IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR
(Shariat Appellate Jurisdiction)

PRESENT:-

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

CRIM. APPEAL NO. 14 OF 2023
Crim. Misc. No. 12 of 2023
(On appeal from the judgment of the Shariat Appellate Bench of the High Court dated 20.03.2023, passed in Criminal Appeal No. 100 of 2019).

Muhammad Asif s/o Mir Hussain, caste Sheikh, r/o Dhani Shahdara, Tehsil Hattian Bala, District Jhelum Valley, presently detained in Central Jail Rarra, Muzaffarabad.

... Convict-Appellant

VERSUS

State through Advocate General, Azad Jammu and Kashmir, Muzaffarabad & another.

...Complainant-Respondents

Appearances:

For the convict-Appellant: Mr. Shahzad Shafi Awan, Advocate.

For the State: Khawaja Muhammad Maqbool War, Advocate-General.

Date of hearing: 31.10.2023

JUDGMENT:

Raza Ali Khan, J:- The captioned appeal arises out of the judgment of the Shariat Appellate Bench of the High Court (*hereinafter to be referred as the High Court*) dated 20.03.2023, whereby, the appeal filed by the convict-appellant, herein, has been partly accepted.

2. The appellant was tried by the District Court of Criminal Jurisdiction Jehlum Valley, convicted and sentenced in the offences under section 377 APC and under section 12 of (Enforcement of Hudood) Act, 1985. According to the contents of FIR, on 02.12.2018, the complainant went to Muzaffarabad, and returned to Hattian Bazar on the same day after spending the whole day in Muzaffarabad city. He went to bus stand but the concerned bus on the route to Chinari had already left for Chinari. While quenching for transportation to Chinari, Muhammad Asif, a Chowkidar, met the complainant and took him to a Tandoor (Coven) at Bani Hafiz Link Road, where he allegedly committed within shop the act of sodomy twice. After apprehending the accused and formal investigation, the Police presented the challan under section 173 of the Code of Criminal Procedure, 1898 (Cr.PC) on 17.12.2018. Later on, th offences under section 377 APC was added, and section 18 ZHA was omitted from the challan. The accused was examined under section 265-D, of Cr.P.C., wherein he pleaded not guilty and opted for the trial of the offence. The prosecution produced eight prosecution

witnesses in support of its case. Following the statements of the prosecution witnesses, the accused was again examined under section 342 Cr.P.C., wherein he reiterated his denial of the charges and claimed that false evidence had been produced against him. At the conclusion of the trial, the learned District Court of Criminal Jurisdiction, Jhelum Valley convicted and sentenced the accused (appellant) to 14 years rigorous imprisonment and a fine of Rs. 50,000 in the offence under section 12 ZHA, as well as 10 years' rigorous imprisonment and a fine of Rs. 50,000 under section 377 APC. In case of non-payment of the fine, the convict had to serve an additional six months' simple imprisonment for each sentence along-with the benefit of section 382-B Cr.PC. Dissatisfied from the conviction, the convict filed an appeal before the High Court. After necessary proceedings, the High Court through the impugned judgment dated 20.03.2023, while partly accepting the appeal, acquitted the convict in the offense under section 12 ZHA and reduced the sentence under section 377 APC to 5 years' rigorous imprisonment, along with a fine of Rs. 50,000, with an additional 2 months' simple imprisonment in case of non-payment of fine.

3. Mr. Shahzad Shafi Awan, the learned counsel for the convict-appellant, presented his arguments stating, therein that the judgments delivered by the lower courts are in violation of law, the rules, and the facts of the case. He emphasized that during the cross-examination, the complainant, in a significant inconsistency, stated the color of clothing as green, whereas in the FIR the victim himself admitted that he was wearing trousers, which was subsequently sent for forensic examination. This inconsistency, Mr. Awan argued, should have been sufficient

to exonerate the convict of the charges. He also pointed out that the medical report prepared by Dr. Rashid Ilyas, CMO, indicated that there was no sign of sodomy committed by the convict, and he only suggested that possibility of "intercrural sex cannot be ruled out." Moreover, in the report no signs of violence or bruises on the victim's body have been shown. Mr. Awan further highlighted that the forensic report of the complainant's clothes is supportive of the innocence of the convict-appellant. Additionally, he argued that there was no evidence of penetration required to complete the act of sodomy and the absence of DNA test raised doubts in the proseuction story. He criticized the absence of independent witnesses from the locality wherein the alleged incident took place, which he considered a clear violation of section 103 Cr.P.C. He contended that the judgments passed by both the Courts below are the result of misinterpretation and a failure to appreciate the evidence properly, thus, the verdict passed against convict must be set aside in terms of the punishment imposed. He concluded by requesting the acceptance of appeal. He referred to and relied upon the case laws reported as *M. Imran vs. The State* [2014 YLR 459, *Muhammad Ibrahim alias Papu vs. The State* [1996 PCr.LJ 685] and *Allah Ditta and others vs. The State and others* [2017 PCr.LJ 789]

