Stereo. H C J D A 38

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

Criminal Appeal No.71 of 2022

Muhammad Zafar alias Gulabi Vs. The State etc.

JUDGMENT

Date of hearing	29.11.2023.
Appellant by	M/s Talat Mehmood kakezai and Farooq Haider Malik, Advocates.
The State by	Mr. Shahid Fareed, Assistant District Public Prosecutor.
The Complainant by	Mirza Muhammad Azam, Advocate.

FIR No.166/2020 dated 03.04.2020 under sections 302/34 PPC police station Bakhshan Khan, Chishtian, Bahawalnagar.

Appeal against judgment dated 31.01.2022 passed by Additional Sessions Judge, Chishtian, District Bahawalnagar in a private complaint whereby **Muhammad Zafar alias Gulabi was convicted and sentenced to imprisonment for life** with a compensation of Rs.200,000/- 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; whereas co-accused Muhammad Hussain was acquitted.

MUHAMMAD AMJAD RAFIQ, J. Ghulam Rasool, complainant and his son Munir Ahmad were standing near the Habitation camp (dera) of his cousin/brother-in-law Muhammad Nawaz in his company when at about 11:30 in the morning on 03.04.2020 they saw from a distance of two Kanals Muhammad Hussain and Muhammad Zafar, father and son inter-se intercepted the motorcycle of Muhammad Nadeem, another son of complainant at the metaled road in front of house of Mazhar Arain. Muhammad Hussain co-accused (since acquitted) commanded his son Muhammad Zafar (appellant) while handing over pistol 30-bore to kill Nadeem in order to finish dispute of landed property between the parties and within their view Zafar made two fires which were claimed as hitting at chest

and belly of Nadeem who fell down on the ground. Accused while brandishing weapon of offence decamped from the place of occurrence.

2. Police reached at the place of occurrence within half an hour; Ghulam Rasool complainant (PW-1) made an oral statement before Muhammad Ali, SI (CW-7) who drafted the complaint, sent the same for registration of FIR and started process of investigation at the site. During that exercise he inspected the dead body, prepared inquest report, application for postmortem and sent the dead body to THQ Hospital under the escort of Shabbir Ahmed 731/C; collected blood-stained earth and three crime empties, made them into sealed parcels, sketched the scene of crime in a site plan, recorded statements of witnesses, obtained their signatures on related documents. Additionally, he also prepared a memo of identification of dead body, necessity whereof is not spurred out, however, it is part of record. After postmortem examination, last worn clothes were produced before him which were taken into possession. All these articles were handed over to the *Moharir* who on 08.04.2020 handed over two parcels said to contain blood-stained earth and crime empties for onwards transmission to the office of PFSA, which CW-7 deposited on 09.04.2020. On the arrest of Zafar (appellant) on 09.04.2020, he led to the recovery of pistol 30 bore from his house which was effected on 12.04.2020 and was sent to PFSA for analysis on 13.04.2020. The report of PFSA was received in positive. During investigation, he found Muhammad Hussain one of the accused as not involved in the commission of offence, therefore, exonerated him and consequently, the report under Section 173 Cr.P.C. was sent to the Court

3. Being dissatisfied with the investigation, complainant filed a private complaint after 2½ months of the occurrence on 18.06.2020 upon which Muhammad Hussain and Zafar were summoned to face the trial. Charge was framed on information which was denied with a claim of trial, whereupon the prosecution produced Ghulam Rasool complainant (PW-1) and Muhammad Nawaz (PW-2) the ocular brigade; Shabbir Ahmed Constable (CW-1), Muhammad Nadeem Iqbal 1140-HC (CW-2), Sagheer Ahmed 287-C (CW-3), Muhammad Arif ASI (CW-4), Farooq Ahmad Civil Draftsman (CW-5), Dr. Ghazanfar Mehmood (CW-6), Muhammad Ali SI (CW-7) and

Rashid Javed ASI (CW-8). On close of prosecution case, the accused when examined under section 342 Cr.P.C., they denied the prosecution evidence, however, neither they 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.

