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Judgment Sheet

IN THE LAHORE HIGH COURT, BAHAWALPUR BENCH, BAHAWALPUR.

JUDICIAL DEPARTMENT

Criminal Appeal No.544 of 2015
(Muhammad Tasleem v. The State, etc.)

JUDGMENT

Date of hearing:	01.06.2023
Appellant by:	Syed Zeeshan Haider, Advocate
State by:	Mr. Shahid Fareed, Assistant District Public Prosecutor
Complainant by:	Mr. Muhammad Sharif Bhatti, Advocate

Muhammad Tariq Nadeem. J:- Muhammad Tasleem appellant faced trial in case FIR No.11 dated 04.02.2010, under sections 409, 420, 468 & 471 PPC read with section 5(2) of Prevention of Corruption Act, 1947, registered at Police Station Anti-Corruption Establishment, Bahawalpur and at the conclusion of trial, the learned trial court *vide* judgment dated 01.12.2015, convicted and sentenced him as under:-

- **Under section 409 PPC** to undergo rigorous imprisonment for five years with a fine of Rs.4,40,000/- or in default thereof to further undergo S.I. for two months.
- **Under section 420 PPC** to undergo rigorous imprisonment for three years with a fine of Rs.10,000/- or in default thereof to further undergo S.I. for one month.
- **Under section 468 PPC** to undergo rigorous imprisonment for three years with a fine of Rs.10,000/- or in default thereof to further undergo S.I. for one month.
- **Under section 471 PPC** to undergo rigorous imprisonment for three years with a fine of Rs.10,000/- or in default thereof to further undergo S.I. for one month.
- **Under section 5(2) Prevention of Corruption Act, 1947** to undergo rigorous imprisonment for five years with a fine of Rs.10,000/- or in default thereof to further undergo S.I for one month.

  All the sentences were ordered to run concurrently and the benefit of section 382-B Cr.P.C was also given to the appellant.

Feeling aggrieved, the appellant has assailed his convictions and sentences through the instant criminal appeal.

2. The prosecution story as given in paragraph No.2 of the judgment of learned trial court reads as under:-

> "2. The prosecution case as gleaned from the complaint Exh.PB lodged by Rana Javed Iqbal Deputy District Officer Water Management Bahawalpur is that Mr. Maqbool Ahmad water Management officer/incharge Field Team No.1 Bahawalpur of National Program for Improvement of Water Courses, informed the complainant through letter No. 149 cated 24.03.2008 that Muhammad Tasleem water management supervisor Bahawalpur fraudulently and by misusing his official position, obtained five blank cheques from the presidents and treasurers of Khall committee of Moga No. 119415-R and Moga No. 126024-R and had an amount of Rs. 13,25,000/- meant for the improvement of said water courses and misappropriated the said amount."

3. After registration of the crime report, investigation of the case was entrusted to Basharat Ali S.I. (PW.7) and thereafter to Farhat Hussain Farooq Assistant Director, Anti-Corruption Establishment, Bahawalpur (PW.6) and on completion of investigation, report under section 173, Cr.P.C. was submitted before the learned trial court against the appellant and his co-accused Muhammad Bilal, but co-accused Muhammad Bilal became fugitive from law and was declared as proclaimed offender by the learned trial court.

4. After observing all pre-trial codal formalities, charge under sections 409, 420, 468, 471 PPC read with section 5(2) of Prevention of Corruption Act, 1947, was framed against the appellant on 01.11.2011, to which he pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution produced as many as seven witnesses. Muhammad Kashif Abdullah (PW.1) received application for registration of case along with the order dated 03-02-2010 of Director Anti-Corruption Establishment, Bahawalpur and recorded the F.I.R (Exh.PA). Rana Javed, DDO (WM) Bahawalpur (PW.2) was the complainant of the case. Farrukh Rasheed (PW.3) was the witness of

recovery memos. Hazoor Bakhsh (PW.4) was the president of watercourse committee of outlets (موگا) No.126024-R Mouza Agha Pur. Haji Nazeer Ahmad (PW.5) was the cashier of watercourse committee of outlets (موگا) No.126024-R Mouza Agha Pur. Farhat Hussain Farooq (PW.6) being Investigating Officer stated about the various steps taken by him during investigation of the case. Basharat Ali S.I. (PW.7) was the scriber of F.I.R No. 119 dated 27-03-2008, under sections 420,468, 471 P.P.C., Police Station Bagdad ul Jadeed (Exh.PA). He (PW.7) also partially investigated the case.