4. On the other hand, Kh. Muhammad Maqbool War, the learned Advocate-General representing the State, strongly defended the conviction recorded by the lower courts, asserting therein that the same is fully compliant with law and should not be subject to interference by this Court. He argued that the judgments impugend are well-founded and aligned with the facts and circumstances of the case, warranting affirmation by the august Court. Mr. War, the learned Advocate-General

contended that the evidence collected by the Investigating Agency and presented in the trial Court, was sufficient to establish the accused's involvement in the commission of offence. He maintained that the prosecution has successfully proved the commission of offences beyond any doubt, justifying the conviction recorded by the Courts below. Mr. War further argued that the defense's grounds for quashing the sentence are baseless and lacking the legal merit, as they are rooted in imagination rather than the real facts and evidence.

5. The arguments presented by the learned counsel for the convict-appellant and the learned Advocate General, have been diligently considered, and a thorough examination of the record and the impugned judgments has been conducted. Upon this review, it is evident that the victim lodged a report at Hattian Bala Police Station, resulting into the registration of FIR No. 90/18 in the offenses under section 12 & 18 of ZHA. Subsequently, the offence under section 377 APC was added, and section 18 ZHA was omitted. The contents of the FIR detailed an allegation made by the victim against the convict, accusing him of committing the act of sodomy twice. Following a formal investigation, a challan under section 173 Cr.PC, was presented in the Court of Criminal Jurisdiction. The trial Court, at the conclusion of the trial, convicted and sentenced the appellant to 14 years' rigorous imprisonment along with a fine of Rs. 50,000 in the offences under section 12 ZHA, and 10 years' rigorous imprisonment, along with a fine of Rs. 50,000 in the offences under section 377 APC. In case of non-payment of fine, the convict was to undergo an additional six months' simple imprisonment for each sentence. Unsatisfied with the convciton, the convict appealed to the High Court, challenging the conviction recorded by the trial

Court. The learned High Court, through its impugned judgment dated 20.03.2023, partly accepted the appeal filed by the convict, exonerated him in the offences under section 12 ZHA, and reduced the sentence awarded under section 377 APC to 5 years' rigorous imprisonment along with a fine of Rs. 50,000, and in the event of non-payment of the fine, the convict was to undergo an additional 2 months' of simple imprisonment.

6. To substantiate its case, the prosecution examined eight witnesses in the trial Court, who got their statements recorded. In terms of documentary evidence, the prosecution brought on record the victim's Medical Report and the Report of the Forensic Science Laboratory, both of which are part of the case record. We have meticulously reviewed the statements recorded by the prosecution witnesses, with particular attention to the statement of Dr. Rashid Ilyas, CMO (PW), who initially examined the victim and prepared the medical report, as it is of utmost importance for a comprehensive understanding of the case. The relevant portion of his statement is reproduced herein below:

> "اس نے اپنی جاری کردہ میڈیکل رپورٹ Exh.PA دیکھ لی ہے جو درست ہے جس پر اس کے دستخط بھی درست ثبت ہیں۔۔۔۔ جرح میں گواہ کا اظہار ہے کہ یہ درست ہے کہ میڈیکل رپورٹ Exh.PA کے مطابق مفعول کے ساتھ بد فعلی ہونا نہ پایا جاتا ہے۔ "از خود میں گواہ کا اظہار ہے کہ مفعول نے کہا تھا کہ ملزم نے اس کی رانوں کے درمیان بد فعلی کی تھی۔ طبّی معائنہ کے وقت مفعول کی رانوں کے ساتھ کوئی مواد نہ پایا گیا تھا۔ میڈیکل رپورٹ Exh.PA میں گواہ نے لکھا ہے کہ جب اس نے Victim کا طبّی معائنہ کیا تو اس وقت وقوعہ کو ایک دن گزر چکا تھا۔ ایسی صورت میں Victim کی رانوں پر اور مقعد میں مواد موجود نہیں ہو سکتا ہے۔ ایک دن گزرنے کی صورت میں مواد دھو لیا گیا، رفع حاجت ہو گئی۔ مواد کیسے باقی رہے؟ گواہ ڈاکٹر کا اظہار ہے کہ مفعول نے اس سے کہا تھا کہ ملزم نے اس کی رانوں میں متلی کی ہے لیکن مفعول پر جو بیتی اس نے واضح کیا ہے کہ ملزم نے اس کے ساتھ دو مرتبہ بد فعلی کی ہے۔ دو بار بد فعلی کرنے کے درمیان 3/2 گھنٹے کا وقفہ تھا۔ مفعول نے ابتدائی بیان اور نہ ہی جرح میں یہ اظہار کیا ہے کہ ملزم نے اس کی رانوں میں بد فعلی کی ہے۔ لہذا اس کا اپنا عدالتی بیان معتبر ہو گا اور اس سے مراد فعل خلاف وضع فطری ہی ہے۔