4. Learned counsel (s) for the appellant contend that witnesses were not present at the place of occurrence; there was a serious contradiction in medical and ocular account because injuries on the chest and belly were declared by the doctor as exit wounds; further added that memo of identification of dead body is a question mark on the prosecution case which clearly speaks absence of witnesses at the place of occurrence; that two fires were claimed but three crime empties were collected from the place of occurrence; scaled site plan was prepared with a delay of one month and twenty-one days and there is contradiction with respect to inter-se distance between deceased and assailant in two site plans, one prepared by draftsman and other by investigating officer. Learned counsel (s) were of the view that recovery of pistol is of no use for prosecution because it was not in exclusive possession of accused/appellant; that dispute with respect to landed property was not taken to the Court nor it was documented in any manner, therefore, motive was also not proved; that crime empties were deposited in the office of PFSA on 09.04.2020 and accused was also shown arrested on the same day, therefore, positive report is not useful for the prosecution; co-accused Muhammad Hussain on the same set of evidence has been acquitted. Learned counsel(s) relied on cases reported as "*EHSAN SHAH versus STATE*" **(PLJ 2021 Cr.C. (Lahore) (DB)** and "*MUHAMMAD ZUBAIR versus The STATE*" **(2021 YLR Note 60)**.

5. On the other hand, learned Assistant District Public Prosecutor assisted by learned counsel for the complainant supported the judgment with the stance that it was a day light occurrence; witnesses were present at a distance of two Kanals from the accused, therefore, there was no mistaken identity of accused even otherwise both the parties were related to each other. Further state that there is no contradiction in medical and ocular account when two entry wounds were also found present, one on flank and other on

back of the deceased and witnesses are not expected to explain the locale of injuries with exactitude; recovery of pistol stood effected; positive PFSA report is a strong support to prosecution case. Learned counsel for the complainant had an additional take on the cross examination of witnesses conducted by the defence, claiming it as too short to give way to admission of many facts as were left out during the cross examination; thus, in turn would be read in favour of prosecution.

6. 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.

7. Ocular account was put forth by the prosecution through Ghulam Rasool complainant (PW-1) and Muhammad Nawaz (PW-2) whereas Munir son of the complainant was given up. Complainant in order to cover up the collection of three crime empties from the crime scene dishonestly improved his statement in examination in chief while deposing that accused had also made aerial firing at the site whereas no such fact was deposed by PW-2 nor it was mentioned in FIR or private complaint. It leaves a negative impact on the credibility of witnesses and doubt on prosecution story. Both the witnesses stated in unequivocal terms that fires made by the accused hit on the chest and belly of the deceased. When cross-examined on this point complainant PW-1 reaffirms this fact in following terms;

> "I had got recorded in my statement before police Exh.PA that the accused persons stopped motorcycle of my son from front side. In the same position Zafar accused fired on the deceased from front side. It is incorrect to suggest that both fires neither hit the deceased in the chest nor in abdomen. Wounds on the above places are exit ones and not the entry wound."

He further conceded that what he has stated before Investigating Officer was recorded by him correctly in the complaint without any addition or omission, similar was the stance of PW-2 and he also deposed in the same way as stated by PW-1. This fact is sufficient to rule out their presence at the place of occurrence because there was no injury on the abdomen. Complainant PW-1 has not stated any particular reason of his presence at the place of occurrence and no reason for commission of murder of Nadeem was brought on record through any documentary proof. It was admitted by PW-1 that he

did not produce any documents, FIR, copy of suit or litigation between the parties with respect to dispute/motive of the occurrence. During evidence, distance between the house of complainant and the place of occurrence could not be brought on record; therefore, it cannot be inferred that complainant was present near the Dera of Muhammad Nawaz witness at the particular time. Absence of witnesses is further reflected from the fact that they deposed in examination in chief that they attended the deceased, but they did not produce their clothes, if blood stained, before the Investigating Officer. Their presence at the time of occurrence is also belied from the fact that investigating officer prepared memo of identification of dead body Ex.PG at the place of occurrence which though was not attested by the complainant PW-1 but Muhammad Nawaz PW-2 cousin/brother-in-law of complainant and given up PW Munir Ahmed brother of deceased are the attesting witnesses but surprisingly without stating direct relation with the deceased, they mentioned before the investigating officer as follows:-

"یہ نعش محمد ندیم ولد غلام رسول قوم بلوچ سکنہ بستی شاہ عباس نئی آبادی موضع لنڈا بھڈیرہ کی ھےجس کو ھم ذاتی طور پر جانتے ھیں جو کہ ہمارا قریبی عزیز تھا۔"