On completion of prosecution evidence, the appellant was examined under section 342 Cr.P.C. whereby he once again denied the allegations leveled against him and professed his innocence. While answering to a question, "*why the case against you and why the PWs have deposed against you?* the appellant stated as under:-

> *"I have been falsely involved in this case and the witnesses being the officials of water management Department have falsely deposed against me just to let off the actual culprits."*

The appellant neither opted to make statement on oath as provided under Section 340(2) Cr.P.C. nor produced any evidence in disproof of the allegations leveled by the prosecution against him.

6. The learned trial court, on conclusion of trial, *vide* judgment dated 01.12.2015, convicted and sentenced the appellant as mentioned above.

7. Learned counsel for the appellant has argued that the appellant was falsely entangled in this case just to save the skin of actual culprits. Further argued that though the appellant could not cross-examine the prosecution witnesses, because his right of cross-examination was struck off by the learned trial court, but mere this fact does not mean that whatever they had spoken before the learned trial court would be considered as gospel truth. Adds that even uncross-examined statements of prosecution witnesses are highly discrepant and as such the conviction and sentences of appellant cannot be maintained on the basis thereof. Lastly, learned counsel for the appellant contended that the prosecution has miserably failed to prove the case against the appellant, thus, has

prayed that the appellant may be acquitted of the charges levelled against him by accepting the instant appeal.

8. Conversely, learned Law Officer assisted by learned counsel for the complainant argued that the prosecution has successfully proved its case against the appellant beyond any shadow of doubt through convincing, unimpeachable and overwhelming evidence. Learned counsel for the complainant added that since the appellant had opted not to cross-examine the prosecution witnesses, so it amounts to admission on the part of appellant that whatever the PWs had stated, was true in all aspects. Finally, both have prayed for dismissal of appeal.

9. I have anxiously considered the arguments put forth by learned counsel for the appellant as well as learned Law Officer assisted by learned counsel for the complainant and scanned the record minutely.

10. Moot-point raised by learned Law Officer assisted by learned counsel for the complainant is that not a single prosecution witness has been cross-examined by the defence despite the fact that the appellant was given more than sufficient opportunities and ultimately his right of cross-examination was closed by the learned trial court with cogent reasons. In this regard, learned Law Officer has referred to paragraph No.6 of the impugned judgment, wherein it is stated that the learned trial court, *vide* order dated 16.01.2013, closed the appellant's right to cross-examine the prosecution witnesses and subsequently, his application to summon them for cross-examination was also dismissed by the learned trial court *vide* order dated 19.06.2013, *however*, this Court restored the appellant's such right *vide* order dated 07.11.2013 passed in Criminal Revision No.145 of 2013, whereby the appellant was given two opportunities to conduct cross-examination, but each time he failed to do so, upon which the learned trial court again closed his right of cross-examination *vide* order dated 18.03.2014. This Court *vide* judgment dated 07.05.2014 passed in Criminal Revision No.69 of 2014, once again provided the appellant a chance to cross-examine the prosecution witnesses on the date already fixed before the learned trial court, but he chose not to do so. As a result, his right of cross-examination was

again closed, whereupon the appellant filed Criminal Revision No.194 of 2015, which was dismissed by this Court *vide* order dated 30.10.2015. Keeping in view the aforementioned facts, learned Law Officer assisted by counsel for the complainant emphasized that since the prosecution witnesses were not cross-examined, their evidence is deemed to be admitted and as such the prosecution has proved its case upto the hilt. In support of above contention, reliance has been placed on the case reported as *"Zafar Iqbal v. The State"* **(PLD 2015 Supreme Court 307).**

