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Judgment Sheet

IN THE LAHORE HIGH COURT,

MULTAN BENCH, MULTAN.

JUDICIAL DEPARTMENT

Murder Reference No.11 of 2019
(The State Vs. Shahid alias Shahra)

Criminal Appeal No. 953-J of 2018
(Shahid alias Shahra Vs. The State)

Criminal Appeal No.1154 of 2018
(Barkhurdar Vs. Khizar Hayat and three others.)

J U D G M E N T

Date of hearing:	03.10.2023.
Appellant by:	Rana Muhammad Nadeem Kanju, Advocate
State by:	Malik Riaz Ahmad Saghla, Additional Prosecutor General .
Complainant by:	Rana Asif Saeed, Advocate.

SADIQ MAHMUD KHURRAM, J. –Shahid @ Shahra son of Jalal (convict) was tried alongwith Khizar Hayat, Shah Muhammad and Muhammad Fayyaz alias Kali (since acquitted), the co-accused of the convict by the learned Additional Sessions Judge, Mianchannu in case F.I.R No. 429 of 2016 dated 20.08.2016 registered in respect of offences under sections 302 and 34 P.P.C. at the Police Station Talumba District Khanewal for committing the *Qatl-i-Amd* of Muhammad Ramzan son of Noor Muhammad (deceased). The learned trial court vide judgment dated 06.11.2018, convicted Shahid @ Shahra son of Jalal (convict) and sentenced him as infra:

Shahid @ Shahra son of Jalal :

Death under section 302(b) PPC as *Tazir* for committing *Qatl-i-Amd* of Muhammad Ramzan son of Noor Muhammad (deceased) and directed to pay Rs.500,000/- as compensation under section 544-A, Cr.P.C. to the legal heirs of the deceased .

The convict was ordered to be hanged by his neck till dead.

Khizar Hayat, Shah Muhammad and Muhammad Fayyaz alias Kali, the co-accused of the convict, were however acquitted by the learned trial court.

2. Feeling aggrieved, Shahid @ Shahra son of Jalal (convict) lodged Criminal Appeal No.953-J of 2018 through Jail assailing his conviction and sentence. The learned trial court submitted Murder Reference No.11 of 2019 under section 374 Cr.P.C. seeking confirmation or otherwise of the sentence of death awarded to the appellant namely Shahid @ Shahra son of Jalal . The complainant of the case namely Barkhurdar filed Criminal Appeal No.1154 of 2018 against the acquittal of the accused namely Khizar Hayat, Shah Muhammad and Muhammad Fayyaz alias Kali by the learned trial court. We intend to decide the Criminal Appeal No. 953-J of 2018, the Criminal Appeal No.1154 of 2018 and Murder Reference No.11 of 2019 through this single judgment.

3. Precisely, the necessary facts of the prosecution case, as stated by Barkhurdar (PW-5), the complainant of the case, are as under:-

> "Stated that I am resident of chak No.21/8R and our "Bhenni" is situated in our land in our chak. On 19/20/08.2016 at about 12:15 A.M I alongwith Muhammad Ramzan (deceased) my brother Muhammad Iqbal and Ghulam Jafar s/o Muhammad Bakhsh Sanpal were present in the said house. Khizar Hayyat and Shahid alias Shahra called Muhammad Ramzan my brother on cell phone in his land. I alongwith my brother Muhammad Ramzan (deceased) my brother Muhammad Iqbal and aforesaid Ghulam Jafar s/o Muhammad Bakhsh proceeded to the nearby land of accused present in the court. When reached there we saw

> Shahid alias Shahra armed with pistol, Khizar Hayyat armed with pistol, Fayyaz armed with Carbeen, Shah Muhammad armed with sota were present there. Shahid alias Shahra accused present in the court raised lalkara that they would teach him a lesson for a quarrelling with them. Fayyaz accused present in the court gave slape (sic) to my brother Muhammad Ramzan. Shahid alias Shahra accused present in the court made a fire shot from his pistol on the upper side right side of abdomen of my brother. Shahra accused made another fire shot with his pistol which hit on the inner side of right thigh of Muhammad Ramzan. Khizar Hayyat accused present in the court made fire shot with his pistol on the left thigh of my brother Muhammad Ramzan. Khizar Hayyat accused made a second shot with his pistol which hit on the right arm of my brother Muhammad Ramzan. Fayyaz accused present in the court made aerial firing with his carbine. Shahid kept on raising lalkara by saying that he would kill whosoever came near to him. Thereafter the accused decamped from the scene of occurrence. We took Muhammad Ramzan in injured condition at RHC, Tulamba where he succumbed to the aforesaid injuries.
>
> The motive behind the occurrence was that the accused Shahid alias Shahra and Khizar Hayyat used to bring the women of bad character near our house on the cots, whereupon Ramzan deceased forbid them to bring such type of women there. Due to that grudge this occurrence took place. I gave application Ex.PC which bears my signatures Ex.PC/1 which was correctly recorded."

