

JUDGMENT SHEET
IN THE LAHORE HIGH COURT,
MULTAN BENCH, MULTAN

Murder Reference No. 51 of 2022

(The State vs. Ashfaq Hussain)

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Criminal Appeal No. 684-J of 2022

(Ashfaq Hussain vs. The State)

&

Criminal Appeal No. 683 of 2022

(Abdul Majeed Shah vs. The State)

&

Criminal Revision No. 340 of 2022

(Shafaqat Mehmood vs. The State and another)

JUDGMENT

Date of hearing: **06-12-2023**

Appellant by: **Malik Muhammad Saleem, Advocate**

State by: **Malik Riaz Ahmad Saghla, APG**

Complainant by: **Ch. Faqir Muhammad, Advocate**

MUHAMMAD TARIQ NADEEM, J.:- Through this single judgment, we intend to dispose of **Criminal Appeal No.684-J of 2022** filed by Ashfaq Hussain appellant against his conviction and sentence, **Criminal Appeal No.683-J of 2022** filed by Abdul Majeed Shah appellant against his conviction and sentence, whereas, complainant Shafaqat Mehmood filed **Criminal Revision No. 340 of 2022** for the conversion of sentence of life imprisonment of Abdul Majeed Shah into sentence of death along with **Murder Reference No.51 of 2022**, received from trial court for confirmation or otherwise of death sentence of Ashfaq Hussain appellant all originated from judgment dated 22-06-2022 passed by learned Additional Sessions Judge-II, Model Criminal Trial Court, Jampur in case FIR No.270 dated 02-09-2016, under Sections 302, 34, PPC registered at Police

Station Sadar Jampur, whereby the trial court convicted and sentenced the appellants as under:-

Ashfaq Hussain

Under Section 302 (b), PPC

Sentence to death with the direction to pay a sum of Rs.2,00,000/- as compensation under Section 544-A Cr.P.C. to the legal heirs of deceased Mst. Zoha Kanwal, in default thereof to further undergo six months S.I.

Abdul Majeed Shah

Under Section 302 (b), PPC

Sentence to life imprisonment with the direction to pay a sum of Rs.2,00,000/- as compensation under Section 544-A Cr.P.C. to the legal heirs of deceased Mst. Zoha Kanwal, in default thereof to further undergo six months S.I.

It may not be out of place to mention here that this Court *vide* Judgment dated 21.03.2022 while deciding Criminal Appeal No. 609-J of 2021, Criminal Appeal No. 123-J of 2018, Criminal Revision No.163 of 2018 and Murder Reference No.04 of 2018, with the consensus of the parties set aside the conviction awarded to the appellants and the case was remanded back to the trial court with the direction that the learned trial Judge shall call the person who conducted interviews of the eyewitnesses and the mother of deceased from TV Channel as Court Witness and will re-record statements of the accused persons under section 342, Cr.P.C. by confronting them with the evidence of said CW. The trial court was directed to complete the assignment within a period of two months positively from the date of receipt of copy of the judgment.

Whereafter, Zeshan Nawaz Malik, anchor person who conducted the interviews of Mirza Shafaqat Mehmood, complainant (PW6), Mirza Muhammad Mansoor (PW7) and Shakeela Begum

mother of deceased was summoned as Court Witness and his statement was recorded as CW1.