Such expression was not expected from the witnesses which shows that no one claimed oneself as the eye witness when investigating officer arrived at the place of occurrence. The identification of dead body was not known, that was the reason memo of identification of dead body was prepared. In such circumstances, it is more than impossible that witnesses were present at the place of occurrence and in their presence, deceased was done to death. They were chance witnesses who could not justifiably account for their presence at the place of occurrence; therefore, their testimony cannot be relied upon. Reliance is placed on cases reported as *"MUHAMMAD ALI Versus The STATE"* **(2017 SCMR 1468)** and *"MUHAMMAD AKRAM Versus The STATE"* **(2016 SCMR 2081)**.

8. Absence of both the witnesses PW-1 & PW-2 at the crime scene is also reflected from the fact that they deposed about riding of deceased on a motorcycle when occurrence took place but investigating officer has not taken into possession any such motorcycle from the place of occurrence. It

shows that deceased died in different circumstances otherwise there was no necessity for preparation of identification memo of dead body. The presence of PWs is further ruled out from the opinion of Dr. Ghazanfar Mehmood (CW-6), who stated that cause of death in this case was excessive blood loss. Had the witnesses been present at the place of occurrence, they would have immediately shifted the deceased to the hospital or at least an effort to stop the oozing of blood. With this scanty ocular account, now I move to the medical evidence produced by the prosecution.

9. Though occurrence was of 03.04.2020 at 11:30 a.m, FIR stood registered at 01:10 p.m. and it was mentioned in the postmortem report that dead body was received in dead house at 12:30 p.m. whereas police papers were received at 03:45 p.m. and autopsy was conducted at 04:00 p.m. which clearly shows that Investigating Officer did not reach to the place of occurrence within half an hour otherwise dead body could have been dispatched with the papers in the mortuary or before the doctor well within time. Reaching of the dead body to the mortuary becomes further doubtful when Shabbir Ahmed 731-C (CW-1) stated that he reached to the hospital at 02:30 p.m. Doctor has observed following four injuries on the person of deceased;

INJURY NO.01:-
Lacerated wound with irregular margins 02cm x 1.5 cm with everted margins on left side of chest 03.0 Cm medial to left nipple. There was no burning or blackening present on cloth or wound. Corresponding hole was present on clothes. Injury No. 1 was exit wound.

INJURY NO.02:-
Lacerated wound with everted margins 02 cm x 01.05 cm irregular in shape deep going on right side of abdomen below costal margin 3.00 cm lateral to mid line in midclavicular line. There was no burning and blackening on wound or clothes. Corresponding holes were present on clothes**.** injury No.02 was exit wound.

INJURY NO.03:-
Lacerated wound was 01.00 cm x 0.75 cm going deep on right side of abdomen in mid axillary line with inverted margins at the level of injury No.2. There was no burning or blackening on clothes or wound. Injury No.03 was entry wound. On exploration skin, muscles, blood vessel and nerves and liver damaged.

INJURY NO.04:-
A lacerated wound was 01.00 x 01.00 cm into deep going with inverted margins on back of left side of chest at scapular region. On exploration skin muscles damaged scapular fractured left lung, ruptured nerves and blood vessels damaged. Injury No.04 for entry wound. There was no burning blackening on injury No.04.

Injuries No.1 & 2 on the chest and belly were mentioned by the doctor as exit wounds; thus, negating the ocular account. However, Injuries No. 3 & 4 were referred by him as entry wounds; one on back at scapular region and other on right side of abdomen in mid auxiliary line which the learned counsel for the complainant tried to exploit but pictorial diagram shows it more clearly as on the flank. For reference an image of mid auxiliary line is reflected below.

