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**JUDGMENT SHEET
IN THE LAHORE HIGH COURT AT LAHORE
JUDICIAL DEPARTMENT**

Murder Reference No.81 of 2019
(The State *versus* Bilal Hassan)

Crl. Appeal No.19109 of 2019
(Bilal Hassan *versus* The State.)

JUDGMENT

Date of hearing: 23.01.2023.

Appellant by: M/s Muhammad Irfan Malik, Ch. Abdur Rehman Sahi and Ch. Waleed Abdullah, Advocates.

State by: Rana Ahsan Aziz, Additional Prosecutor General.

Complainant by: Mr. Ayaz Ahmad Butt, Advocate.

AALIA NEELUM, J:- The appellant-Bilal Hassan, son of Ghulam Murtaza, caste Jatt, resident of village Chak Bhulla, Tehsil & District, Gujrat, was involved in case F.I.R. No.86 of 2016, dated 22.02.2016, offences under Sections 302, 324 P.P.C., registered at P.S. Saddar, District Gujrat and was tried by the learned Addl. Sessions Judge, District Gujrat. The learned trial court seized with the matter in terms of the judgment dated 25.03.2019, convicted **Bilal Hassan (the appellant) under Section 302(b) PPC**, and sentenced to **Death** for committing Qatl-e-Amd of Azmat Ullah (the deceased), with the direction to pay compensation of Rs.5,00,000/- to the legal heirs of the deceased as envisaged under section 544-A of Cr.P.C and in case of default thereof, to further undergo 06-months S.I. The appellant was also convicted **under section 324 PPC** and sentenced to undergo ten years R.I., with the direction to pay a fine of Rs.15,000/-. The benefit of Section 382-B Cr.P.C was also extended in favor of the appellant.

2. Feeling aggrieved by the judgment of the learned trial court, Bilal Hassan, the appellant has assailed his conviction by filing the instant

appeal bearing Criminal Appeal No.19109 of 2019. Whereas the learned trial court also referred **M.R. No.81 of 2019 (The State. Vs. Bilal Hassan)** for confirmation of the death sentence awarded to the appellant-Bilal Hassan. The matters arising out of the same judgment of the learned trial court are being disposed of through a single judgment.

3. The prosecution story, as alleged in the F.I.R (Ex. PB) lodged on the written application (Ex. PC) of Haji Zia Ullah-the complainant (died during trial), is that in the intervening night of 22.02.2016 at about 03:30 A.M, Bilal Hassan (the appellant), who is their close relative, came to the house of Azmat Ullah (deceased) through the roof and knocked internal door; the brother of the complainant and his daughter-in-law, namely, Shazia wife of Sami Ullah (PW-7) asked about the matter from the accused, who stated to open the door as he had an urgent piece of work. The moment the door was opened, Bilal (the appellant), wearing 'Chadar,' took out riffle 244 bore, made a fire-shot, and asked about her father-in-law, Azmat Ullah, and started firing, due to which family members woke up. They informed the complainant telephonically, who was present at his Dera. The complainant reached the place of occurrence. Before the complainant's arrival, accused-Bilal Hassan (the appellant) made a fire-shot on the chest of Azmat Ullah-brother of the complainant, which went through and through, who smeared with blood and died at the spot. Shazia Begum tried to rescue her father-in-law, and the accused/appellant fired upon her, hitting her right flank. The accused, Bilal Hassan (the appellant), kept firing while standing in the compound, and he also extended threats of dire consequences and told that he would teach a lesson of taking Haveli. The occurrence was witnessed by Sami Ullah (PW-7) and Nasrullah (PW-8). The motive behind the occurrence was that the complainant's sister gave her personal Haveli to Azmat Ullah, deceased, which raised a grudge in the mind of the accused, due to which he committed the said occurrence.

4. After the occurrence, the complainant reported the matter to the police through the written application (Ex. PC); after that, formal F.I.R (Ex. PB) was chalked out by Nisar Ahmad 829/GT (PW-3). After registration of

this case, the investigation of this case was conducted by Khadim Hussain S.I (died during trial), who, having found the accused/appellant guilty, prepared a report under Section 173, Cr.P.C., and sent the same to the court of competent jurisdiction. On 25.03.2017, the learned trial court formally charged the appellant, to which he pleaded not guilty and claimed trial. In support of its version, the prosecution produced as many as eight (08) witnesses.