2. The prosecution story as given in the judgment of the trial court dated 22.12.2017 before remand reads as under:-

“Precisely, the prosecution case as disclosed from the statement of the complainant Mirza Shafqat Mehmood s/o Mirza Abdul Ghani (Exh.PH) is that marriage of daughter of complainant namely Mst. Zoha Kanwal was solemnized with Syed Ashfaq Hussain s/o Abdul Majeed Shah on 14.06.2013. At the time of marriage, Syed Ashfaq Hussain agreed to give a constructed house consisting of land measuring five marlas situated in Kotia Mughlan, gold ornaments weighing 10 tolas and agricultural land measuring one acre in Mauza Qamber Shah as dower consideration. During cohabitation, differences arose between the spouses on account of payment of dower consideration. In the meanwhile out of their wedlock, a daughter namely Hania Jannat aged about two years was born. Some days before the registration of case, daughter of the complainant came to the house of the complainant on account of differences with her husband due to non-payment of dower consideration while his son in law (accused Ashfaq Hussain) remained making efforts for reconciliation but Abdul Majeed Shah, father of son in law of the complainant was not ready on alienation of land in lieu of dower consideration. On 02.09.2016, compromise was effected before the respectables of the locality on the terms that Mirza Mansoor, son of the complainant would obtain computerized proof regarding the ownership of land of the son in law of the complainant and thereafter the son in law of the complainant, would alienate the land in lieu of dower consideration. Documentary proof of ownership was obtained and at about 4.00 p.m, Ashfaq Hussain accused, who is son-in-law of the complainant, took Mst. Zoha Kanwal and Hania Jannat to his house. After about 1 1½ hours, the complainant alongwith Mirza Mansoor, his son and Muhammad Akmal went to make program for alienation of land in lieu of dower by his son in law in favour of Mst. Zoha Kanwal but as soon as they entered the house through a small gate, they saw that accused Ashfaq Hussain armed with pistol and Syed Abdul Majeed Shah armed with Churri were present in a room on western side of house and they were assaulting

the daughter of the complainant in a brutal manner. Syed Ashfaq Hussain was catching hold of the daughter of the complainant while Abdul Majeed Shah was giving Churri blows on her body, as a result of which, she received severe injuries on her head, forehead, right and left sides of face, left wrist, fingers of her left hand, right wrist, right elbow, front and left side of neck. The complainant alongwith witnesses rushed towards his daughter but his son-in-law made fire with his pistol at his daughter with intention to commit her murder, which hit her on backside of her head and went through and through. She fell down on the ground. The PWs tried to apprehend the accused persons but they threatened them not to come near them while waiving the pistol and Churri and after taking Hania Jannat, they decamped from the place of occurrence while riding on motorcycle CD-70, which was standing outside the house. The complainant and the witnesses attended Mst. Zoha Kanwal, who had succumbed to the injuries at the spot. Motive behind the occurrence was that due to non-payment of dower consideration mentioned in column No. 16 c the Nikahnama, the accused persons, in furtherance of the common, intention committed murder of Mst. Zoha Kanwa deceased. Upon the statement of the complainant, this case was registered.....”

3. After completion of investigation, report under section 173 Cr.P.C. was prepared and submitted before the trial court. The trial court, after observing all codal formalities, as provided under the Code of Criminal Procedure, 1898, framed charge against the appellants for the offences mentioned above, to which they pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution produced as many as 12 witnesses during the trial. Mirza Shafaqat Mehmood, complainant (PW6), Mirza Muhammad Mansoor (PW7) and Muhammad Akmal (PW8) have furnished the ocular account. Muhammad Sadiq, SI (PW12), being the Investigating Officer, stated about various steps taken by him during investigation of the case. Muhammad Zahid 995/HC (PW1) was the witness of handing over sealed parcels containing crime empty of pistol .30 bore and blood stained cotton and

Chhurri. Kamal Ahmad 741/HC (PW2) was the witness of collecting call data of the appellants pertaining to mobile numbers 0334-7552807, 0304-4486051, 0333-6451391 and 0302-7379152, whereas, Ghulam Qasim 1295/C (PW3) was the witness who escorted the dead body of Mst. Zoha Kanwal to THQ hospital Jampur for post-mortem examination and also witness of recovery memo Exh. PA pertaining to the call data of cell phones of the appellants.

Medical evidence was furnished by Doctor Fatima Ali Syed (PW5).

The remaining prosecution witnesses, more or less, are formal in nature.

After recording the evidence of Zeeshan Nawaz Malik CW1, statements under section 342 Cr. P.C. of the appellants were recorded wherein they denied the allegations leveled against them and professed their innocence. However, they neither opted to appear as their own witnesses within the scope of section 340(2) Cr.P.C. nor produced any evidence in their defence.

The trial court *vide* judgment dated 22-06-2022 found the appellants guilty and thus, convicted and sentenced them as mentioned and detailed above.