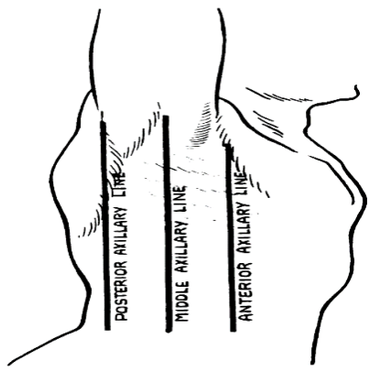

Diagram clearly shows that mid auxiliary line is in fact depicts the flank. If the accused/appellant had fired from the position as shown in the site plan then there could hardly be any chance to receive the injury on the flank with exit wound on the belly or at scapular region on the back with exit on the chest. If this fact is conceded that a living man could not be a static object and his movement can result in injury at any part of the body, then by all means injuries must have burning or blackening because same were caused from a very close range while standing in front of motorcycle of the deceased. Thus, prosecution story has many holes to fill in; like if the deceased was sitting on the motorcycle when received injury, then blood must have been dropped on said motor cycle but it has not been taken into possession and even some other injuries on the body due to his fall from motorcycle were also expected but they were missing. Doctor was cross-examined on this aspect by the complainant's counsel that in order to extend favour to the prosecution he has changed the nature of injuries which was denied by him and so much so complainant or prosecution has not challenged postmortem report or opinion of doctor at any stage during the investigation. This contradiction in ocular and medical evidence leads to the conclusion that witnesses were not present at the place of occurrence. *"MUHAMMAD IDREES and another Versus The STATE and others"* **(2021 SCMR 612)** and

such contradiction also helps to draw an inference that as a matter of fact the prosecution witnesses were not truthful in their stance and were not present at the place of occurrence at the relevant time and had not witnessed the occurrence. Reliance in this regard is placed on the cases *"MUHAMMAD ASHRAF alias ACCHU versus The STATE"* **(2019 SCMR 652)** and *"ZAFAR Versus The STATE and others"* **(2018 SCMR 326)**. Investigating Officer (CW-7) while responding to cross-examination conducted by the complainant's counsel stated that doctor has wrongly changed the nature of injuries otherwise, he has observed injuries on the chest and belly with smaller size but he admitted in cross-examination that he had not asked the doctor for clarification of such anomaly, if any. CW-7 probably is not speaking the truth because perusal of inquest report and injury statement clearly show that Investigating Officer has not mentioned the wounds as entry or exit in any manner, which they usually do while mentioning as "داخلہ و خارجہ" however, his mala-fide is further reflected from the interpolation in inquest report and the injury statement wherein injury No.4 was added later with different writing and ink which means that such injury was added after postmortem examination. In addition to this contradiction, he has also changed the inter-se distance between accused/appellant and the deceased by making it as 06-feet because doctor has not observed any burning or blackening in the injuries which were expected in the situation when fires were made from a very close range. Claim of complainant's counsel that inter se distance is clearly and without any interpolation is mentioned in scaled site plan is outrightly rejected because it was prepared after one month and twenty-one days of occurrence. From the above situation, it is clear that Investigating Officer tried to distort the actual facts to complete the false story of prosecution.

10. Motive behind the occurrence was the dispute of landed property between the accused and complainant party but no document showing any litigation between the parties was brought on record. Both the witnesses of ocular account and investigating officer CW-7 conceded that no such litigation was pending before any Court. PW-2 stated as follows;

> "During investigation we did not produce any witness regarding the motive claimed by us. we also did not produce any document in respect of the alleged motive."

Whereas investigating officer CW-7 during cross examination by the complainant's counsel responded as follows;

> "The accused and complainant party are close relative interse. There was a dispute between the parties regarding landed property and it was the reason for this occurrence. However there was no record of court litigation till then."

Thus, prosecution had not succeeded to establish the motive part of the occurrence. 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 cases reported as *"PATHAN versus The STATE"* **(2015 SCMR 315)** and *NAVEED alias NEEDU and others versus The STATE and others"* **(2014 SCMR 1464).**

11. Site plan clearly speaks about nearby residences of accused persons on the northern side of place of occurrence, dera of Muhammad Nawaz PW-2 on western side and on the southern side house of Mazhar Arian and vacant plots of Nawaz Khokhar and Ashraf Khokhar. In this case occurrence took place in front of house of Mazhar Arian who did not join the investigation as admitted by the complainant, and investigating officer had also not associated him into the investigation, therefore, most natural witness was skipped by the prosecution for the reasons best known to them which fact could be read against the prosecution.