It is true that due to lethargic attitude of the appellant, his right of cross-examination was closed by the learned trial court, but this Court still has to determine whether or not the evidence of prosecution witnesses, who were not subjected to cross-examination, is sufficient to uphold the appellant's conviction and sentences. No hard and fast rule has been laid down by the apex Supreme Court of Pakistan in the op.-cit. case-law that if the prosecution witnesses are not cross-examined by the defence, their statements would be blindly relied upon by the courts of law for convicting and sentencing the accused. I am afraid, the above principle highlighted by the prosecution is applicable to the cases on civil side and not to the criminal cases. It has been well-settled by now that the criminal cases should be decided with regard to the totality of impressions drawn and inferred from the circumstances of the case rather than on the restricted basis of a witness's cross-examination or otherwise on a specific fact disclosed by him. Guidance in this respect has been sought from the cases reported as *"Juwarsing and others v. The State of Madhya Pradesh"* **(AIR 1981 Supreme Court 373)** and *"Nadeem Ramzan v. The State"* **(2018 SCMR 149).** In the latter case, the august Supreme Court of Pakistan has been pleased to hold as under:-

> *"4. We have specifically attended to the sentence of death passed against the appellant and have noticed in that context that the motive set up by the prosecution had not been established by it. While discussing the motive part of the case the High Court had observed that both the eye-witnesses had stated about the alleged motive and they had not been cross-examined by the defence on that aspect of the case and, thus, the alleged motive stood proved. This approach adopted by the High Court has been found by us to be fallacious inasmuch as it had been clarified by this Court in the case of S. Mahmood Alam Shah v. The State (PLD 1987 SC 250) that the principle that a fact would*

> *be deem to be proved if the witness stating such fact had not been cross-examined regarding the same was a principle applicable to civil cases and not to criminal cases. It was held that a criminal case is to be decided on the basis of totality of impressions gathered from the circumstances of the case and not on the narrow ground of cross-examination or otherwise of a witness on a particular fact stated by him. A similar view had already been expressed by this Court in the case of State v. Rab Nawaz and another (PLD 1974 SC 87) wherein it had been observed that a criminal case is to be decided on the basis of totality of circumstances and not on the basis of a single element."*

11. After scanning the prosecution evidence, it transpires that according to the crime report (Exh.PA), the appellant being a supervisor of Water Management Department, Bahawalpur, embezzled an amount of Rs.13,25,000/- from the bank accounts of watercourse committees, who were supervising outlets (**موگا**) Nos.119415-R and 126024-R of Mauza Aghapur Tehsil Bahawalpur; he obtained five blank signed cheques from the president and treasurer of watercourse committee pertaining to outlet (**موگا**) No.119415-R of Mauza Aghapur and he also took into custody cheque book of Anjuman Islah-e-Aabpashan (**انجمن اصلاحِ آب پاشاں**) pertaining to outlet (**موگا**) No.126024-R of Mauza Aghapur. According to the statement of Rana Javed Iqbal, DDO (WM) Bahawalpur (PW.2), the appellant received five blank cheques from Bashir Ahmad, chairman and Hafiz Muhammad Sabir, treasurer of watercourse committee regarding outlet (**موگا**) No.119415-R of Mauza Aghapur and he (appellant) also took cheque book from Hazoor Bakhsh (PW.4), chairman and Haji Nazeer Ahmad (PW.5), treasurer of watercourse committee outlet (**موگا**) No.126024-R of Mauza Aghapur. It further manifests from the statement of Rana Javed Iqbal, DDO (WM) Bahawalpur (PW.2) that out of five blank cheques, the appellant had drawn Rs.8,85,000/- through two cheques; the amount of one cheque to the tune of Rs.7,35,000/- was got transferred in the account titled as Bilal Building Material supplier while the other cheque of Rs.1,50,000/- was drawn by the appellant while writing the word "self". Rana Javed Iqbal, DDO (WM) Bahawalpur (PW.2) further stated that another amount of Rs.4,40,000/- was got transferred to Bilal Building Material supplier

through cheque No.5208701 and in this way an amount of Rs.13,25,000/- was embezzled by the appellant.