5. We have heard the learned counsel for the appellants as well as learned Additional Prosecutor General assisted by learned counsel for the complainant and also scanned the record with their assistance. We have reappraised the whole evidence and taken everything into our consideration in the light of arguments advanced by both the sides.

6. Ocular account of the incident has been furnished by Mirza Shafqat Mehmood complainant (PW6), Mirza Muhammad Mansoor (PW7) and Muhammad Akmal (PW8). The above mentioned witnesses are real father, real brother and maternal uncle of Mst. Zoha

Kanwal (deceased), respectively. According to the prosecution story Mst. Zoha Kanwal (deceased) was annoyed with her husband Ashfaq Hussain appellant due to non-payment of *Haq-ul-Mahar* described in Column No. 16 of her *Nikah Nama*. All the PWs have stated that on the day of occurrence, i.e. 02.09.2016 at 04.00 p.m. Ashfaq Hussain appellant took Mst. Zoha Kanwal (deceased) along with his daughter Hania Janat to his home on the basis of compromise with the condition that Mirza Muhammad Mansoor (PW7) son of the complainant, would obtain copy of record of rights of land owned by Ashfaq Hussain appellant and hand over to him, thereafter appellant would alienate the said property to Mst. Zoha Kanwal (deceased). We have noted that Mirza Muhammad Mansoor (PW7) has categorically stated in his cross examination that his sister was not willing to go back without payment of dower. Relevant line of his cross examination reads as under for ready reference:-

“My sister told that she was not willing to go back to her house until the dower is paid to her by the accused”

Furthermore, we have also observed that Mirza Muhammad Mansoor (PW7) had obtained copy of record of rights (P-9) about the ownership of land of Ashfaq Hussain, appellant on 02.09.2016 at 10:42 a.m., whereas, according to the prosecution story Ashfaq Hussain appellant was present in the house of complainant till 04.00 p.m. on 02.09.2016, in this way, why the above mentioned document was not handed over to Ashfaq Hussain appellant at that time and there was no need to go to the house of occurrence. Similarly, when Mst. Zoha Kanwal (deceased) was not willing to reconcile with Ashfaq Hussain appellant without payment of dower then why she went alongwith him without transfer of property of dower in her name. These facts do not appeal to a prudent mind because without

resolving the controversy she (deceased) could not be sent with Ashfaq Hussain appellant by her parents.

It is evident from the record that the above mentioned eyewitnesses were not residing nearby the place of occurrence. Moreover, place of occurrence was also not the house of Ashfaq Hussain appellant. Although Mirza Shafaqat Mehmood complainant (PW6) has stated in his examination-in-chief as infra:-

“Prior to the marriage, Ishfaq accused was settled at Mauza Qambar Shah. The distance between Kotla Mughlan and Qambar Shah is about 12 K.M. It was settled that accused Ishfaq and my daughter would live in Kotla Mughlan in a separate house, which I had gifted to my daughter.”

But we have observed that prosecution evidence is completely silent on the point whether after differences between the spouses, Ashfaq Hussain appellant was residing in the gifted house of his father-in-law situated at Kotla Mughlan. Contrary to above Mirza Shafaqat Mehmood complainant (PW6) has stated in his cross examination that they took the police to the house of accused persons at Qambar Shah after the occurrence at evening time. The house of accused persons in *Mauza Qambar Shah* was locked and accused persons were not available. This fact is sufficient to hold that Ashfaq Hussain, appellant was not residing in the house of occurrence situated at Kotla Mughlan.