5. Ocular account, in this case, has come out from the statements of Sami Ullah (PW-7) and Nasrullah (PW-8), whereas Dr. Nayyer Akram, Medical Officer (PW-4), who conducted a postmortem examination on the dead body of the deceased-Azmat Ullah, found the following injuries on his person: -

INJURIES

- 1-A) A firearm injury entry wound of 1x1 cm with inverted margins at the lower anterior part of the chest.
- 1-B) A firearm injury exit wound of 2x2 cm with averted margins at the lower part of the back on the paravertebral region.

OPINION

After conducting the postmortem examination, the doctor opined that the injuries were ante mortem and caused by a firearm causing damage to vital organs, i.e., liver aorta and stomach, leading to hypovolemic shock due to excessive bleeding leading to death. The time between injury and death was within minutes, and the time between death and post-mortem was about 11 hours and 45 minutes.

The statements of the remaining prosecution witnesses are formal in nature.

6. The learned Deputy District Public Prosecutor gave up PWs Dr. Mubashara and Ehsan Ullah as unnecessary and after tendering Forensic D.N.A and Serology Analysis report (Ex. PP, Ex. PQ) and attested copies of

treatment chart and Surgical Notes of injured Shazia Bibi (deceased) (Ex.PR/1-46) closed the prosecution evidence.

7. The appellant was also examined under Section 342 Cr.P.C., wherein he did not opt to appear as his own witness in terms of section 340(2) Cr.P.C.; however, he tendered documents as Mark-DA to Mark-DD in his defence evidence. In response to a particular question about why this case was against him and why the PWs deposed against him, the appellant made the following deposition: -

“Prior to the occurrence my sister Fouzia was married with Waseem Ullah who was son of Azmat Ullah deceased and out the said wedlock, two children namely Haider and Abdullah were born and after that Waseem Ullah was died. Later on Fouzia was remarried with Aman Ullah brother of Azmat Ullah deceased and out of this wedlock four minors namely Umer, Momna, Haleema and Ibrahim were born, but, later on, Aman Ullah was also died. After the death of both husbands, Fouzia and her children came to the house of her parents. During the days of occurrence, the minors and Fouzia were being looked after by me and my father. I used to demand the share of the children and Fouzia from the land from Sami Ullah, Nasar Ullah and Haji Zia Ullah etc., but they were reluctant to give the due shares of Fouzia and her children and had turned hostile towards me. All the PWs had also suspicion about the character of Azmat Ullah and Shazia. They themselves managed to murder Azmat Ullah and Shazia, but luckily Shazia was survived and Azmat Ullah met his death. Complainant party tried to kill two birds with one stone at one hand they entangled me in false case and on the other hand they also achieved their goal. All the PWs being interse related had falsely deposed against me to usurp the land of the minors and Fouzia, so, that no one could pursue to achieve their land from the complainant party. I am innocent.”

8. After evaluating the evidence available on record in light of arguments advanced by both sides, the learned trial court found the prosecution version proved beyond any shadow of reasonable doubt, which resulted in the appellant's conviction in the terms above.

9. We have given our anxious and most thoughtful consideration to both sides' rival submissions. We have minutely gone through the evidence on record.

10. In the instant case, the occurrence occurred at 03:30 a.m. (night) on 22.02.2016 in the area of Chak Bhola, situated within the jurisdiction of Police Station Saddar, District Gujrat. The inter-se distance between the place of occurrence and the police station is about 5/6 kilometers. Whereas, formal FIR (Exh. PB) was got registered on 22.02.2016 at 07:00 a.m., on the written application (Ex. PC) of Haji Zia Ullah-the complainant (died during trial), brother of the deceased Azmat Ullah. It is note-able that the occurrence occurred at 03:30 a.m. (night), and the distance between the place of occurrence and the police station was 5/6 kilometers. Whereas, Haji Zia Ullah-the complainant, took three hours and thirty minutes to report the incident to the police at the police station. Sami Ullah (PW-7)-the eye witness, son of Azmat Ullah-the deceased and husband of Shazia Bibi-injured, deposed during cross-examination that: -