Victim کی پینٹ کا وہ حصہ جس پر مادہ منویہ کا موجود ہونا میڈیل آفیسر نے تحریر کیا ہے کو فرانزک سائنس لیبارٹری میں بھیجا گیا۔ جس کی رپورٹ یہ آئی ہے کہ Victim کی پینٹ پر مادہ منویہ موجود ہے۔ رہی یہ بات کہ یہ مادہ منویہ کس کا ہے؟ جس کے تعین کے لئے گو کہ DNA ٹیسٹ نہ کرایا گیا ہے جو ضروری تھا۔ لیکن مقدمہ کے Facts اور Victim کے بیان سے اس بات کی تائید ہوتی ہے کہ مادہ منویہ جو Victim عاطف کی پینٹ پر موجود ہونا فرانزک سائنس لیبارٹری سے تصدیق ہوا ہے ملزم آصف ہی کا ہے۔ گواہ ڈاکٹر نے جرح میں مزید کہا ہے کہ یہ درست ہے کہ 18/17 سال کے بندے کو احتلام بھی ہو سکتا ہے۔ کونسل ملزم اس بات سے یہ ثابت کرنا چاہتے ہیں کہ Victim کی پینٹ پر مادہ منویہ اگر ہے بھی تو Victim کا اپنے احتلام سے ہے۔ لیکن اس بات میں اس لئے وزن نہ ہے کہ احتلام کو وجہ بنا کر اتنا بڑا الزام کسی پر کوئی نہ لگاتا ہے۔ جبکہ ملزم Victim سے بہت دور رہتا ہے۔ اس کا ملزم کے ساتھ سابقہ کسی کا کوئی تعلق واسطہ نہ ہے۔ کوئی دشمنی نہ ہے کہ جس بناء پر Victim نے ناحق ملزم کے خلاف اتنا بڑا الزام لگا دیا"

7. During the course of cross-examination, the pw (supra) affirmed that, according to the medical report (Exh.PA), no evidence of sodomy was found to have been committed with the victim. He further deposed that the victim had alleged that the accused had intercrural sex with him but no substance was found between the victim's legs during the medical examination. The witness, in the medical report (Exh.PA), deposed that the medical examination of the victim conducted a day after the alleged incident had occurred. In such a scenario, it would not be possible to detect any substance on the victim's legs or establish its presence. The Medico-legal Report prepared by the aforementioned pw is also part of the record. It would be useful to reproduce the same hereunder, for reference:

> *"On the basis of report of surgeon there was no perianal tear or stain. On perirectal examination there was hemorrhoid and anal tissue e sentinel tag which may direct towards its chronicity.*
>
> *There was no staions on thighs of the victim. However, there were stains on this pent innerly which needs expert forensic lab opinion. On the basis of above mentioned statement it is concluded that:-*

Intercrural sex can't be ruled out when time of period of one day has been elapsed.

Expert examination of the stains on pent of the victim may be helpful to determine the fact. So, Forensic lab examination of the station specimen is advised."

8. The medical report (supra) talks about a possible kind of sexual activity between the victim's thighs. The doctor didn't find any sign or bruse around the victim's bottom. However, it did find something like a swollen blood vessel and a small piece of extra skin near the victim's bottom, which might have been since long. Some stains on the victim's trouser were also found, but it is not known what caused them owing to the elapse of some time since the incident (a day) which is indicative of the fact that he is not sure that the act of sodomy was committed with the victim.