7. Another crippling feature of this case which cannot be lost sight of is that according to the prosecution story all the above mentioned eyewitnesses reached at the place of occurrence by chance and occurrence took place exactly at the time of their arrival at place of occurrence. This aspect of the prosecution case does not appeal to a prudent mind as observed by the Supreme Court of Pakistan in the case titled as *The State through Advocate General, Khyber*

Pakhtunkhwa, Peshawar vs. Hassan Jalil and others (2019 SCMR 1154). Relevant paragraph is hereby reproduced as under:-

“Arrival of Noor Seema, PW at venue exactly at a point of time when the respondent allegedly did away with the deceased, in itself is a circumstance that reflects on the very genesis of the prosecution case. On an overall analysis of the prosecution evidence, the learned High Court found the prosecution case fraught from doubts, an analysis that cannot be viewed as unconscionable or imprudent, being well within the realm of possibility, calling for interference. Appeal is dismissed. ”

We have also noticed that Mirza Shafqat Mehmood complainant (PW6) and Mirza Muhammad Mansoor (PW7) have admitted in their cross-examinations that many media persons recorded their interviews regarding the occurrence. Moreover, this fact has also been endorsed by Muhammad Sadiq, SI/I.O. (PW12). Relevant lines of his cross examination reads as under for ready reference:-

“This occurrence was also reported to the electronic media. It is correct that interviews of the complainant and eyewitnesses were also aired on SAMA nad other T.V. Channels. ”

Zeeshan Nawaz Malik, anchor person of SAMA T.V. Channel appeared as CW1 who categorically stated in his cross examination as under:-

“I had conducted the interviews. I don't remember that interviews of father, mother and brother of deceased were conducted exactly at the spot but the possibility of the same cannot be ruled out. Confronted with the CD Exh.DA (portion of the video showing the place of occurrence of the instant case), I say, it is the same place whereby the alleged occurrence took place. It is correct that in CD Exh.DA the portion regarding the statement of father of deceased namely Shafqat Mahmood is same as shown in the video that when he

(complainant) reached at the place of occurrence, deceased Zoha Kanwal was lying dead in her room. Confronted with the CD Exh.DA (portion of the video showing the statement of the mother of the deceased), it is correct that in CD Exh.DA the portion regarding the statement of mother of deceased namely Shakeela Baigm is same as shown in the video that when she reached at the place of occurrence, deceased Zoha Kanwal was lying dead in her room. At the time of interview, the son of complainant namely Mansoor was also present there. The said Mansoor has also endorsed the statement of his parents.

In the light of above facts, it is abundantly clear that the eyewitnesses reached at the place of occurrence afterwards and we are quite confident to hold that supra mentioned witnesses are related and chance witnesses. A chance witness in legal parlance is the one who claims that he was present on the crime spot at the fateful time, albeit, his presence there was a sheer chance as in the ordinary course of business, place of residence and normal course of events, he was not supposed to be present at the spot but at a place where he resides, carries on business or runs day-to-day life affairs, in this context the testimony of chance witness, ordinarily, is not accepted unless justifiable reasons are shown to establish his presence at the crime scene at the relevant time. In normal course, presumption under the law would operate about his absence from the crime spot. True that in rare cases, the testimony of chance witness may be relied upon, provided some convincing explanations appealing to prudent mind for his presence on the crime spot are put forth, his testimony would fall within the category of suspect evidence and cannot be accepted without a pinch of salt. Guidance can be sought from the case laws titled as “Mst. Mir Zalai v. Ghazi Khan and others” (2020 SCMR 319), “Ibrar Hussain and another v. The State” (2020 SCMR 1850)

“Liaqat Ali and another v. The State and others” (2021 SCMR 780)
and “Abdul Khaliq v. The State” (2021 SCMR 325).

8. According to the Inquest Report (Exh. PF) and post mortem report of Mst. Zoha Kanwal (deceased) (Exh. PE) as well as statement of Dr. Fatima Ali Syed, WMO (PW5) mouth of Mst. Zoha Kanwal (deceased) was opened. This fact shows that no person had afflicted to close the mouth of Mst. Zoha Kanwal (deceased), which couldn't have befallen in the presence of eye witnesses. Reliance is placed upon the cases titled as “Muhammad Asif vs. The State” (2017 SCMR 486), “Zahir Yousaf and another v. The State and another” (2017 SCMR 2002) and “Muhammad Rafique alias Feeqa v. The State” (2019 SCMR 1068).