It is noteworthy that according to prosecution's own version, all five signed blank cheques were pertaining to outlet (موگا) No.119415-R of Mauza Aghapur and it is also an admitted position in this case that Bashir Ahmad, chairman and Hafiz Muhammad Sabir, treasurer of watercourse committee regarding this outlet (موگا), were not produced in evidence. More so, the prosecution has not brought on the file during its evidence any forensic analysis report to prove that the cheques in question were filled by the appellant. Likewise, the prosecution has also failed to produce before the learned trial court any bank employee to establish that the cheques were presented by the appellant before the concerned bank for transfer of amount in the account of Bilal Building Material supplier. These lapses, discrepancies and inconsistencies on the part of prosecution goes to the root of its case and badly shattered the same. Reliance is placed on the case titled as *"Muhammad Asif v. Tanveer Iqbal and 2 others"* **(2021 YLR 324).**

So far as the factum of taking cheque book from watercourse committee regarding outlet (موگا) No.126024-R of Mauza Aghapur is concerned, both learned Law Officer as well as learned counsel for the complainant frankly conceded that there is no allegation against the appellant that he put forged signatures of chairman and treasurer of this outlet (موگا) on any cheque or withdrew any amount through encashment of any cheque pertaining to this outlet (موگا). In this way, the statements of Hazoor Bakhsh (PW.4), chairman and Haji Nazeer Ahmad (PW.5), treasurer of watercourse committee outlet (موگا) No.126024-R of Mauza Aghapur do not offer any help to the prosecution's case against the appellant.

12. Another intriguing aspect of the case which cannot be lost sight of is that the prosecution remained failed to prove any nexus of appellant with the financial affairs of watercourse committees regarding outlets (موگا) No.119415-R and 126024-R of Mauza Aghapur and the whole evidence is silent in this regard, because, it is an admitted position in this case that the affairs of watercourse committees exclusively fell within

the domain of their representatives, who could draw and spend the amount for improvement of watercourses. According to the National Program for Improvement of Watercourses in Pakistan (The Punjab Component), the appellant's role was limited to the extent of providing regular and frequent supervision and guidance to the watercourse committees and nothing else.

13. Learned Law Officer assisted by learned counsel for the complainant also argued that an amount of Rs.3,00,000/- was recovered from the appellant *vide* seizure memo (Exh.PC/2) and a sum of Rs.1,00,000/- was recovered from him *vide* seizure memo (Exh.PC/3), but they both could not refer anything from the record which could persuade the Court to believe that the above mentioned amounts were drawn by the appellant through the cheques in dispute. According to the prosecution's own version, the amounts were transferred in the account of Bilal Building Material supplier and there is no evidence that the same was transferred in his account at the behest of appellant. Moreover, the alleged recovered amount has not been produced by the prosecution before the learned trial court at the time of evidence, which is another crucial factor, therefore on this point as well, the aforementioned recoveries have caused dent in the prosecution case.

With regard to the recovery of case-property and its retention with the police, I have also swiftly perused the pertinent rules i.e. Rules 22.16, 22.18, 22.70, 27.16, and 27.17, which are reproduced hereunder:-

> ***22.16. Case property.*** *- (1) The police shall seize weapons, articles and property in connection with criminal cases and take charge of property which may be unclaimed:-*
>
> *(a) under the implied authority of Section 170, Code of Criminal Procedure;*
>
> *(b) in the course of searches made in police investigations under Sections 51, 165 and 166, Code of Criminal Procedure;*
>
> *(c) under Section 153, Code of Criminal Procedure, as regards weights, measures, or instruments for weighing that are false;*
>
> *(d) under Section 550, Code of Criminal Procedure, as regards property alleged or suspected to have been stolen : provided that if the property consists of an animal or animals belonging to Government or to persons of good status it may be made over to them or to a commissioned or a gazetted officer, under the orders of*

a Magistrate, who is empowered to make such an order under Section 523, Criminal Procedure Code.

