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JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
(JUDICIAL DEPARTMENT)

Criminal Appeal No.255528/2018
Muhammad Aslam Vs. The State etc.

Criminal Revision No.255777/2018
Muhammad Yousaf Vs. Muhammad Aslam, etc.

JUDGMENT

Date of hearing	10.04.2023.
Appellant by	Mr. Naveed Ahmad Khawaja.
The State by	Mr. Muhmmad Asad Tehrim, Deputy Prosecutor General.
The Complainant by	Mr. Muhammad Imran Ashfaq Chaudhry, Advocate.

MUHAMMAD AMJAD RAFIQ, J. Muhammad Aslam (accused/appellant) and Fiaz Ahmad faced trial before learned Additional Sessions Judge, Depalpur in a private complaint arising out of an FIR No.411/2015 dated 25.07.23015 under sections 302/34 PPC police station Saddar Depalpur and on conclusion of trial vide judgment dated 14.11.2018 Fiaz Ahmad was acquitted, whereas, Muhammad Aslam was convicted under section 302(b) PPC and sentenced to imprisonment for life, with a compensation of Rs.300000/- to be paid to the legal heirs of deceased under section 544-A Cr.P.C., in case of default to further undergo six months' simple imprisonment. Benefit of section 382-B Cr.P.C. was extended. Through Criminal Appeal No.255528/2018 Muhammad Aslam has challenged his above conviction, whereas, through Criminal Revision No.255777/2018 the complainant has prayed for enhancement of sentence; both these matters are being decided through this judgment.

2. Intended by wish complainant Muhammad Yousaf on 25.07.2015 at 8.00 p.m. (night) in the company of Muhammad Younis, Muhammad Nazim and Muhammad Ashraf with a ride on motorcycles was roaming to the house of one Aziz Allah Ditta Khokhar at Chak No. 48/D (Depalpur, Okara), when Muhammad Aslam and Fiaz (brothers inter se) along with two unknown accused armed with firearms intercepted them near the house of Aziz s/o Muhammad Ali, who were identified in the light of bulb and head lamps of

motorcycles. Fiaz exhorted to teach lesson and kill Muhammad Younis for taking side of opposing party; upon which Muhammad Aslam made fire with rifle which hit on his face at left side near the nose, who fell and succumbed. Remaining accused while firing with their respective weapons fled away from the spot.

A tussle between Muhammad Niaz and Aziz Ullah groups reported through FIR bearing No. 408/15 P/S Saddar Depalpur was told to be motive of this occurrence because Younis deceased as opposed to the accused party was supporter of Aziz Ullah group and a threat of murder has already been extended.

3. On 25.07.2015 the investigation of the case was entrusted to Muhammad Riaz SI (CW-7), who proceeded to the place of occurrence, inspected the dead body, prepared injury statement and inquest report; drafted application for postmortem and handed over the dead body to Zulfiqar Ali 662/C to mortuary. He himself inspected the place of occurrence, prepared unscaled site plan, collected two bullet casings of pistol 30 bore and one bullet casings of 7mm; collected blood stained earth; took into possession one electric bulb and recorded statement of witnesses; on 25.10.2015 accused/appellant Muhammad Aslam was arrested who on 05.11.2015 led to recovery of rifle from his residential room hidden in an iron box. During investigation he concluded that one Khalid alias Khalo committed murder of Muhammad Younis and arrested him. Pursuant to his investigative opinion, while finding Fiaz as not involved in the crime, sent Khalid alias Khalo and Aslam to face the trial. Dissatisfied with the conclusion drawn by the Investigating Officer, the complainant initiated private prosecution, wherein, trial was commenced against Muhammad Aslam and Fiaz.