“I did not go to Police Station to report the occurrence. Volunteered stated that I went to hospital for saving the victims. -----Police reached the place of occurrence upon receiving ‘15’ call at about 4:00/5:00 AM. None of the said police official, is mentioned as witness in the calendar of witnesses. We reached to hospital at about 4:00/4:30 AM. Police station Sadar Gujrat was situated at the distance of about 5/6 KMs away from the place of occurrence.”

He (PW-7)-the eye witness, further deposed during cross-examination:

“Police was reported about the occurrence at about 6:00/7:00 AM. I was in hospital, I did not know, when my paternal uncle Zia Ullah reported the occurrence to the police.”

Nasrullah (PW-8)-the eye witness, the brother of Azmat Ullah-the deceased, deposed during cross-examination that: -

“Zia Ullah received information about the occurrence through his wife. When Zia Ullah reached the place of occurrence, the accused had left the scene of

occurrence. I with other eye witness of the occurrence did not become complainant of the instant case. I did not go to the Police Station after the occurrence. I went to Police Station in connection with instant case for once. -----Zia Ullah complainant came to hospital after about one hour of our reaching in hospital. Khadim Hussain SI came to hospital after about 1/1½ hour of our reaching to hospital.”

Whereas, in an application for registration of case (Ex. PC) as well as in FIR (Ex. PB), Haji Zia Ullah-the complainant mentioned as under: -

"و قوعہ ہذا سمیع اللہ ولد عظمت اللہ، نصر اللہ ولد غلام رسول اقوام جٹ سکناے دیہہ نے پیشتم خود دیکھا ہے جو خوف کے مارے قریب نہ آئے جو نہی میں گھر پہنچا تو ملزم فائرنگ کرتا ہوا چھت پر چڑھ گیا مقامی پولیس کو فون کیا جو فوراً موقع پر پہنچ گئی جنہوں نے شازیہ بیگم کو اٹھا کر ہسپتال پہنچایا عظمت اللہ موقع پر ہی جاں بحق ہو گیا ہے میری استدعا ہے کہ درخواست پیش کرتا ہوں کاروائی قانونی کی جاوے۔"

From the above narration of written application (Ex.PC) as well as FIR (Ex.PB), it reveals that after the incident, Haji Zia Ullah-the complainant (died during the trial), went to the police station to report the incident to the police, after making a call on "15". The police reached the place of occurrence and shifted Shazia Bibi-injured to hospital, whereas Azmat Ullah died at the spot. Whereas, Sami Ullah (PW-7)-the eye witness deposed during the examination in chief that: -

"We made call to the police on '15' upon which police came there, I shifted my wife in injured condition to ABS Hospital, Gujrat in the accompany of police '15'."

Similarly, he (PW-7) deposed during cross-examination:

"The dead body of my deceased father was taken to hospital at about 08:00 AM. I had taken my wife to hospital, so I cannot say that one Sadaqat Ali 1540/C took the dead body of my father to hospital at 05:00 AM."

During cross-examination, the defence got confronted about the improvements made by Sami Ullah (PW-7)-the eye witness. Sami Ullah (PW-7) deposed during cross-examination that:-

“I did not record to the police u/s 161 Cr.P.C. about the making of call to police on ‘15’ or her shifting by me to ABS Hospital, Gujrat in injured condition.”

Contrary to the above, Nasrullah (PW-8)-the eye witness deposed during the examination in chief that:

“Local Police was informed about the occurrence, who came at the spot and dead body of Azmat Ullah and Shazia Bibi in injured condition were shifted to ABS Hospital, Gujrat.”