4. After the formal investigation of the case report under section 173 of the Code of Criminal Procedure, 1898 was submitted before the learned trial court and the accused were sent to face trial. The learned trial court framed the charge against the accused on 13.09.2017, to which the accused pleaded not guilty and claimed trial.

5. The prosecution, in order to prove its case, got statements of as many as **eleven** witnesses recorded. The ocular account of the case was furnished by Barkhurdar (PW-5) and Muhammad Iqbal (PW-6). Ghulam Farid 174/HC (PW-1) stated that on 20.08.2016, Zahid Mahmood Inspector (PW-9) handed over to him one sealed parcel said to contain blood stained earth and one sealed parcel said to contain the empty shells of the bullets recovered from the place of occurrence and on 09.09.2016, he handed over both the parcels to Zahid Mahmood, Inspector (PW-9) for their onward transmission to the office of the Punjab Forensic Science Agency, Lahore and on 13.11.2016, Qamar Zia, SI (PW-8) handed over to him a sealed parcel said to contain a pistol and five live bullets and on 27.11.2016, he handed over the said parcel to Maqbool Ahmad, SI (PW-2) for its onward transmission to the office of the Punjab Forensic Science Agency, Lahore and on 25.12.2016, Qamar Zia, SI (PW-8) handed over to him another sealed parcel said to contain a pistol which sealed parcel he handed over to Maqbool Ahmad, SI (PW-2) for its onward transmission to the office of the Punjab Forensic Science Agency, Lahore on 16.01.2017. Khalid Mahmood 151/C (PW-3) stated that on 20.08.2016, he escorted the dead body of the deceased to the hospital and received the last worn clothes of the deceased from the Medical Officer after the post mortem examination of the dead body of the deceased. Raja Usman Yousaf Junjua, (PW-4) prepared the scaled site plan of the place of occurrence (Exh.PB). Rasheed Ahmad, ASI (PW-10) stated that on 20.08.2016, he got recorded the formal F.I.R (Exh.PQ). Munir Ahmad (PW-11) stated that on 20.08.2016, he identified the dead body of the deceased at the time of its post mortem examination and the last worn clothes of the deceased were handed over to the Investigating Officer of the case by the Medical Officer. Qamar Zia, SI (PW-8), the Investigating Officer of the

case, investigated the case from 24.10.2016 till 20.03.2017, arrested the appellant on 02.11.2016, and detailed the facts of the investigation as conducted by him in his statement before the learned trial court. Zahid Mahmood, Inspector (PW-9), the Investigating Officer of the case, investigated the case from 20.08.2016 till 20.10.2016 and detailed the facts of the investigation as conducted by him in his statement before the learned trial court.

6. The prosecution also got Dr. Muhammad Asif Imam (PW-7) examined, who on 20.08.2016 was posted as Medical Officer at RHC Talumba and on the same day conducted the postmortem examination of the dead body of Muhammad Ramzan son of Noor Muhammad (deceased). Dr. Muhammad Asif Imam (PW-7) on examining the dead body of Muhammad Ramzan son of Noor Muhammad (deceased) observed as under:-

> *"* **Injury No.1.** A circular wound 2x2 cm going deep with blackish margins in right upper cuadrant (sic) of abdomen 3 cm below right costal margin.
>
> **Note**:
>
> Inspite of all efforts, no bullet could be taken out because bullet was impacted into the thoracic vertebrae.
>
> **Injury No.2**
>
> A circular wound 1x1 going deep with blackish margin on the inner side of right thigh 21 cm above from knee joint (entry wound).
>
> **Injury No.3**.
>
> A circular wound 2x2 cm going deep with averted margins on the outer side of right thigh 16 cm above from right knee. This is exit wound to injury No.2.
>
> **Injury No.4.**
>
> A circular wound 1.5x1.5 cm with blackish margin going deep on the outer side of left thigh 31 cm above from left knee joint. This is entry wound.
>
> **Injury No.5.**
>
> A circular wound 1x1 cm going deep on the back of left thigh 29 cm above from left popliteal fossa. This is exit wound to injury No.4.

Injury No.6

A lacerated circular wound 1x1 cm going deep with blackish irruglar margins on the inner side of right arm just above right elbow. This is entry and exit wound at the same place.

……..

OPINION.