9. Another important fact of this case is that the alleged eyewitnesses namely Mirza Shafaqat Mehmood complainant (PW6), Mirza Muhammad Mansoor (PW7) and Muhammad Akmal (PW8) are not the witnesses of identification of deadbody of deceased at the time of autopsy of Mst. Zoha Kanwal (deceased). Furthermore, they are also not the witnesses of identification of deadbody at the time of preparing the inquest report (Exh. PF). Had they been present at the scene of the occurrence at the relevant time, they must have been the witnesses of identification of deadbody. This fact has constrained us to hold that they were not present at the time and place of occurrence. A reference in this respect may be made to the cases reported as “Abdul Jabbar alias Jabri v. The State” (2017 SCMR 1155), “Nadeem alias Kala v. The State and others” (2018 SCMR 153) and “Liaqat Ali and another v. The State and others” (2021 SCMR 780).

10. The record further reflects that according to the statement of Dr. Fatima Ali Syed, WMO (PW5) Mst. Zoha Kanwal (deceased) received one fire shot and sixteen other injuries on the body of Mst.

Zoha Kanwal (deceased) at the time of conducting post mortem examination on her body, whereas, according to the statement of Mirza Shafqat Mehmood complainant (PW6) their clothes were not stained with blood at the time of attending the deceased. Relevant line of his cross-examination is hereby described as under:-

“Neither my clothes nor the clothes of the witnesses became stained with blood while attending my deceased daughter.”

We are of the view that it is improbable when a person has sustained 17 injuries with fire shot and sharp-edged weapon, blood would not ooze and would not touch the clothes of attending persons. This fact constrained us to hold that eyewitnesses were not present at the time and place of occurrence, otherwise, their clothes must have been stained with blood while attending the deceased, hence, both the witnesses of ocular account were not reliable and there is likelihood that they had not witnessed the occurrence.

11. Another important fact of this case is that Abdul Majeed Shah appellant was declared innocent during the course of investigation. Muhammad Sadiq, SI/I.O. (PW12) has stated in his cross-examination as infra:-

“On 16.09.2016, I joined accused Abdul Majeed into investigation and recorded his first version. Accused Abdul Majeed took the plea before me that he had no concern with the alleged occurrence and he was innocent. It is correct that he also took plea that his backbone was operated upon and his knee and arm were fractured. It is correct that he also took the plea that he offered Jumma and Asar prayers in Shrine of Ali Shah and he could produce the persons who were present there. I joined 16 respectables of the area in the investigation and they verified the plea of accused Abdul Majeed, therefore, I declared that accused Abdul Majeed was not involved in the occurrence and had no nexus with the present occurrence.”

Although it is generally established principle of law that *ipse dixit* of the police is not binding on the Court, yet it can be considered if it is founded on some cogent and convincing evidence. A reference in this respect may be made to the case tilted as “Khalid Mehmood and others vs. The State” (2011 SCMR 664) wherein it has been held infra:-

Adverting to the case of Abid Hussain appellant, it may be observed that no weapon of offence has been effected from his possession. He was found innocent by different police agencies including Ch. Akhtar Hussain, DSP, CIA, Sheikhpura and got discharged from the Court of the Magistrate, which order was not challenged by the complainant. We entertain serious doubt in our minds, regarding participation of appellant Abid Hussain in the commission of crime. The evidence of the complainant and Nasir Ahmad P.Ws. qua appellant Abid Hussain is not credible and trustworthy.”

Similar view has also been taken in the recent case reported as Sajjad Hussain vs. The State and others (2022 SCMR 1540).

12. Insofar as the evidence of call data record of the appellants is concerned, it is noteworthy that no voice record transcript has been brought on record. The evidence further demonstrates that both the appellants were in telephonically contact and not more than this. Here, we would like to refer to the case of “Azeem Khan and others vs. Mujahid Khan and others” (2016 SCMR 274) wherein it has been held as under:-

“The cell phone call data collected is of no help to the prosecution for the reasons that numerous calls have been made indicating continuous interaction between the two cell phones, contrary to the evidence given by Muhammad Wali (PW-3), who has stated at the trial that the unknown caller made calls on his cell phone four times. No competent witness was produced at the trial, who provided the call data, Ex.P -1 to Ex.P-5. No voice record transcript has been brought on record. Similarly from which area the caller made

the calls, is also not shown in it. Above all, the most crucial and conclusive proof that the cell phone was owned by the accused and SIM allotted was in his name is also missing. In this view of the matter, this piece of evidence is absolutely inconclusive and of no benefit to the prosecution nor it connects the accused with the crime in any manner.”