12. So far as recovery of pistol and its matching report is concerned, it has been observed that crime empties were deposited in the office of PFSA on 09.04.2020, the day when accused was arrested, there is every possibility that crime empties were managed; therefore, PFSA matching report cannot be relied upon; reliance is on case reported as *"MUHAMMAD ASHRAF alias ACCHU Versus The STATE"* **(2019 SCMR 562)**; pistol was shown recovered later, which is also not believable in the sense that when CW-7 had visited the place of occurrence, family members of the accused were present and in

their presence accused got recovered pistol, therefore, pistol was in his exclusive knowledge or possession of the appellant. In the circumstances, there are clouds on sending crime empties well in time, recovery of pistol too was not from exclusive possession, therefore, the prosecution case fails on this evidence as well which cannot be believed in any manner.

13. On the basis of similar evidence, co-accused Muhammad Hussain was acquitted of the charge which in turn rules out even his presence at the spot, therefore, similar facts cannot be believed on the same set of evidence against the appellant and principle of *falsus in uno falsus in omnibus* is somewhat with slight change is applicable in this case, therefore, acquittal of co-accused can be read a factor setting clouds on the prosecution story.

14. Objection on the other side that cross examination of witnesses in this case was too short to shatter the whole case-evidence, and the important aspects in favour of prosecution, which skipped notice of, should be read as a support to the charge. It is pertinent to mention that the cross examination should always be brief and to the point; practice of prolonged cross examination has been deprecated by the Supreme Court of Pakistan in a case reported as *"MUHAMMAD SHAFI and 2 others versus THE STATE"* **(PLD 1967 Supreme Court 167)** with following observation;

> There is a regrettable practice among a class of lawyers to use prolonged cross-examination for the purpose of leading a witness into error after his alertness has been reduced through fatigue and his resistance to suggestions made in the form of leading questions has thereby been reduced. Such a practice is plainly designed not for the disclosure of truth, but for the manipulation of error, and we take this opportunity of expressing our entire disapproval of the use of such methods.

Above observation was reiterated in case reported as *"MUDDASSAR alias JIMMI versus THE STATE"* **(1996 SCMR 3)**.

Before embarking upon what has been asked in cross examination in this case, let's have a glance how examination of a witness proceeds during the trial. In an adversarial criminal justice system, there are two parties in contest, i.e., Prosecution and Defence. Examination of witness, by the party who calls him/her, is called examination-in-chief or direct examination.

Examination of that witness by opposite party is called cross examination and any question subsequent to cross examination by the party who calls the witness is called re-examination or re-direct. All three stages of examination hardly had any time-lag, therefore, any party who does not come froward to question the witness on a day, the alternate arrangement should be made because examination of a witness is a sacred business which cannot be lingered on so as to jeopardize it through intrigues, mechanicians or invented treacherous plans to kneel down or pressurize the witness. Even frequent appearance of witness in Court for giving evidence in piecemeal, not only derail the true facts due to fading of memory or other reasons but also had a bad impact on the economy of witness who had to earn bread for his family. It is for that reason usually actual witnesses do not come forward to help improve the quality of evidence. The Judge must understand this social problem. If he thinks that defence counsel is not ready to cross examine the witness, a heavy cost be imposed which is called an "adjournment cost", fully covered under section 344 of Cr.P.C. Reliance is on case reported as *"MUHAMMAD SHAHID YOUSAF Versus The STATE and others"* **(2022 MLD 1331)** or to provide counsel on state expenses but not to struck off the right of cross examination; reliance is on case reported as *"SHER HASSAN and others Versus GUL HASSAN KHAN and others"* **(2022 SCMR 1360)**. Similarly, if the lawyers are observing strike or the complainant's counsel seeks time, even then Court is required to move forward with measures suggested in a case reported as *"SHAHBAZ AKMAL Verus The STATE through Prosecutor General Punjab, Lahore and another"* **(2023 SCMR 421)**. Court must have a close eye on the cross examination of witness and if the Counsel on State expenses cannot do the job properly, judge should cross examine the witness; reliance is on cases reported as "*Dikson v. Emperor*" **(AIR 1942 Pat. 90);** "*NAZIR HUSSAIN versus The STATE*" **(PLJ 1986 Cr.C. (Lah.) 120)**; *"Khadija Begum v. Nisar Ahmad"* **(AIR 1936 Lah. 887)**. If on such measures of a Judge, the advocate concerned retaliates with a behaviour which attracts misconduct or professional misconduct, it can well be reported to the High Court for an action under Section 54 (2) of the Legal Practitioners and Bar Councils Act, 1973. The Judge and an advocate are for the system to strive for search of truth; both should re-think

and re-define their conduct to contribute in the system, and this is high time to stand synchronized with the international best practices which help to recognize their proper and vital roles. Judges should not work for gain or appreciation; it is a divine duty and its efficient performance always finds a support from the audience, even in the form of a one man's feedback and it is learnt through age and experience that feedback is a gift; so, work, work and work, and win the gift.