4. Charge was framed on information which was denied with a claim of trial, whereupon the prosecution produced Muhammad Yousaf complainant (PW-1) and Nazim Ali (PW-2) the ocular brigade; Ghulam Fareed (CW-2) for motive; Muhammad Irfan 1264/C (CW-3) and Muhammad Amir 714/C (CW-4), witnesses of weapon recovery from the accused persons; Muhammad Riaz SI (CW-7) had investigated the case; Adil Rasheed Medical Officer (CW-8) conducted post mortem of deceased on 26.07.2015;

Abdul Rasheed (CW-9) appeared in the dock to depose about the fact that one Muhammad Sarwar told him about the fact that Muhammad Aslam and Fiaz has been arrested whereas Khalid alias Khalo went to police station and confessed in his presence that he committed the murder of one, whose name he cannot remember. Whereas Arslan (CW-10) deposed about extra judicial confession by Khalid alias Khalo accused. The remaining witnesses are almost formal and they made statements about their respective functions. On close of prosecution case, the accused when examined under section 342 Cr.P.C. they denied the prosecution evidence, however, they neither produced any evidence in defence nor opted to make statements under section 340(2) Cr.P.C. and the trial ended in the terms detailed above.

5. Learned Counsel for the appellant opens up that it was a night occurrence, wherein identification of accused was a serious issue; contradiction in medical and ocular account doubts the presence of PWs at the spot which brought an alternate hypothesis during investigation for swapping the appellant with one Khalid alias Khalo as the real culprit but complainant party did not accept this version and brought private prosecution against two accused Muhammad Aslam (appellant) and his brother Fiaz. Use of scientific evidence to gauge the culpability of appellant through polygraph test stood failed. Motive could not be proved and recovery being inconsequential did not provide support to prosecution because rifle allegedly recovered did not send to PFSA; co-accused Fiaz on the same set of evidence has been acquitted.

6. On the other hand, learned Deputy Prosecutor General assisted by learned counsel for the complainant supported the judgment with the stance that sufficient light was available, and witnesses have proved their presence at the spot that was the reason FIR stood registered within one hour and the postmortem during the following night. Enmity is reflected from the earlier FIR and there was no occasion to substitute the real culprit; it was the malafide of police who attempted to distort the case of prosecution by introducing Khalid alias khalo as the culprit and this failed attempt has been duly defied by the learned trial court by disbelieving the story of police and acquitted him u/s 265-K Cr.P.C. in police/challan case.

7. Arguments proffered by the proponent and opponent set the parties at opposite poles to advocate their viewpoints creating a standoff; it had taken much time of this court to thrash the whole evidence.

8. The foremost stance of learned counsel for the appellant was that medical evidence connotes a different story because injury on the nose of deceased was first observed by the investigating officer as 'blood-stained wound' through an important and first document i.e., inquest report but later by interpolation the word 'fire' was inserted. Though this interpolation could have been ignored as innocent omission but if read in the light of observation made by the doctor about description of injury, it becomes of vital importance to create a doubt that either sufficient light was not available at the site enabling the investigating officer to view the injury with open eyes, or the dead body was attended in different circumstances when such injury had already been tempered with. Such observation is due to the reason that though investigating officer prepared all the documents at the site around 9.00 p.m. and handed over the dead body to Zulfiqar Ali 662/C immediately, yet postmortem report shows receiving of police papers on the following night at 3:15 a.m. During postmortem, the injury was observed by the doctor Adil Rasheed CW-8 like as under;

> "A lacerated wound 1x1 cm margins inverted at left side of nose, blackening present (entry wound)".
>
> Fractured nasal bone; bullet recovered from back of neck (3rd & 4th of cervical vertebrae); fractured maxilla right side; injured spinal cord; injured 3rd and 4th cervical vertebrae)