13. Insofar as motorcycle CD-70 recovered on the pointation of Ashfaq Hussain appellant from the house of Abdul Majeed Shah appellant situated in Mauza Qamber Shah, which was taken into possession by the Investigating Officer vide seizure memo (Ex.PM) is concerned, no registration number, colour, has been described in the FIR. In this way, recovery of motorcycle at the pointation of the appellants is inconsequential and not helpful to the prosecution case. We fortify our view from the dictum laid down in the case titled as “*Naveed Asghar Vs. The State and another*” (PLD 2021 SC 600).

Now advertent to recoveries of pistol 30 bore P-12 taken into possession vide seizure memo Exh. PN at the pointation of Ashfaq Hussain appellant from deserted building of irrigation department and recovery of blood stained *Chhurri* P-14 taken into possession vide seizure memo Exh. PO at the pointation of appellant from the place of occurrence are concerned, we have noted that place of recovery of pistol 30 bore P-12 was an open place and accessible to everyone, in this way, the recovery of pistol P-12 is inconsequential in the eye of law. In this backdrop, the supra mentioned recovery has no evidentiary worth. Reference in this context may be made to the case of “*Muhammad Ismail and others vs. The State*” (2017 SCMR 898).

As regards recovery of *Chhurri* P-14 is concerned, we have observed that according to the prosecution story the same was not used by Ashfaq Hussain appellant rather Abdul Majeed Shah co-convict has

used the same who was declared innocent during the course of investigation. More so, report of Punjab Forensic Science Agency, Lahore qua pistol and *Chhurri* Exh. PT as well as Exh. PU are not helpful to the prosecution case because we have already disbelieved the recovery of pistol P-12 at the pointation of Ashfaq Hussain appellant, whereas, positive report of PFSA Exh. PT qua the human blood on *Chhurri* P-12 has also no legal credence because occurrence in this case allegedly took place on 02.09.2016 and *Chhurri* P-14 was deposited in the Office of PFSA, Lahore on 04.10.2016, i.e. with the delay of 30 days. It is settled proposition of law that blood disintegrate after three weeks. We fortify our view from the case titled as “*Muhammad Jamil v. Muhammad Akram and others*” (2009 SCMR 120) and “*Faisal Mehmood v. The State*” (2016 SCMR 2138).

We have also taken note that witnesses of above mentioned recoveries are Mirza Muhammad Mansoor (PW7) and Muhammad Akmal (PW8) who are also witnesses of ocular account and their evidence has been disbelieved by us in the preceding paragraphs No. 6 and 7 of this judgment, in this way, their evidence to the extent of corroborative piece of evidence is also not helpful to the prosecution case. Wisdom can also be derived from the case law titled as *Mst. Rukhsana Begum and others vs. Sajjad and others* (2017 SCMR 596) wherein it was held as under:-

“It is also pertinent to mention here, that the attesting witness to all these recoveries of incriminating articles is Muhammad Sharif (PW-9) whose testimony we have already disbelieved as a whole. It is fundamental principle of justice that corroboratory evidence, must come from independent source providing strength and endorsement to the account of the eyewitnesses, therefore, eye-witnesses, in the absence of extraordinary and very exceptional and rare circumstances, cannot corroborate themselves by becoming attesting witness/witnesses to the recovery of crime articles. In other words, eye-witnesses cannot corroborate

themselves but corroboratory evidence must come from independent source and shall be supported by independent witnesses other than eye-witnesses, thus, these recoveries are equally of no judicial efficacy.”