15. Coming back to conducting of cross examination; we know questioning is a technique, it is not like brandishing a Sabre but learning to handle a scalpel; examination of witness must be structured that can be in the form of a one line of transcript of each question, which means "one fact in one question", because composite question creates misunderstanding and annoyance to witness and the Judge. Defence Counsel must know his objective with every witness and should never ask a question to which he does not know the answer and his examination should be like as conversational as he can. Counsel must develop the habit of riding the bumps, which means that he must be patient, cool and calm if an unexpected reply of a witness has disturbed him.

There are some basic approaches to cross examination which lay down some rules in this respect. If somebody want guidance on the way that successful cross-examinations have operated in the past then go to Art of Cross-examination by Francis Wellman (Collier-Macmillan, 1962) and to The Art of the Advocacy by Richard Du Cann (Penguin, 3rd edition, 1982). Read the memoirs of the great advocates. Read the reports of famous trials because every person has its own technique of asking question. One may not agree with the technique of others because they get the required results and continue on it with pride. However, there are three major rules of cross-examination. General Rule, Specific Rule, Cautionary Rule and Mandatory Rule of putting your case.

General Rules.

(1) 'Be as kind as you can'; in this way you can win the sympathy of judge and also put the witness on ease to extract required information; therefore, technique of "Pitch, Pause & Pace" (PPP) would well work to achieve your objective. (2) 'Ask question in a spirit of inquiry' which means gentle and

inquiring approach as not flatly to contradict a witness but to persuade him to change his view point. (3) 'Expect no help from the witness' throws light that you must go prepared while cross examining the witness with Plan-A & Plan-B, because it's like 'fishing trip' and every time you cannot catch the fish; sometime you don't get the required results, therefore, you must aim to achieve a specific purpose to every question.

Specific Rules

(1) 'Stick to the 'one line' question as much as you can; keep asking short questions which allow specific and short answer. Don't ask open question starting from words "what, when, where, why, how" because it invites long reply and also losing control on witness. (2) Avoid the multiple question; ask only one question at a time and rephrase if witness does not get it. (3) Aim for precision; aim for exactness in your questions. Mentally break down what it is you are after.

Cautionary Rules.

(1) Don't ask the question to which you don't know the answer (2) Don't suddenly draw back with a start; which means if you are landed at wrong place, don't withdraw abruptly rather move back slowly. (3) Ride the bumps (as explained above)

The mandatory rule of putting your case.

This portion of cross examination is usually in the form of suggestions to raise questions on the facts adversely affecting the accused' case, so that later if evidence is required to be given to diffuse the effect of those facts, he must have justification for it.

The cross examination conducted by the learned counsel for the accused was almost based upon above rules and also perfect in the light of direction passed by the Supreme Court in cases cited supra.

16. 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 failed miserably to establish the charge against the accused beyond any shadow of doubt. In the case "*NAJAF ALI SHAH versus The STATE*" **(2021 SCMR 736)** 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. Reliance is also on the cases reported as "*AMIR MUHAMMAD KHAN Versus The STATE*" **(2023 SCMR 566)**, "*SARFRAZ and another Versus The STATE*" **(2023 SCMR 670)**, "*Mst. HAJIRA BIBI alias SEEMA and others Versus ABDUL QASEEM and another*" **(2023 SCMR 870)**, *"BASHIR MUHAMMAD KHAN versus The*

STATE" **(2022 SCMR 986*)*** and "*KHALID MEHMOOD alias KHALOO Versus The STATE"* **(2022 SCMR 1148).** 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. 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.

Approved for Reporting.

Judge.

This judgment was announced on 29.11.2023 and after dictation and preparation, it was signed on 20.12.2023.

Jamshaid*