Whereas, during cross-examination, Nasrullah (PW-8)-the eye witness, deposed that:-

“Police who attended ‘15’ call reached the place of occurrence at about 4:00 AM. Said police took Shazia injured and Azmat Ullah deceased on their vehicle to hospital.” He (PW-8) further deposed during cross examination that, **“When dead body was taken to hospital by police, I accompanied them. The dead body of Azmat Ullah was shifted to the mortuary at 4:00 AM. I remained in hospital for about 2/3 hours. When Zia Ullah complainant came to the place of occurrence, Azmat Ullah deceased and Shazia injured had been shifted to hospital.”**

In the prosecution evidence, there is a severe flaw, to precisely fix the time when the incident was reported to the police. This aspect of the matter is sufficient to cast doubt about the authenticity of the F.I.R. This creates serious doubt about the genuineness of the prosecution story, including the presence of the complainant at the scene of occurrence. Sohail Ramzan 1292/HC (PW-6) was produced by the prosecution in secondary evidence, as Khadim Hussain-investigating officer, died during the trial. He (PW-6) deposed during examination in chief that: -

“Khadim Hussain SI reached at the place of occurrence (Village Bhulla) situated within territorial jurisdiction of police station Sadar Gujrat. Complainant Zia Ullah appeared before him and supported his earlier version given in Exh.P.C and further stated that the dead body of Azmat Ullah deceased has been already shifted to ABS Hospital,

Gujrat where his brother Ehsan Ullah is present to guard the dead body.” He (PW-6) further deposed during cross-examination that, **“Then I.O alongwith me proceeded to ABS Hospital, Gujrat alongwith other officials. When we reached there dead body was found lying outside the mortuary of ABS Hospital, Gujrat. I.O prepared injury statement Exh. P.E, inquest report Exh. P.F. also prepared the application for post mortem examination on the dead body of deceased Exh.P.D.”**

Whereas, on perusal of the inquest report (Exh. PF), it reveals that the same was prepared at village Chak Bhulla and in column No.3, i.e., time and date of receiving information of death, (----- تقریباً 22-02-16) was written and time was not mentioned. In the column related to the brief history of the case, it was said that: -

"جس پر موقع پر پہنچ کر ملاحظہ موقع، نقشہ موقع مرتب ہوا۔ نعش مقتول عظمت اللہ قبل ازیں ABS ہسپتال گجرات جا چکی ہے جو میں مع ہمراہی ملازمان ABS گجرات پہنچا ہوں۔ نعش مقتول مردہ خانہ کے باہر شرقاً غرباً چارپائی پر پڑی ہوئی ہے۔ جس کا نقشہ مضروبی نقشہ صورتحال درخواست پوسٹمارٹم مرتب کر کے حوالے صداقت علی c / 540 جبکہ احسان اللہ، نصر اللہ شناخت گان نعش کو ہمراہ دیا گیا۔

خادم حسین SI/HIU سرکل

" 22-2-16

On the last page of the inquest report (Exh.PF), in the column related to where it was prepared, it was mentioned as “Chak Bholla on 22.02.2016,” and both the witnesses did not sign the same. Similarly, column No. 24 of the inquest report (Exh. P.F) reveals that the dead body was not lying on the cot. The application for postmortem examination (Exh.PD) reveals that the duty medical office received the application at 3:00 p.m. on 22.02.2016. Dr. Nayyar Akram (PW-4), who conducted a post-mortem examination on the dead body of Azmat Ullah (the deceased), deposed that he conducted an autopsy at 3:15 PM on the corpus of Azmat Ullah (the deceased). During cross-examination, he (PW-4) deposed that:-

“The police papers were provided to me at 3:05 PM. It is correct that had the police papers been provided to me earlier; I would have conducted post mortem earlier.”

We have noted that in the inquest report (Exh.PF), the investigating officer did not mention the time of receiving information of death in column No.4. Whereas, from the application for conducting a postmortem examination (Exh. PD), it reveals that Medical Officer received the said application at 03:00 p.m. So, it becomes that no FIR had been registered as alleged by the prosecution, and after some consultation and deliberation, it came into existence. It is established that the FIR has been got registered by Haji Zia Ullah-the complainant, who was not an eyewitness of the occurrence. The contents of the inquest report (Ex.PF) reveal that the same was prepared after conducting a preliminary investigation by the police. The inordinate delay of three hours and thirty minutes from the time of the commission of the offence remained unexplained and rendered the whole of the prosecution version doubtful. As per the prosecution case, Sami Ullah (PW-7)-the eye witness, shifted his wife, Shazia Bibi-injured to the hospital for medical treatment to save her life. Nasrullah (PW-8), the eye witness, stated that he went with the dead body to the hospital and remained there. Whereas, as per the prosecution version, Zia Ullah went to the police station to report the incident. The contents of FIR (Ex.PB) and application for case registration (Ex.PC) reveal that Zia Ullah-the complainant was present at the place of occurrence when the last episode of the incident was under progress. As mentioned above, Sami Ullah (PW-7) admitted during cross-examination that:

“Police reached the place of occurrence upon receiving ‘15’ call at about 4:00/5:00 AM.”

But the incident was not reported to police at 4:00/5:00 a.m. when the local police reached the spot. The Hon’ble Supreme Court of Pakistan held in the case of Iftikhar Hussain and another v. The State (2004 SCMR 1185) that:-

“As far as F.I.R. under section 154, Cr.P.C. itself is concerned, it is always treated to be a cornerstone of the prosecution case to establish guilt against culprits involved in the crime. Thus it has got a very significant role to play. If there is any doubt in lodging of F.I.R. and commencement of investigation,

it gives rise to a doubt in benefit of which, of course, cannot be extended to anyone else except to the accused. However, an F.I.R. under section 154, Cr.P.C. which has been lodged after conducting an inquiry loses its evidentiary value-----.”

Admittedly, the incident occurred inside the deceased's house at odd night hours. Sami Ullah (PW-7)-the eye witness, and Nasrullah (PW-8)-the eye witness, failed to explain why Shalwar/trouser of Shazia Bibi-injured, was not secured by the investigating officer during the investigation, or handed over by the medical officer. Non-handing over the Shalwar of Shazia Bibi-injured has much significance in the instant case. As per the prosecution case, Shazia Bibi-injured opened the door of the house on knocking the door by the accused-Bilal. Sami Ullah (PW-7)-the eye witness deposed during the examination in chief that: -

“At 3:30 AM, on the same morning, somebody knocked the door of the room of my father. My wife woke up and asked that who is knocking. Bilal accused present in the court who is my second cousin replied that I am Bilal, upon which my wife opened the door.”

It does not appeal to the prudent mind that a woman without Shalwar/trousers will come forward to do any work in our social setup. The prosecution's case mainly revolves around Shazia Bibi-injured, who opened the door. After that, the incident took place. Sami Ullah (PW-7)-the eye witness deposed during the examination in chief that: -

“On 23.02.2016, I and Nasrullah joined the investigation before the I.O. In our presence Sadaqat Ali 1540/C brought last worn clothes of the injured Shazia Bibi my wife comprising of Qameez P-9, sweater P-10, and Brazier P-11, which were taken into possession by the police vide recovery memo Exh. P.L, which I and Nasrullah signed.”

Whereas, during cross-examination, he (PW-7) deposed that:

“The clothes of my injured wife were not handed over to the I.O. in my presence.”

However, the investigating officer moved an application for permission to record the statement of Shazia Bibi-injured on 23.02.2016, which was allowed by the medical officer; even then, the statement of Shazia Bibi-injured was not recorded. During the trial, Shazia Bibi-injured expired. Sami Ullah (PW-7)-the eye witness deposed during cross-examination that: -

“The grave of my deceased wife is situated at above said Fatehpur village. -----My wife went to her parents house, as there was no one to care her in my village. -----I did not get an autopsy of the dead body of my wife Shazia deceased.”

Looking at these facts, this court is of the opinion that the prosecution has withheld the true genesis of the occurrence.

11. We have also noted that Sami Ullah (PW-7)-the eye witness deposed that the appellant/accused-Bilal Hassan, made the first fire shot on the person of Azmat Ullah, his father, which hit on the front of his chest and he fell. After that, his wife, Shazia Bibi, to save Azmat Ullah, came forward, and Bilal Hassan made another fire shot, which hit his wife, and she became injured. Whereas, Nasrullah (PW-8)-the eye witness deposed during cross-examination that: -

“Firstly, Shazia injured received fire shot and thereafter, Azmat Ullah deceased received fire shot in my presence. Accused made fire shots inside the room while standing just ahead of the door.”