(e) under Section 550, Code of Criminal Procedure, as regards property found under circumstances which create suspicion of the commission of an offence; when an offence in respect of an animal is committed and such animal is not stolen property such animal shall be seized and sent with the case to the magistrate having jurisdiction;

(f) under Section 25 of the Police Act, as regards unclaimed property;

Ordinarily the police shall not take possession of movable property as unclaimed when it is in the possession of an innocent finder; but in cities and in cantonments the police may, in compliance with an order issued under Section 26 or 27 of the Police Act, take possession and dispose of unclaimed property made over to them by innocent finders.

Such property shall be entered in the store-room register, unless a special register is prescribed for the purpose by the District Magistrate.

(g) under the provisions of Local and Special Laws.

(2) Each weapon, or article of property not being cattle, seized under the above rule, shall be marked or labelled with the name of the person from whom, or the place where, it was seized, and a reference to the case diary or other report submitted from the police station.

If articles are made up into a parcel, the parcel shall be secured with sealing wax bearing the seal impression of the responsible officer, and shall be similarly marked or labelled. Such articles or parcels shall be placed in safe custody, pending disposal as provided by law or rule.

Cattle shall be placed in the pound and shall be carefully described in the case diary or other report regarding their seizure from the police station.

All expenses for feeding and watering cattle kept in the pound in connection with cases shall invariably be recovered from the District Magistrate and not from the complainant.

(3) The police shall send to headquarters or to magisterial outposts

(a) all weapons, articles and property connected with cases sent for trial;

(b) suspicious, unclaimed and other property, when ordered to do so by a competent magistrate.

(4) Motor vehicles detained or seized by the police in connection with cases or accidents shall be produced before a magistrate after rapid investigation or by means of incomplete challan. The evidence relating to the identity or condition of the vehicle should be led and disposed of at an early date, and the magistrate should then be invited to exercise the discretion vested in him by section 516-A, Code of Criminal Procedure, to order that the vehicle be made cover to the owner pending conclusion of the case or security to be produced whenever demanded by the Court.

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22.18. Custody of property. *- (1) Property exceeding in value of Rs. 500, whether ap-pertaining to cases, or seized on suspicion, or taken as unclaimed, shall be forwarded as soon as possible to district headquarters for deposit in the treasury in accordance with Po-lice Rule 27.18(2) or, in the case of property connected with a case to be tried at an outstation or tahsil, to the tahsil treasury, where it shall be placed in the tahsil store-room under charge of the tahsildar.*

Large sums of money or valuable property of any description shall not be entrusted to police officers below the rank of head constable.

When property is brought from outstations to headquarters at a time when the prosecuting inspector and sub-inspectors are engaged in court duties, the bearer shall hand it over to the head constable acting as assistant to the prosecuting inspector under rule 27.14(4) and obtain his receipt in acknowledgement on the road certificate. When a prosecuting officer is free, the bearer of the property shall have the road certificate countersigned by him before his return to his police station.

(2) All case property and unclaimed property, other than cattle, of which the police have taken possession shall, if capable of being so treated, be kept in the store-room. Otherwise the officer in charge of the police station shall make other suitable arrangements for its safe custody until such time as it can be dealt with under sub-rule (1) above.

Each article shall be entered in the store-room register and labelled. The label shall contain a reference to the entry in the store-room register and a description of the article itself and, in the case of articles of case property, a reference to the case number. If several articles are contained in a parcel, a detail of the articles shall be given on the label and in the store-room register.

The officer in charge of the police station shall examine Government and other property in the store-room at least twice a month and shall make an entry in the station diary on the Money following the examination to the effect that he has done so.

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22.70. Register No. XIX. *- This register shall be maintained in Form 22.70.*

With the exception of articles already included in register No. XVI every article placed in the store-room shall be entered in this register and the removal of any such article shall be noted in the appropriate column.