14. Now the next piece of evidence which still remains in the field is the motive advanced by the prosecution behind the unfortunate incident, which, as per, Mirza Shafqat Mehmood complainant (PW6) and Mirza Muhammad Mansoor (PW7) was that there was dispute between deceased Mst. Zoha Kanwal and accused persons on account of non-payment of dower mentioned in *Nikah Nama* and under the said grudge the appellants in furtherance of their common intention committed the occurrence. We have noted that motive was only an oral assertion of the complainant and no material evidence was produced to substantiate the motive alleged by the prosecution, *hence*, we feel no hesitation to hold that the prosecution has failed to prove the motive part of the unfortunate occurrence. Although, the prosecution is not under obligation to establish a motive in every murder case but it is also well settled principle of criminal jurisprudence that if prosecution sets up a motive but fails to prove it, then, it is the prosecution who has to suffer and not the accused. Guidance is hereby sought from the case laws reported as“ “*Manzoor Ahmed Shah and others Vs. The State and others*” (2019 SCMR 2000), “*Muhammad Ilyas and another Vs. Ameer Ali and another*” (2020 SCMR 305), “*Liaqat Ali and another Vs. The State and others*” (2021 SCMR 780) and “*Khalid Mehmood and other Vs. The State and others*” (2021 SCMR 810).

15. We have considered all the pros and cons of this case and have come to an irresistible conclusion that the prosecution could not prove its case against the appellants beyond the shadow of doubt. It is, by now well established that it is the prosecution, which

has to prove its case against the accused by standing on its own legs, but in this case the prosecution remained failed to discharge its responsibility. It is also well settled by now that if there is a single circumstance which creates doubt regarding the prosecution case, the same is sufficient to give benefit of doubt to the accused, whereas, the instant case is replete with number of circumstances which have created serious doubt about the prosecution story. In case of "*Naveed Asghar and two others Vs. The State*" (PLD 2021 SC 600), the Hon'ble Supreme Court of Pakistan, in paragraph No.33, was pleased to observe as under--

"...The prosecution is under obligation to prove its case against the accused person at the standard of proof required in criminal cases, namely, beyond reasonable doubt standard, and cannot be said to have discharged this obligation by producing evidence that merely meets the preponderance of probability standard applied in civil cases. 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 person, the benefit of that doubt is to be given to the accused person as of right, not as of concession. The rule of giving benefit of doubt to accused person is essentially a rule of caution and prudence, and is deep rooted in our jurisprudence for safe administration of criminal justice. In common law, it is based on the maxim, "It is better that ten guilty persons be acquitted rather than one innocent person be convicted". While in Islamic criminal law it is based on the high authority of sayings of the Holy Prophet of Islam (peace be upon him): "Avert punishments [hudood] when there are doubts"; and "Drive off the ordained crimes from the Muslims as far as you can. If there is any place of refuge for him [accused], let him have his way, because the leader's mistake in pardon is better than his mistake in punishment". A three-member Bench of this Court has quoted probably latter part of the last mentioned saying of the Holy Prophet (peace be upon him) in Ayub Masih v. State in the English translation thus: "Mistake of Qazi (Judge) in

releasing a criminal is better than his mistake in punishing an innocent.”

Similar view was taken in the cases of “*Muhammad Imran Vs. The State*” (2020 SCMR 857), “*Mst. Hajira Bibi alias Seema and others vs. Abdul Qaseem and another*” (2023 SCMR 870).

16. For the foregoing reasons, the above mentioned appeals filed by Ashfaq Hussain and Abdul Majeed Shah appellants are **accepted**, convictions and sentences awarded to them *vide* judgment dated 22-06-2022 passed by the trial court are **set aside** and they are acquitted of the charge leveled against them while extending the benefit of doubt in their favour. They shall be released forthwith if not required to be detained in any other case.

17. **Murder Reference No.51 of 2022** is answered in **negative** and death sentence passed by trial court against Ashfaq Hussain, appellant is **not confirmed**.

18. As a natural corollary, criminal revision filed by Shafqat Mehmood, complainant for the conversion of sentence of life imprisonment of Abdul Majeed Shah into sentence of death is **dismissed**.

(Sadiq Mahmud Khurram)
Judge

(Muhammad Tariq Nadeem)
Judge

Announced, and dictated, on 06-12-2023 prepared and signed on
13-12-2023.
Khurram

APPROVED FOR REPORTING

JUDGE

JUDGE