9. The clothes of the victim were also sent to Forensic Science Laboratory (FSL) and the report was also been received. According to the report semen was found on the cloth of the victim. The report reads as under: -

"Results and Conclusion:

Seminal material was found on item# 1.1 and 1.4, but no conclusion can be made about the inclusion or exclusion of suspect(s) until the submission of standard reference samples of suspect(s) and victim. Presumptive testing indicated the pressure of seminal material on item 1.3, 1.5 and 1.6. no seminal material was found on item# 1.2 and 1.7."

The FSL report reveals important findings: Seminal material, typically associated with male reproductive fluid, has been identified on two specific items, i.e. 1.1 and 1.4. However, in the report it has been mentioned that without standard

reference samples from both the potential suspect(s) and the victim, a definite conclusion regarding the involvement or exclusion of suspect(s) cannot be drawn at this stage. This is a standard procedure in forensic analysis to ensure accuracy. Moreover, presumptive testing indicated the possible presence of seminal material on three additional items # 1.3, 1.5 and 1.6, but further, more detailed testing is required to confirm the presence of seminal material of a specific kind. The FSL report indeed sheds light on the presence of seminal stains on the victim's clothing, which is a significant finding. However, it is important to emphasize that the presence of seminal stains alone does not constitute a decisive factor, especially in the absence of DNA testing. DNA testing is a crucial and highly precise method for identifying the source of biological materials, including semen etc. In absence of DNA test, it becomes challenging to establish whose' semen was found on the victim's pants, with absolute certainty. This absence of irrefutable DNA evidence introduces an element of doubt in the case. While the seminal stains indicate a potential link to sexual activity, the lack of DNA testing means that we cannot conclusively attribute the semen to a specific individual. As a result, the case remains uncertain, and further investigation, potentially including DNA testing, may be necessary to establish a clearer understanding of the situation and identify potential suspects or confirm the victim's account.

10. Now heading towards the statement of victim who straight away, stated in this statement that the convict committed the act of sodomy with him twice with a passage of a gap of 2 to 3 hours. For better appreciation, his statement is reproduced hereunder:

"مورخہ 02.12.2018 کو وہ والدہ سے -/1000 روپے لے کر مظفر آباد گیا۔ وہاں گھوما پھرا۔ رات 8 بجے ہٹیاں بازار پہنچا۔ چناری کی گاڑی تلاش کی جو نکل چکی تھی۔ گاڑی تلاش کرنے کے دوران چوکیدار آیا۔ اس نے نام پوچھا۔ ڈرایا دھمکایا اور کہا کہ تم یہاں کیا کر رہے ہو؟ تمہارے پاس شناختی کارڈ نہیں ہے۔ تم کیمرہ میں آگئے ہو۔ میرے ساتھ چلو ورنہ پولیس کے حوالہ کر دوں گا۔ پھر اس کو بنی حافظ روڈ پر تنور کے پاس لے گیا ۔اس کو ڈرایا دھمکایا اور اس کے ساتھ بد فعلی کی۔ ملزم محمد آصف مفعول عاطف کو ہٹیاں بازار سے اس کی مرضی کے خلاف بنی حافظ روڈ پر تنور کے پاس لے گیا اور دوبار اس کے ساتھ بد فعلی کی گواہ مفعول کے بیان سے موقف استغاثہ کی تائید ہوتی ہے کہ ملزم نے جرم 12-2 HA اور 377 AC- کا ارتکاب کیا ہے ۔۔۔۔۔۔ جرح میں گواہ کا اظہار ہے کہ وہ مظفر آباد سے بروز وقوعہ رات 8 بجے بیٹیاں بازار پہنچا تھا۔ ہٹیاں اڈے پر گاڑی سے اترا تھا۔ اس وقت ہوٹل بند تھے۔ اس نے میٹرک کا امتحان دیا ہوا ہے۔ گواہ مفعول کی عمر 17 سال ہے۔ گواہ نے کونسل ملزم کی اس بات کو درست مانا ہے کہ ملزم نے مفعول کو رات 3 بجے پولیس کے حوالے کیا تھا۔ تھانے پہنچنے میں 5 منٹ لگے تھے۔ گواہ مفعول کا مزید اظہار ہے کہ اس کے ساتھ ملزم نے دوبار بد فعلی کی اور دوبارہ بد فعلی کرنے کے درمیان 3/2 گھنٹے کا وقفہ تھا۔ 3/2 گھنٹے اس کو ملزم نے تنور پر بٹھائے رکھا۔ تھانہ میں دی گئی درخواست گواہ کو عدالت میں دکھائی نہ گئی ہے۔ یہ APP کی کوتاہی ہے نہ کہ گواہ مفعول کی۔ درخواست خود مفعول نے تھانہ میں دی ہے۔ درخواست اس نے خود لکھی تھی۔ گواہ نے اس بات کو درست نہ مانا ہے کہ جس طرح پولیس نے اس کو بتایا اس نے اسی طرح درخواست لکھ کر پولیس کو دی۔ بلکہ اس کے ساتھ جو بیتی تھی اس نے لکھ کر دی۔ دوسرے دن اس کا ہٹیاں بالا ہسپتال میں میڈیکل چیک اپ ہوا۔ یہ غلط ہے کہ ملزم نے اس کے ساتھ بد فعلی نہ کی ہے۔ گواہ مفعول نے جرح میں بھی ملزم پر یہ واضح الزام لگایا ہے کہ ملزم نے اس کے ساتھ اڈے سے تنور میں لے جا کر دوبار بد فعلی کی۔ درمیان میں 3/2 گھنٹے کا وقفہ رہا۔ اس دوران گواہ مفعول کو ملزم نے تنور میں بٹھائے رکھا۔ دوسری بار اس کے ساتھ بد فعلی کرنے کے درمیان 2/3 گھنٹے کا وقفہ رہا۔ اس کے ساتھ بد فعلی کرنے کے بعد رات کے تین بجے اپنے جرم کو چھپانے کے لئے ملزم نے مفعول کو پولیس کے حوالے کیا۔ جائے وقوعہ سے تھانہ پہنچنے میں پانچ منٹ لگے تھے۔ درخواست اس نے خود لکھ کر دی تھی۔ جو اس پر بیتی تھی وہی لکھا تھا۔ جرح میں بھی گواہ مفعول نے موقف استغاثہ کی مکمل تائید کی ہے۔ چوکیدار ملزم ہی ہے۔ ملزم نے 7 کس گواہان پر جرح کے دوران کہیں یہ موقف نہ لیا ہے کہ وہ بازار ہٹیاں بالا کا چوکیدار نہ ہے۔"