If it was a distant fire as mentioned in the site plan with inter se distance of 11 feet with no exit wound then in that case, there must be no blackening and burning because it is not possible beyond 3 or 4 feet as held in cases reported as "*MUHAMMAD ZAMAN Versus The STATE and others*" **(2014 SCMR 749)**; "*BARKAT ALI Versus MUHAMMAD ASIF and others*" **(2007 SCMR 1812)**. The presence of blackening shows that it was a close-range fire but mystery prevails as absence of exit wound makes the phenomenon more complex. It is true that maxilla bone is one of the hardest bones of the body and can cause a ricocheting effect to the bullet and the doctor has mentioned the channel or track of bullet as it after passing through maxilla bone finally pierced in the neck at 3rd & 4th of cervical vertebrae. Such an injury though is possible with a pistol fire if caused even from a close range. Case approved

for reporting in Crl. Appeal No.223-21 as "*BASHIR AHMAD VS THE STATE ETC.*" **(2023 LHC 1090)** is referred. Even it was possible due to ricocheting effect couple with the fact that velocity of a pistol shot is usually up to **'145 miles per hour'** whereas of rifle is **'120 miles per second to 370 miles per second'** in black powder muskets. So, this difference is not only of digits but of hours and seconds as well. This anomaly as to whether fire hit with a rifle or pistol was easy to settle if checked as to whether lead bullet recovered from the body of deceased stood matched with which weapon of offence. As per PFSA report Ex. PG, one Nisar Ahmad ASI has submitted parcel-1 (pistol recovered from Khalid alias Kahlo) and Parcel-2 of a 30-caliber bullet (B1) on 21.12.2015, whereas parcel-3 (C1 & C2 of 30 caliber cartridge case and C3 of 7mm caliber cartridge case) was submitted by one Imtiaz Ali (430/C) on 05.08.2015. Both these witnesses were not produced by the prosecution to show the nature of bullet casings; yet from the report it can be presumed that bullet B1 was the lead bullet recovered from the dead body of deceased, however, it was given a category of 30 caliber bullet in the said report, which of course could only be used in a 30-bore pistol and not in rifle. PFSA report Ex.PG though contains a fact that Bullet marked as B1 due to lack of sufficient suitable corresponding microscopic markings was not possibly identified or eliminated to have fired from the pistol recovered from Khalid alias Khalo yet fact remains that it was not a bullet of rifle so as to tag the appellant with criminal liability that bullet ejected from his rifle has indeed caused the murder of deceased. This fact has left the prosecution barren of evidence on this score.

9. The ocular account claimed to be of trustworthy was objected to very seriously by the learned counsel for the appellant on many scores. First in line was the written application EX.PA of the complainant which was a computer composed copy, source of preparation the complainant disclosed a shop situated at Quaid-e-Azam chowk but failed to disclose the name of such shop during cross examination. He though admitted that he has done his Masters in history yet did not explain that why he had not himself written the application. CW-1 Kamran Khaliq who registered the FIR did not explain that it was a computer composed copy. All that shows that the matter was not reported to police at 9.00 p.m. It shows that till the postmortem examination PWs were not available, on whose appearance, FIR was registered later.

From the above facts, it is reflected that it was not a prompt FIR; therefore, with such fact when the evidence of PW-1 & PW2 was attendant, it was found that witnesses were resident of Chak 52/D whereas occurrence took place in the precinct of Chak 48/D which is at distance of 5 kilometer as deposed by PW-1 Muhammad Yousaf, complainant. However, PW-2 Nazim regraded this distance as three kilometers. Both the witnesses did not justify their presence at the spot nor produced Aziz Allah Dita Khokhar whom they were going to meet him and so much so motorcycles in the use of complainant party were not produced before the investigating officer. Both admitted that Muhammad Aslam appellant and Younis deceased were neither the accused nor witness in FIR No. 408/15 (motive). PW-1 further admitted that Muhammad Younis deceased had no grievances against the appellant prior to the occurrence. PW-1 complainant did not expose his individuality in facts rather seemed acting on borrowed information. Such conduct was categorically observed by this court while reading a situation in cross examination when the complainant was confronted with the application Ex.DA showing nomination of Ijaz and Mushtaq as unknown accused by him, he responded as under;

> "I identify my signatures on application Ex. DA but that application was not submitted by me and with my consent because it was the routine of I.O to take my signatures on blank papers".