The register may be destroyed three years after the date of the last entry.

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27.16. Registers to be maintained by prosecuting Deputy Superintendent or Inspector. *- The head of the police prosecuting agency shall, with the help of his assistants, maintain the following registers :-*

(1) Register of case property and unclaimed property in Form 27.16(1). This register may be destroyed three years after being completed.

(a) This register shall be in the same form as register No. 1, and shall contain copies of any entries in register No. 1 referring to property which has been in the custody of the police for over three years. Property in cases in which the accused are absconding, and the retention of which is necessary for purposes of evidence, may be transferred to this register as soon as proceedings under section 512, Code of Criminal Procedure, are complete.

This register is a permanent record.

(2) Register of issue from and return to the prosecuting agency's store-room of case property daily produced in courts and pending cases, - vide Rule 27.18(1).

(3) Register of warrants of commitment of jail, and of orders for the reception of lunatics into asylums, in Form 27.16(3).

(a) Register of receipt and dispatch of undertrial prisoners in Form 27.16(3)(A).

This register may be destroyed ten years after being completed.

(4) Register of warrants and summonses received for execution and service by the police in Form 27.16(4).

This register may be destroyed two years after being completed.

(5) Register of intermediate orders in Form 27.16(5).

This register may be destroyed two years after being completed.

(6) Register of reasons on security under the provisions of the Code of Criminal Procedure, or local and special Laws, in Form 27.16(6).

This register shall be divided into separate parts from each police station in the district.

At the end of each year the names of those persons remaining on security shall be re-written in the order in which their securities are timed to expire.

(7) Register of exercise cases occurring during the year in which police officers have been directly concerned, in Form 27.16(7).

(8) Permanent advance account of all judicial expenses in Form 10.52(b). This register may be destroyed three years after being completed.

(9) Register of absconders, in English in Form 23.20(1).

(10) Register showing progress of action against absconders in Form 23.21.

(11) Register of proclaimed offenders who are members of criminal tribes in Form 22.54(b).

This register shall contain the names of all members of criminal tribes who have been proclaimed under section 87, Code of Criminal Procedure, for offences against the Criminal Tribes Act.

27.17. Duties in connection with property. *- (1) At headquarters the head of the prosecuting agency, with the assistance of his staff, shall take charge of weapons, articles and property connected with cases sent for trial and shall be responsible for their safe custody until the case is decided. When final orders are passed in the case, such weapons, articles and property shall, if not made over to the owner, be made over to the sheriff.*

(2) The head of the prosecuting agency shall similarly take charge of, and be responsible for the safe custody of, suspicious property until the issue of the proclamation under Section 523, Code of Criminal Procedure, when such property shall be made over to the sheriff.

(3) Unclaimed property sent in by the police shall be made over to the sheriff as soon after arrival as possible and a receipt thereof taken in register No. 1 [rule 27.16(1)].

(4) Property connected with a case in which the accused is at large and has been pro-claimed shall, if likely to be of material advantage to the prosecution, be kept by the head of the prosecuting agency in a strong box in his store-room. If such property, excepting valuables, is too large to be kept in the strong box it may be kept on separate racks. If, after 50 years, the case still remains undecided the property shall be made over to the sheriff for disposal.

When there are claimants to the property who would suffer hardship through its retention the orders of the magistrate shall be taken.

(5) Within the first ten days of each quarter the prosecuting inspector shall verify all property of which he or a prosecuting sub-inspector at head- quarters is in charge and shall submit a certificate to the Superintendent of Police that he has duly carried out the verification. Where a prosecuting sub-inspector is in sole charge of property or is in joint charge with the prosecuting inspector, the prosecuting sub-inspector shall be present during the verification and shall also sign the certificate.