There is conflict between the statements of both witnesses regarding the fact that the first fire made by the appellant/Bilal Hassan, hit whom. In this background, the mode and manner of the incident as deposed by the witnesses seem doubtful.

12. As per prosecution evidence after registration of the F.I.R., (Exh.PB) Sohail Ramzan 1292/HC (PW-6) along with the investigating officer went to the hospital at 10:00/10:30 a.m. Sohail Ramzan 1292/HC (PW-6) deposed during cross-examination:

“I alongwith I.O went to hospital on the day of occurrence at about 10:00/10:30 AM.”

Particularly in the circumstances that the incident was reported to the police at 07:00 a.m., whereas the incident occurred at 03:30 a.m and the distance between the place of occurrence and the police station is 5/6 kilometers; the medical office received the application for postmortem (Ex. PD) at 03:00 p.m. Per the postmortem report (Ex. PG), the dead body was received in the mortuary at 05:00 a.m. on 22.02.2016, whereas the doctor received complete documents at 03:05 p.m. on 22.02.2016. There is a delay in the postmortem examination of about 11 hours and 45 minutes, which is supported by a doctor's statement. In this regard, Dr. Nayyer Akram (PW-4), Medical Officer, deposed during cross-examination:-

“The police papers were provided to me at 3:05 PM. It is correct that had the police papers been provided to me earlier, I would have conducted postmortem earlier.”

There is no plausible explanation as to why the postmortem of the dead body was delayed for 11 hours and 45 minutes. This aspect of the matter is sufficient to cast doubt about the authenticity of the F.I.R. This creates serious doubt about the genuineness of the prosecution story. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought.

13. There is also conflict between the ocular account and medical evidence. Dr. Nayyer Akram (PW-4), Medical Officer, deposed during cross-examination that:

“It is correct that dimension of injury received by the deceased was upward to down word.”

It reveals that from the upper level, a fire shot was made by the accused, which hit the deceased. Whereas, as per the prosecution witnesses, i.e., Sami Ullah (PW-7) and Nasrullah (PW-8), the accused/appellant made a straight fire, which hit on the front of the chest of Azmat Ullah-the deceased,

and he received an injury in standing position. Sami Ullah (PW-7)-the eye witness deposed during the examination in chief that:

“My father Azmat Ullah also woke up and reached near the door and asked Bilal Hassan accused that you want to kill me. Bilal Hassan replied that I want to teach you a lesson for taking Haveli and started reckless firing. One fire made by him hit my father on front of his chest who fell down near the door of his room after receiving severe injury.”

It reveals that the prosecution witnesses concealed the mode and manner of the occurrence.

14. So far as recovery of the weapon of offence, i.e., rifle 244-bore, from the possession of the accused/appellant and positive report of Punjab Forensic Science Agency, are concerned, as per the prosecution case, on 03.03.2016, the accused was arrested from his Dera situated at Chak Bhola and upon his disclosure, rifle 244-bore (P-4) and three live bullets (P-5 to P-7) were recovered. The investigating officer secured the same through a recovery memo (Ex. PI). Contrary to the prosecution case, Sami Ullah (PW-7)-the eye witness, deposed during cross-examination that:

“The police arrested the accused by cordoning of village on the same day. The father of accused, handed over the accused to the police on the same.”

He (PW-7) further deposed during cross-examination that:

“Volunteered stated that on the first day of occurrence, the father of the accused produced the accused before police and stated that he had no concern with the occurrence; his son, the present accused had committed the occurrence.”

Besides, Sohail Ramzan 1292/H.C. (PW-6) stated that on 22.02.2016, the investigating officer secured ten crime empties of 244-bore (P-8/1-10) through recovery memo (Ex. PK), which were handed over to the Moharrar Malkhana. Sohail Ramzan 1292/H.C. (PW-6) deposed during cross-examination that:

“As per record, during spot inspection, five crime empties were collected by I.O which were made into sealed parcel.”

