and allegedly managed to install a fake number plate i.e. 4455/J. According to prosecution, the thumb impressions of the convict-appellant also matched with the fingerprints obtained from the vehicle. It is an admitted fact that neither the convict-appellant was present at the day/place of occurrence, nor he is directly involved in the murder of the victim and snatching the vehicle. He has been alleged to have abated the main accused for selling the vehicle snatched by them at Abbottabad.

10. The CDR Data Ex-PEEE, Ex-PEEE/1, Ex-PEEE/2 Ex-PEEE/3, Ex-PEE/4, Ex-PEEE/5, Ex-PEEE/6 and Ex-PEEE/7, dated 26.05.2016, are available at page 81 to 91 of the file of trial Court. Upon careful examination of these documents, it becomes apparent that they are of a general nature, lacking specific details or pertinent information. Notably, the data fails to highlight any relevant entries that would strengthen the case. Furthermore, crucial evidence such as transcripts of voice recordings is conspicuously absent. The absence of such transcripts poses a significant challenge for the prosecution, as they are unable to provide concrete support for their allegations against the convict-appellant. Mere presentation of call

data in isolation, lacking corresponding transcripts or comprehensive audio recording, fails to carry significant evidentiary value that can be deemed as reliable within the legal context. The Courts are obliged to exercise due diligence in evaluating such evidentiary materials. This caution is imperative due to remarkable strides made in science and technology, which have rendered it remarkably facile to manipulate and alter such evidence to align with personal indications. In light of these considerations, the court faces a daunting task in determining the credibility and admissibility of the evidence presented. Without the essential transcripts or end-to-end audio recordings, the evidentiary value of the CDR data remains questionable and unreliable. Therefore, a thorough and meticulous analysis of the available evidence, taking into account the limitations and potential for manipulation, is imperative for a fair and just decision. Reliance in this regard may be placed to the case from Pakistan jurisdiction reported as Mian Khalid Pervaiz vs. The State through Special Prosecutor ANF and another[5], wherein it has been observed as under: -

> "The defence evidence recorded by Najam Riaz (DW-1) and Nouman Khan Bangash (DW-2), pertains to calls data of Appellant's mobile phones and that of the cell phones of Investigating Officer (I.O.) (Ex. DB to DE and DJ). A perusal of these documents would reveal that these were general in nature. Neither relevant entries were pointed out in the data nor the voice record transcripts were produced which, if available, could have made a point. There is nothing on the record in this regard to help out the Appellant in support of his allegations made in defence. Mere production of CDR DATA without transcripts of the calls or end to end audio recording cannot be considered/used as evidence worth reliance. Besides the call

[5] [2021 SCMR 522]

> transcripts, it should also be established on the record that callers on both the ends were the same persons whose calls data is being used in evidence. While considering such type of evidence extra care is required to be taken by the Courts as advancement of science and technology, on the other hand, has also made it very convenient and easy to edit and make changes of one's choice..."

11. The learned counsel for the convict-appellant vigorously contended that both the trial Court and the learned High Court have failed to fully comprehend the evidence presented. The accusation of making forged and counterfeit number plates remains unproven and the prosecution's narrative lacks details on the origin and method of preparing the fake plates. We have thoroughly examined this argument in the light of prosecution evidence, which indicates that the complainant in this statement stated that the police discovered the counterfeit number plates in vehicle and kept them separately, while the genuine plates were searched for but not found. Similarly, Wazir Shaikh, who is the recovery witness of number plates deposed that after reaching the police station Kahori, police removed the fake number plates from the vehicle, except that nothing is available on record through which it could be ascertained how and from where number plates were prepared, beyond these statements of PWs. there is no concrete evidence on record to assert the source or origin of these counterfeit plates or the individual responsible for their discovery. The trial Court, unfortunately, relied solely on the accused's statement made during police custody, wherein, he allegedly confessed to preparing the forged number plates. It is vital to note that relying upon such statements obtained during police custody is impermissible under law. Regrettably, both the learned

trial Court and the High Court erred in presuming such dubious statements. The principle of “innocent until proven guilty” is the corner stone of criminal justice, mere admission of an accused in police custody cannot be the basis of conviction in the pursuit of fair and impartial trial. It is incumbent upon the Courts to uphold the sanctity of evidence and refrain from relying on the statement extracted under questionable circumstances. The Court has to base its conclusion as to involvement of an accused as abettor or conspirator on some solid material collected during the course of investigation, and not on surmises or conjectures. It is true that a conspiracy to commit a crime by its very nature is usually secret and cannot be proved by direct evidence in most cases. It, however, does not mean that the prosecution is absolved from its duty to prove the allegation of conspiracy, or that mere allegation of conspiracy is sufficient for holding the accused liable. In case of non-availability of direct evidence, the police must collect during investigation, and the prosecution must lead during trial, such circumstantial evidence from which a Court could draw a legitimate inference of the existence of conspiracy and involvement of the accused in that conspiracy.