Likewise, Rules, 14-E, 14-F and 14-H, Part B of Chapter 24, Volume III of the Lahore High Court Rules and Orders (Civil and Criminal) also deal with the proposition in hand, relevant lines whereof are reproduced hereunder:-

*"**14-E. Custody of other articles**.---Similar care is often required in tracing the custody of prisoner's substances, personal food, blood-stained clothes etc. The evidence should never leave it doubtful as to what person or persons have had charge of such articles throughout the various stages of the inquiry if such doubt can be cleared up. This is especially necessary in the cases of articles sent to the Chemical Examiner. The person who packs, seals and dispatches such articles should*

> *invariably be examined.*
> ***14-F. Every article to be produced.***---*Clothes, weapons, money, ornaments, food and every article which forms a part of the circumstantial evidence should be produced in Court and their connection with the case and identity should be proved by witnesses.*
> ***14-H. Exhibits.***---*All exhibits should be marked with a letter or numbers, Articles which are produced in evidence should have a label attached to them bearing a number, and that number should be quoted throughout the record wherever any such article is referred to and should be distinctly marked as "admitted or not admitted". If the exhibits have already been assigned numbers by the police, that series of numbers should be mentioned to avoid confusion.*
> *A printed label should be affixed or attached to each exhibit containing the following particulars:-*
> *(i) Number of exhibit*
> *(ii) Produced by*
> *(iii) Admitted (Signature of Court)*
> *(iv) Date*
> *(v) Case*
> *(vi) Description of exhibits.*
> *The Sessions Judge, should see that these entries are property made.*

In addition to the above, there is no evidence at all that the case-property i.e. currency notes valuing Rs.4,00,000/- were disposed of pending trial in terms of section 516-A, Cr.P.C. by the court of competent jurisdiction, therefore, in the eventuality of above mentioned facts, I have no hesitation to hold that the prosecution has failed to prove the recovery of Rs.4,00,000/- from the possession of appellant. Reliance is placed on the cases titled as *"State of Islamic Republic of Pakistan through Deputy Attorney-General for Pakistan v. Kenneth Marshal and 2 others"* **(2005 SCMR 594)** and *"Gul Dast Khan v. The State"* **(2009 SCMR 431).**

14. Epitome of the above comprehensive discussion is that the prosecution has failed to prove its case against the appellant beyond the shadow of doubt rather the shadows of doubt are looming large in this case. It is a well-established principle of administration of justice in criminal cases that finding of guilt against an accused cannot be based merely on the high probabilities that may be inferred from evidence in a given case. The findings as regard the guilt of accused should be rested surely and firmly on the evidence produced in the case

and the plain inferences of guilt that may irresistibly be drawn from that evidence. Mere conjectures and probabilities cannot take the place of proof. If a case is decided merely on high probabilities regarding the existence or non-existence of a fact to prove the guilt of a person, the golden rule of giving "benefit of doubt" to an accused person, which has been a dominant feature of the administration of criminal justice in this country with the consistent approval of the Constitutional Courts, will be reduced to a naught. The prosecution is under obligation to prove its case against the accused at the standard of proof required in criminal cases, beyond reasonable doubt standard, and cannot be said to have discharged this obligation by producing evidence that merely meets the preponderance of probability. If the prosecution fails to discharge its said obligation and there remains a reasonable doubt, not an imaginary or artificial doubt, as to the guilt of the accused, the benefit of that doubt is to be given to the accused as of right, not as of concession. Reference is made to the cases titled *"Sajjad Hussain v. The State and others"* **(2022 SCMR 1540)** and *"Tajamal Hussain Shah v. The State and another"* **(2022 SCMR 1567).**

15. For the foregoing reasons,` Criminal Appeal No.544 of 2015 filed by Muhammad Tasleem appellant is **accepted,** his convictions and sentences are **set aside** and he is acquitted of the charges leveled against him while extending the benefit of doubt in his favour. He is present in the Court by way of suspension of his sentences, his sureties stand discharged from the liability of bail bonds.

(Muhammad Tariq Nadeem)
Judge

APPROVED FOR REPORTING

Judge

Announced on: 01.06.2023
Dictated, prepared and signed on 13.06.2023
مقدس