The above expression clearly indicates that complainant was playing in the hands of investigating agency as being not certain of facts due to his absence on the place of occurrence at the relevant time and FIR was lodged with consultation and deliberation. Both PW-1 & PW-2 were not shown as witnesses in the inquest report nor were they the witnesses of identification of dead body. Deceased if had died in their presence, it is not expected that they kept them robotic so as not to attend the deceased and, in this way, they must have attended the deceased, their clothes too have stained with blood, but no such clothes were produced before the investigating officer. Except bald narration of facts by the PWs, no supporting material was on record about their presence at the spot.

10. Learned counsel for the complainant states registration of FIR itself is a relevant fact which contains the name of appellant with specific role and in the absence of any enmity, witnesses cannot be disbelieved. It is trite that

FIR is not a substantive piece of evidence, and it cannot be relied upon to the level that mere on the basis of averments in FIR one could be convicted, therefore, unless an independent corroboration is available, FIR would remain only an evidence of relevant fact. This principle of law is embodied in Article 49 of Qanun-e-Shahadat Order, 1984 which is reproduced for reference;

> **49. Relevancy of entry in public record made in performance of, duty:** An entry in any public or other official book, register or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specialty enjoined by the law of the country in which such book, register or record is kept, is itself a relevant fact.

Though entry in any public or other official book or register about fact in issue or relevant fact is admissible evidence as a relevant fact but conviction cannot be based on FIR. Reliance is on case reported as "*ASMAT ALI AND ANOTHER versus THE STATE*" **(1968 P Cr. L J 309) [Dacca]**. FIR can only be used for contradicting or corroborating the maker thereto as held in cases reported as "*NISAR AHMAD-Petitioner versus THE STATE*" **(1971 SCMR 398)**; "*ANWAR ALI KHAN and others versus WAHID BUX and others*" **(1991 SCMR 1608).** The Honourable Supreme Court in a case reported as "*MUHAMMAD ZAMAN Versus The STATE and others*" **(2014 SCMR 749)** has held as under: -

> "an F.I.R. cannot be treated as a substantive evidence unless its maker affirms its content on oath and passes through the test of cross-examination, but it can be looked into in terms of Article 19 of the Qanun-e-Shahadat Order (10 of 1984) as a relevant fact for having been said by a person who happened to see or hear something about the occurrence as a by stander or a passer by shortly before or after the occurrence inasmuch as it forms part of the same transaction. It can be looked into as a relevant fact to un-husk the lies, distortions and half truths introduced at a subsequent stage if proved in terms of Article 78 of the Order which provides for proof of signature and handwriting of person alleged to have signed or witnessed such document. It can also be looked into as a relevant fact for having been entered in the relevant register in terms of Article 49 of the Order so long as it does not amount to confession."

Thus, the above argument of learned counsel for the complainant is rejected as having no legal value.

11. Investigation of the case was conducted by Muhammad Riaz SI who appeared in the dock as CW-7 and during cross examination admitted that Muhammad Aslam appellant was not found involved in commission of murder of Younis rather according to his investigation he challaned the

accused namely Khalid alias Khalo; what he deposed is reproduced as under:-

> "It is correct that while disbelieving eye witnesses of the FIR supporting the prosecution case from the very beginning and while relying upon the witnesses Abdul Rasheed and Arslan appearing before me after 17 days of the occurrence, I challaned accused Khalid alias Khalo to be involved by assigning him the role of firing at deceased whereas attributing aerial firing to accused Aslam."

Said two witnesses Abdul Rasheed CW-9 and Arslan CW-10 entered appearance in the dock and stated about the extrajudicial confession of Khalid alias Khalo as narrated supra. Arslan CW-10 stated that Khalid accused is from his brethren; however, Muhammad Hafiz CW-11 reportedly an acclaimed eye witness for fire shot made by Khalid alias Khalo turned hostile, who was duly cross examined. The above facts if do not tarnish the case of prosecution can easily create a reasonable dent in the story put forth by the complainant.

12. Recovery in this case was shown to have effected on the lead of appellant in the form of a rifle after about four months of the occurrence, yet same was not sent for testing to PFSA because the appellant was found innocent during the investigation, therefore, recovery being inconsequential is of no use for the prosecution.