12. It has also been argued by the learned counsel for the convict-appellant that proper procedure has not been followed by the police while obtaining the fingerprints from the vehicle at the vehicle was recovered from Abbottabad and the fingerprints were obtained from the vehicle at Police Station Kahori. He stated that the fingerprints of the convict-appellant were forcefully put by the police at the police station. As far this argument is concerned, no doubt that the fingerprints obtained from the vehicle were matched

with the fingerprints of convict-appellant, however, it is not proved that whether the said fingerprints were taken from the vehicle at the time of recovery or at the Police Station by force as alleged by the convict-appellant. In such state of affairs, we feel that the trial Court was not justified in convicting the convict-appellant, especially, when the prosecution has miserably failed to prove its case against the convict-appellant and to establish the guilt of the accused. It is already settled by the Courts time and again that for the purpose of giving benefit of doubt to an accused, more than one infirmity is not required, rather, single infirmity creating reasonable doubt in the mind of a prudent person regarding the truth of the charge, makes the whole case doubtful. The rule of giving benefit of doubt to accused person is essentially a rule of caution and prudence, and is deep rooted in our jurisprudence for the safe administration of criminal justice. In common law, it is based on the maxim, *"It is better that ten guilty persons be acquitted rather than one innocent person be convicted".* While in Islamic criminal law it is based on the high authority of sayings of the Holy Prophet of Islam (Peace Be Upon Him):

Abu Huraira reported: The Messenger of Allah, peace and blessings be upon him, said,

"**Avoid applying legal punishments as long as you find an excuse to avoid them.**"

Source: Sunan Ibn Mājah 2545

Grade: *Hasan* (fair) according to Al-Suyuti

Al-Suyuti said, "A principle of law states that legal punishments are suspended by doubts."

Source: al-Ashbāh wal-Naẓāʾir 2/122

عَنْ أَبِي هُرَيْرَةَ قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ **ادْفَعُوا الْحُدُودَ مَا وَجَدْتُمْ لَهُ مَدْفَعًا**

سنن ابن ماجه كتاب الحدود باب الستر على المؤمن ودفع الحدود بالشبهات2545

المحدث السيوطي خلاصة حكم المحدث حسن في الجامع الصغير317

قال السيوطي القاعدة (في الفقه) الحدود تسقط بالشبهات

13. According to the celebrated principle of administration of criminal justice, the burden lies on the prosecution to prove its case through cogent evidence by exclusion of all the doubts. For the better administration of justice in criminal legal system, the accused person is always extended with the benefit of "reasonable" and not of “imaginary” doubt. What constitutes a reasonable doubt is a basic question of law; essentially a question for human judgment by a prudent person to be found in each case, taking in account fully all the facts and circumstances appearing on the entire record. It is an antithesis of a haphazard approach for reaching a fitful decision in a case. Reliance in this regard may be placed to the case reported as *Ghulam Rasool Shah vs. State & others*[6], wherein, it has been observed as under: -

> “… while under law, it was the bounded duty and moral obligation of the prosecution to prove its case beyond any doubt. The prosecution has to stand on its own legs and every benefit of doubt will got to the accused. It is well settled principle of law that surmises and conjectures cannot take the place of proof.”

14. In the instant case, the prosecution has not been able to sufficiently prove its case against the convict-appellant beyond reasonable doubt, unequivocally favouring the convict-appellant. This view is fortified from the reported judgment of this Court titled *Tasawar Husain vs. The State & others*[7], wherein, it has been held as under: -

> “According to the universally settled and accepted principle of law of criminal

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[6] [2009 SCR 390]
[7] [2016 SCR 373]

> administration of justice, benefit of doubt always goes to the accused."

In another judgment of this Court reported as *Abid Hanif vs. Muhammad Afzal & 4 others*[8], on the question of slightest doubt it has been held as under:

> "From the perusal of hereinabove reproduced portion, it appears that the doctor negates the version of the prosecution which creates a doubt and it is settled principle of law that even a slightest doubt must go in favour of the accused. In this scenario when the ocular account is disbelieved by the trial Court being contradictory in nature, the other evidence which are only corroborative in nature cannot be given any weight and no preference can be given over the ocular account.

15. Criminal Jurisprudence is very clear in this regard that whenever any reasonable doubt arises in the prosecution case, the benefit thereof, would be extended to the accused as a matter of right. Wherever a person is accused of serious charges like the case in hand, all kinds of hate and disgust are naturally attached to the accused, but the Courts must abide by the principles of criminal jurisprudence and crucial aspect of appreciation of evidence by keeping the emotions and sentiments aside. The evidence in a criminal case must be scrutinized with due caution and care so that no probability of doubt is left behind but in a case where the prosecution story itself is full of visible doubts and loop-holes, then it would be against the principles of criminal jurisprudence and natural justice to rely on the same.

16. The rule which forms the backbone of criminal jurisprudence is that the guilt of the accused, in order to justify conviction, must be proved beyond

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[8] [2014 SCR 983]

the shadow of reasonable doubt. When there exist contradictions in a criminal case, the story must be broken down into elements; more precisely; criminal elements and each element must be proved beyond reasonable doubt by the prosecution in order to form an unbroken chain which connects the accused with the guilt. The burden of proof always lies on the prosecution to prove the guilt of the accused which is a settled principle of law and requires no debate. In the case in hand, the learned High Court overlooked the above discussed golden rules of criminal jurisprudence which led to the impugned judgment. Finding of guilt against an accused cannot be based merely on high probabilities that may be inferred, but solely and firmly on the deep perusal of each and every aspect of the case. Rule of benefit of doubt occupies a pivotal position in the Islamic law and is enforced rigorously. If the prosecution fails to prove the case beyond reasonable doubt, benefit of doubt no matter how slight it may be, must go in favour of the accused.

17. In the light of above, while accepting this appeal, setting aside the judgment of the trial Court as well as the High Court to the extent of accused-appellant, herein, he is acquitted of the charges while extending him benefit of doubt. He shall be released forthwith if not required in any other case.

JUDGE **CHIEF JUSTICE**

Muzaffarabad.
15.08.2023.
Approved for reporting.

M. Saeed vs. The State & others.

ORDER:

Judgment has been signed. It shall be announced by the Registrar after notifying the counsel for the parties.

CHIEF JUSTICE JUDGE

Muzaffarabad,
15.08.2023