10. After appreciating the victim's statement, which outlined a distressing series of events, it is essential to delve deeper into the circumstances surrounding the case. The victim claimed that he suffered abuse twice, with a noticeable time gap of two to three hours. This aspect of the case raises several intriguing questions. First and foremost, the victim's age, being 17 years old, is a point of particular interest. At this stage of adolescence, individuals typically possess the physical

and emotional capacity to resist and react to abusive situations. It is unusual that the victim did not make any attempt to resist, cry out for help, or escape from the scene during these two instances of alleged abuse. This passivity raises questions about the dynamics of the situation and the victim's response. Moreover, the absence of any discernible marks of abuse on the victim's body, as reported in the medical examination, adds another layer of complexity to the case. The absence of physical evidence in cases of abuse can indeed be puzzling, but it also necessitates a thorough investigation into the nature of the alleged abuse.

11. The trial Court has convicted the appellant under section 377 APC, and sentenced him ten years rigorous imprisonment along-with a fine of Rs. 50,000/- however, the High Court while maintaining the conviction, reduced the sentence to five years' rigorous imprisonment along-with a fine of Rs. 50,000/-. The learned counsel for the convict has taken the stance that in the case in hand, section 377APC is not attracted. For analyzing the same, we would like to go through the statutory provision, which is reproduced hereunder for better appreciation: -

> "377. **Unnatural offences.** – Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine."

11. The statutory provision under consideration i.e. section 377 APC consists of three main elements: firstly, that the accused engaged in carnal intercourse must be committed the order of nature; secondly, that this intercourse was with a man, woman, or animal; and thirdly, that the accused did so

voluntarily. For application of section 377 APC, there exists a divergence of opinion amongst the Courts. One perspective asserts that penetration, however minimal, must be strictly proven to establish the offence of sodomy[1]. In cases where no penetration is established, the mere presence of semen on the victim's anus and on the clothing of both the accused and the victim is insufficient to secure a conviction under section 377 APC[2]. Conversely, the second perspective maintained by some Courts contends that penetration into the anus is not a strict requirement for constituting an offense under section 377 APC. Instead, entry of the male genital organ of the accused into the artificial cavity between the thighs of the victim is considered as penetration and carnal intercourse[3]. In the case in hand, it aligns with the latter perspective, as the medico-legal report does not establish penetration. It can be held that according to the differing opinions of the Courts, that the application of section 377 depends on the overall facts and circumstances of each case. In some instances where penetration is not proven, section 377 APC is applicable, while in cases where penetration is established, section 377 APC may not apply. This is because, to convict an accused under section 377 APC, the Court must consider the overall facts of the case, including the eyewitness account that corroborates the medical evidence. In this case, the eyewitness account does not align with the medical evidence.