13. In support of motive CW-2 Ghulam Fareed entered appearance and stated that on 25.07.2015 he along with Muhammad Younas deceased and Muhammad Yar was passing through bus stop of Chak 48/D, Aslam and Fiaz accused were standing there, where they stopped Muhammad Younas and extended threats to stop supporting Azeez etc. Said witness admitted that he is from brethren of complainant party and is resident of Chak 52/D, 3-½ kilometers away from Chak 48/D. He admitted that he never visited complainant's house in order to inform him about the conversational threats given by accused persons nor Muhammad Yar informed this fact to complainant. This frail and sole testimony is of no use to support the motive when FIR bearing No. 408/15 P/S Saddar Depalpur was not tendered in evidence; nor any witness from Aziz Ullah group appeared to show the fact of enmity between two groups or supporting of deceased or appellant to any of groups. Even during cross examination on PW-1 & PW-2 it transpires that there was no enmity between deceased and Aslam appellant prior to the

occurrence and both were neither accused nor witness in FIR bearing No. 48/15 supra. In the absence of any evidence in support of motive, mere stating it in FIR does not cater to the requirement of due evidence. Motive also fails in this case. It is trite that though the prosecution is not required to prove motive in every case, yet the same, if set up, should be proved through independent source of evidence other than the words of mouth and in case of failure to do so, the prosecution should have faced the consequences and not the defence. Reliance is placed on judgment reported as *"Hakim Ali v. The State"* **(1971 SCMR 432)**, which has further been adopted in case titled *"RIASAB KHAN versus NOOR MUHAMMAD and another"* **(2010 SCMR 97).**

14. Learned counsel for the complainant states that accused/appellant has also faced a lie detection process in the form a polygraph test wherein the expert has given no opinion about his truthfulness. Learned counsel for the appellant states that polygraph test is not the exact science to extract truth, therefore, has no value. It has been attended in the light of arguments of both the counsels which needs certain clarification; but before that what expert has opined after test of Muhammad Aslam appellant is cited as below;

> "I can render no opinion as to the truthfulness of Mr. Muhammad Aslam s/o Shama regarding his statement that he did not fired (sic) deceased Mr. Younas in the aforementioned case of murder."

It has been observed that the examination was administered to determine the examinee's truthfulness when he stated that he did not fire at deceased Mr. Younas and above response was recorded after asking just one question in three formulations like as under;

Sr. No.	Questions formulated	Response
1	Kiya aap nay Younis per seedha fire kiya tha?	No
2	kiya younis per seedha fire karnay walay insaan ap they?	No
3	Kiya Younis per jis nay seedha fire kiya wo shakas ap they?	No

Remarks:

The examinee produced poor psychophysiological data. Hence, no conclusive opinion could be drawn from these data.

From the above exercise, it is apparent that expert has not taken much pain to ascertain the facts in issue while formulating question which in no case helped to detect lie or provide any additional information so as to add valuable contribution for building an opinion for and against the truthfulness of the accused. Before outlining the requirement of a true and perfect attempt to extract the truth through polygraph test, it is essential to see what a polygraph test is, it is explained as under:-

> "A polygraph, often incorrectly referred to as a lie detector test, is a device or procedure that measures and records several physiological indicators such as blood pressure, pulse, respiration, and skin conductivity while a person is asked and answers a series of questions. The belief underpinning the use of the polygraph is that deceptive answers will produce physiological responses that can be differentiated from those associated with non-deceptive answers."