The Punjab Forensic Science Agency report (Ex. PQ) reveals that a parcel of 44-bore rifle was submitted on 04.03.2016, and a parcel of ten 44-caliber cartridges was submitted on 01.03.2016 by Khadim Hussain S.I. Given the admission of prosecution witnesses that on the day of occurrence, i.e., 22.02.2016, the accused/appellant was in police custody, and investigating officer collected five crime empties, creates doubt about the recovery of rifle 244-bore on 03.03.2016 and its positive report. In these circumstances, the recovery of the weapon of offence and a positive report are not of any consequence.

15. As far as the motive is concerned, although the prosecution has alleged motive for committing the incident by the appellant, however, the prosecution in this regard produced no evidence. We are of the opinion that the prosecution has been unable to establish a motive in the instant case.

16. All the above-narrated facts and circumstances lead this Court to only one conclusion: the prosecution has not been able to prove the case against the appellant, as there were many dents in the prosecution story, as such the conviction and sentence recorded by the learned trial court cannot be sustained. The conviction passed by the learned trial court in the circumstances is against all canons of law recognized for dispensing criminal justice. As per dictates of the law, the benefit of every doubt is to be extended in favor of the accused. In the case of **“Muhammad Akram v. The State”** (2009 SCMR 230), it has been held as under: -

“The nutshell of the whole discussion is that the prosecution case is not free from doubt. It is an axiomatic principle of law that in case of doubt, the benefit thereof must accrue in favor of the accused as matter of right and not of grace. It was observed by this Court in the case of Tariq Pervez v. The State 1995 SCMR 1345 that for giving the benefit of doubt, it was not necessary that there should be many circumstances creating doubts. If there is circumstance which created reasonable doubt in a

prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of doubt not as a matter of grace and concession but as a matter of right.”

The golden principle of law is that the Court should let off a hundred guilty but not convict one innocent person. In the case of “Ayub Masih v. The State” (PLD 2002 SC 1048), it has been held by the Hon’ble Supreme Court of Pakistan that: -

“----It is hardly necessary to reiterate that the prosecution is obliged to prove its case against the accused beyond any reasonable doubt and if it fails to do so the accused is entitled to the benefit of doubt as of right. It is also firmly settled that if there is an element of doubt as to the guilt of the accused the benefit of that doubt must be extended to him. The doubt of course must be reasonable and not imaginary or artificial. The rule of benefit of doubt, which is described as the golden rule, is essentially a rule of prudence which can not be ignored while dispensing justice in accordance with law. It is based on the maxim, “it is better that ten guilty persons be acquitted rather than one innocent person be convicted”.

In simple words it means that utmost care should be taken by the Court in convicting an accused. It has further been held in “The State v. Mushtaq Ahmed” (PLD 1973 SC 418) that this rule is antithesis of haphazard approach or reaching a fitful decision in a case. It will not be out of place to mention here that this rule occupies a pivotal place in the Islamic law and is enforced rigorously in view of the saying of the Holy Prophet (P.B.U.H) that the “mistake of Qazi (Judge) in releasing a criminal is better than his mistake in punishing an innocent”.

17. The upshot of the above discussion is that the prosecution had severely failed to bring home a charge against the appellant beyond any reasonable doubt; therefore, in the interest of the safe administration of Criminal Justice, Crl. Appeal No.19109 of 2019, filed by Bilal Hassan, the appellant, is accepted in toto. The sentence awarded by the learned Additional Sessions Judge, Gujrat, vide judgment dated 25.03.2019, is set aside, and the appellant is acquitted of the charge in case FIR No.86/2016

dated 22.02.2016, registered under sections 302, 324 PPC at P.S. Saddar, District Gujrat. The appellant-Bilal Hassan, son of Ghulam Murtaza, is ordered to be **released forthwith**, if not required in any other case.

18. **Murder Reference No.81 of 2019**, forwarded by the learned trial court for confirmation of the sentence of death inflicted upon the convict fails, which is answered in **Negative**.

(Farooq Haider)
Judge

(Aalia Neelum)
Judge

Approved for Reporting

Judge

Judge

*This judgment has been
dictated, pronounced,
prepared and signed on
23.01.2023.*

*Ikram**