12. In such cases, where there are no witnesses other than the victim and the sole statement of the victim is sufficient to convict the accused, the standard of evidence should be such that it eliminates contradictions in the witness's own

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[1] [1995 MLD 588]
[2] [PLD 1951 Bal. 22]
[3] [PLD 2000 Pesh. 5]

statement. According to the victim's statement, the convict-appellant committed an unnatural offence with him twice (دو دفعہ بدفعلی کی). However, during the examination by the doctor, when it was revealed that no penetration was found to have occurred, the victim himself stated that the accused committed the act between his thighs/legs of the victim (میڈیکل رپورٹ کے مطابق مفعول کے ساتھ بدفعلی ہونا نہ پایا جاتا ہے۔ از خود میں گواہ کا اظہار ہے کہ مفعول نے کہا تھا کہ ملزم نے اس کی رانوں کے درمیان بد فعلی کی تھی). Similarly, according to FIR the victim reported that upon reaching the location, threating being apprehended by the police and captured on CCTV camera, the accused committed unnatural twice and then forced him to leave (سائل گیا تو پولیس اور کیمرے میں آنے کا خوف دے کر مذکور نے دو دفعہ بد فعلی کی اور پھر وہاں سے بھگا دیا). While giving his statement in Court, the victim reiterated the same narrative, indicating that after committing the offence, the convict-appellant allowed him to leave. However, during cross-examination, he deposed that:

> "یہ درست ہے کہ بروز وقوعہ ملزم نے پولیس کو بلایا تھا اور مظہر کو پولیس کے حوالے کیا تھا۔ مظہر کو 3 بجے پولیس کے حوالے کیا تھا۔ رات کے 3 بجے پولیس کے حوالے کیا تھا۔ پولیس مبینہ جائے وقوعہ پر رکی تھی لے کر چلی گئی تھی"

13. On one hand, the victim stated that he was forced to leave from the place of occurrence by the convict-appellant and during cross-examination, he deposed that the convict-appellant himself, handed over the victim to the police. In such state of affairs, when the ocular account is found doubtful, no definite view can be formed for attraction or non-attraction of section 377-APC, as the same appears to be immaterial that whether the penetration is proved or not, especially when the ocular account is not proved. Keeping in view the overall facts and circumstances of the case, we are of the view that the prosecution has not been able to prove its case beyond shadow of reasonable doubt. The Courts have already settled the

principle of law that where the slightest doubt arises in the case, the benefit of the same should go to the accused. 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 on the case reported as *Ghulam Rasool Shah vs. State & others*[4], 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 failed to prove its case against the accused beyond any reasonable doubt which of course goes in favour of the accused. This view is fortified from the reported judgment of this Court titled *Tasawar Husain vs. The State & others* [2016 SCR 373][5], wherein, it has been held as under: -

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

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[4] [2009 SCR 390]
[5] [2009 SCR 390]

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

In another judgment of this Court reported as *Abid Hanif vs. Muhammad Afzal & 4 others*[6], 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.

Reliance can also be placed on the case reported as *Allah Ditta and others vrs. The State & others*[7], wherein, in para 26, it was observed as under:-

> *"26. The upshot of the above discussion is that the prosecution has badly failed to bring home charge against the appellants beyond any reasonable doubt, therefore, in the interest of safe administration of criminal justice, Crl. Appeal No. 646 of 2013 filed by Allah Ditta, appellant and Crl. Appeal No. 704 of 2013 filed by Zeshan Khan, appellant are accepted in toto. The conviction and sentence awarded by the learned Sessions Judge/ Juvenile Court, Narowal vide judgment dated 19.04.2013 is* ***set-aside*** *and the appellants Allah Ditta and Zeshan Khan are* ***acquitted*** *of the charge. Both the appellants are in custody and are ordered to be released forthwith, if not required in any other case."*

In the light of what has been discussed above, the impugend judgment of the High Court as well as of trial Court is set-aside and while accepting this appeal, the

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[6] [2014 SCR 983]
[7] [2017 P Cr. L J 789]

appellant, herein, is exonerated of the charges while extending him benefit of doubt. The appellant shall be released forthwith if not required in any other case or offence.

JUDGE **JUDGE**

Muzaffarabad,
10.11.2023
Approved for reporting.