In the method, the examiner typically begins polygraph test sessions with a pre-test interview to gain some preliminary information which will later be used to develop diagnostic questions. Then the tester will explain how the polygraph is supposed to work, emphasizing that it can detect lies and that it is important to answer truthfully. Then a "stim test" is often conducted: the subject is asked to deliberately lie and then the tester reports that he was able to detect this lie. Guilty subjects are likely to become more anxious when they are reminded of the test's validity. The test is passed if the physiological responses to the diagnostic questions are larger than those during the relevant questions. Supreme Court of India observed and held in case titled Selvi & Ors vs State Of Karnataka & Anr on 5 May, 2010 (https://indiankanoon.org/doc/338008/,)

> "10. The theory behind polygraph tests is that when a subject is lying in response to a question, he/she will produce physiological responses that are different from those that arise in the normal course. During the polygraph examination, several instruments are attached to the subject for measuring and recording the physiological responses. The examiner then reads these results, analyzes them and proceeds to gauge the credibility of the subject's answers. Instruments such as cardiographs, pneumographs, cardio-cuffs and sensitive electrodes are used in the course of polygraph examinations. They measure changes in aspects such as respiration, blood pressure, blood flow, pulse and galvanic skin resistance. The truthfulness or falsity on part of the subject is assessed by relying on the records of the physiological responses. …".

The test must be explanatory not only to question relating to facts in issue or relevant facts but also for requiring some more information relating to crime. For which three techniques have been suggested through above judgment which are as under:-

i. The relevant-irrelevant (R-I) technique
ii. The control question (CQ) technique

iii. Directed Lie-Control (DLC) technique …

These techniques are essentially confirmatory in nature, wherein inferences are drawn from the physiological responses of the subject. However, the reliability of these methods has been repeatedly questioned in empirical studies. In the context of criminal cases, the reliability of scientific evidence bears a causal link with several dimensions of the right to a fair trial such as the requisite standard of proving guilt beyond reasonable doubt and the right of the accused to present a defence.

14. All over the word in the past there was serious criticism over polygraph test as being inconclusive while an intrusion to personal liberty and was suggested that it should not be conducted without the consent because otherwise it opposes to fundamental right of protection against self-incrimination. Though there are some studies showing improvements in the accuracy of results with advancement in technology, there is always scope for error on account of several factors. Objections can be raised about the qualifications of the examiner, the physical conditions under which the test was conducted, the manner in which questions were framed and the possible use of `countermeasures' by the test subject. A significant criticism of polygraphy is that sometimes the physiological responses triggered by feelings such as anxiety and fear could be misread as those triggered by deception but it can be a best investigative tool to take a lead for collection of directed evidence. In our jurisdiction the value of polygraph test has been dilated upon in cases reported as "*Abdul Qayyum Vs. The State and another*" **(2018 P Cr. L J Note 45)**; *"Ghulam Abbas Vs. The State and another"* **(2013 P Cr. L J 1402)**; *"Muhammad Asif and another Vs. The State"* **(2008 MLD 1385)**. The Honourable Supreme Court has held in case titled "*Husnain Mustafa Vs. The State and another*" **(2019 SCMR 1914)** as under: -

> "3. ...Polygraph test, a modern forensic method to unearth the truth, may establish a person's capacity to lie, however, findings thereof, cannot be equated with admission of guilt. …"

True, findings of polygraph test cannot be equated with admission of guilt and does not provide a ground for conviction solely on such findings but more or less it being confession can be considered a relevant fact in conjunction with other evidence on the record. In our regime, certain provisions of law support the evidentiary value of polygraph test and give it a legal cover as a modern device. Like an opinion of investigating officer in

the form of report u/s 173 Cr.P.C., Polygraph test is also an investigative technique conducted by an expert and opinion of an expert on any subject is a relevant fact as explained under Article 59 of Qanun-e-Shahadat Order, 1984, hereinafter referred as QSO, 1984, which is reproduced as under;

> **59. Opinions of experts:** When the Court has to form an opinion upon a point of foreign law, **or of science/or art**, or as to identity of handwriting or finger impressions; the opinions upon that point of persons specially skilled in such foreign law science or art, or in questions as to identity of hand-writing or finger impressions-are relevant facts.
>
> Such persons are called experts.
>
> Emphasize supplied.

Opinion of such experts are always subject to judicial scrutiny, therefore, in Article 65 of QSO, 1984, it has been explained that grounds of opinion shall also be relevant; it is as under: -

> ***65. Grounds of opinion when relevant:*** *Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.*
>
> *Illustrations An expert may give an account of experiments performed by him for the purpose of forming his opinion.*

Therefore, report of polygraph test should not be thrown away from consideration and best course can be the summoning of expert if any confusion arises while drawing inferences from such report. Admissibility of polygraph test being opinion of an expert has been tracked in the light of provisions of QSO, 1984 in the sense that truth extracted through polygraph test is like listening an extra judicial confession, burden to prove such confession is always on prosecution as per Article 119 of QSO, 1984; which is as under;

> **119. Burden of proof as to particular fact:** The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.
>
> Illustrations (a) A prosecutes B for theft, and wishes the Court to believe that B admitted the theft, to C. A must prove the admission.

An objection can be raised that through polygraph test, a truth is extracted technically and some time by asking misleading questions, or through promise or without warning etc., therefore, it would be not relevant as being involuntary; but the provision in the Qanun-e-Shahadat Order, 1984 reproduced below gives due legal cover to such arrangement:-

> ***42. Confession otherwise relevant not to become irrelevant because of promise of secrecy, etc.:*** *If such confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practiced on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to Questions when he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him : .*
>
> *Provided that the provisions of this Article shall not apply to the trial of cases under the laws relating to the enforcement of Hudood.*

The above Article covers all apprehension like confession made under a promise of secrecy, or in consequences of deception practiced on the accused or it was made in answer to question when he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him, because if the confession is true, it can be acted upon. Prosecution, therefore, can make good use of this test provided it is conducted by a knowledgeable expert with formulation of sound and relevant questions while following the techniques like relevant-irrelevant (R-I), the control question (CQ), directed Lie-Control (DLC), in order to cover all areas of information relating to crime. Coming back to the case, it has been observed that polygraph test conducted in this case is short of information and also lack of competency of expert could not add any value to prosecution case for determination of guilt of accused, therefore, report of polygraph test cannot be read against the present appellant.

15. In this new era of digital age, barring some jurisdiction, polygraph test is regarded as an investigative technique to unearth the truth which is being employed for many purposes; some of which are calculated as under:-

a. To evaluate the truthfulness of suspects and to help exonerate the innocent who is surrounded by circumstantial or uncorroborated evidence.
b. To hire and select potential employees (pre-employment screening).
c. For security clearance of potential employees.
d. For the surveillance of employees working on sensitive positions.
e. For the detection or deterrence of spying in military and intelligence communities.
f. To solve domestic disputes such as spouse cheating or infidelity.
g. For solving disputes over property and business matters.
h. By employers and companies on issues of employee theft.

i. To detect and deter computer and other workplace crimes like fraud, corruption, collusion with vendors/suppliers, sabotage, theft of corporate,

Based on the studies now available, experts assess the accuracy of polygraph examinations administered by a competent examiner to be about 90%. Level of skill and experience of the examiner plays an important part in the accuracy of the examination. Comparative studies have shown that polygraph tests yield an accuracy that equals or exceeds that of many other forms of evidence.

15. Considering all the pieces of evidence in this case and for what has been discussed above, I have no doubt to hold that here in this case the prosecution has miserably failed to establish the charge against the accused beyond any shadow of doubt. In the case "*NAJAF ALI SHAH versus The STATE*" **(2021 SCMR 736)** the Hon'ble Supreme Court of Pakistan has held that for giving benefit of doubt to an accused a single circumstance creating reasonable doubt in a prudent mind about guilt of accused is sufficient to make him entitled to such benefit. Here in this case as discussed above the prosecution has squarely failed to bring home the guilt against the appellant. Consequently, the criminal appeal is allowed, the impugned judgment of conviction and sentence is set-aside and the accused/appellant is acquitted of the charge against him. He shall be released forthwith if not required in any other case.

16. For the same reasons, the criminal revision filed by the complainant fails and is dismissed.

17. The case property, if any, be disposed of in accordance with law and the record of the learned trial court be sent back immediately.

(Muhammad Amjad Rafiq)
Judge.

This judgment has been prepared, read and signed on 20.04.2023.

Javed*

Approved for Reporting.

Judge.