In my opinion in this case death was due to shock and hemorrhage (internal and external) which was due to fatal injuries of abdominal viscera like liver, stomach small and large intestine which was due to injury No.1. Injury No.1 individually and Injury No.1 to 6 collectively were sufficient to cause death. Injury No.1 to 6 were antimortem in nature and were by firearm.

7. On 29.08.2018, the learned Assistant District Public Prosecutor gave up the prosecution witnesses namely Ghulam Jafar and Mazhar Ali as being unnecessary and closed the prosecution evidence after tendering in evidence the reports of the Punjab Forensic Science Agency, Lahore (Exh. PR, Exh.PS, Exh. PT, Exh. PT/1 and Exh.PU).

8. After the closure of prosecution evidence, the learned trial court examined the appellant namely Shahid @ Shahra son of Jalal under section 342 Cr.P.C. and in answer to the question *why this case against you and why the PWs have deposed against you*, he replied that he had been involved in the case falsely and was innocent. The appellant namely Shahid @ Shahra son of Jalal opted not to get himself examined under section 340(2) Cr.P.C. and did not adduce any evidence in his defence.

9. On the conclusion of the trial, the learned Additional Sessions Judge, Mianchannu convicted and sentenced the appellant as referred to above.

10. The primary contention of the learned counsel for the appellant is that the whole case is fabricated and false. The learned counsel for the appellant argued that the prosecution remained unable to prove the facts in issue and did not produce any unimpeachable, admissible and relevant evidence to prove the same. The learned counsel for the appellant further contended that the statements of the eye witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6) were not worthy of any reliance. The learned counsel for the appellant also argued that the recoveries were full of procedural defects, of no legal worth and value and result of fake proceedings. The learned counsel for the appellant finally submitted that the prosecution had totally failed to prove the case against the appellant beyond the shadow of doubt.

11. On the other hand, the learned Additional Prosecutor General along with the learned counsel for the complainant contended that the prosecution had proved its case beyond shadow of doubt by producing independent witnesses. The learned Additional Prosecutor General and the learned counsel for the complainant further argued that the deceased was murdered by the appellant. The learned Additional Prosecutor General and the learned counsel for the complainant further argued that the recovery of the pistol (P-3, *mentioned as P-1 in the statement of Muhammad Iqbal*) from the appellant also corroborated the statements of the other witnesses. The learned Additional Prosecutor General and the learned counsel for the complainant contended that there was no occasion for the prosecution witnesses, who were related to the deceased, to substitute the real offenders with the innocent in this case. The learned Additional Prosecutor General and the learned counsel for the complainant prayed for the rejection of the appeal as lodged by the appellant namely Shahid alias Shahra. The learned counsel for the complainant also argued

that the Criminal Appeal No.1154 of 2018, assailing the acquittal of Khizar Hayat, Shah Muhammad and Muhammad Fayyaz alias Kali by the learned trial court from the charges also merited acceptance.

12. We have heard the learned counsel for the appellant, the learned counsel for the complainant, the learned Additional Prosecutor General and with their assistance carefully perused the record and evidence recorded during the trial.

13. The whole prosecution case revolves around the statements of the eye witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6). The relationship of the said witnesses with each other and the deceased is on record. Muhammad Ramzan son of Noor Muhammad, deceased, was the brother of Barkhurdar (PW-5) and Muhammad Iqbal (PW-6). It was also admitted by both the prosecution witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6) that the place of occurrence was at a distance of 3-4 acres from the house of the prosecution witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6). Barkhurdar (PW-5) during cross-examination stated as under:-

> " The place of occurrence is at a distance of **three acres** from our house. " (emphasis supplied).

Muhammad Iqbal (PW-6) during cross-examination admitted as under:-

> "The place of occurrence is at a distance of 3/4 acres from our house "

We have also perused the scaled site plan of the place of occurrence (Exh.PB) as prepared by Raja Usman Yousaf Janjua , Draftsman (PW-4) and the rough site plan of the place of occurrence (Exh.PN) as prepared by Zahid Mahmood, Inspector (PW-9), the Investigating Officer of the case, and find that neither the place of the residence of the witnesses namely Barkhurdar (PW-5) and Muhammad

Iqbal (PW-6) nor any land owned and possessed by the witnesses namely Barkhurdar (PW-5)and Muhammad Iqbal (PW-6) are marked in the same. In view of the above mentioned facts, it can be validly held that the prosecution witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6) were "*chance witnesses*" and therefore were under a duty to explain and prove their presence at the place of occurrence, at the time of occurrence. A perusal of the statements of prosecution witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6) reveals that both the prosecution witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6) failed to provide any reason, consistent with the attending circumstances, due to which reason they left their houses at night and proceeded to the place of occurrence. Though, it was not mentioned in the written application (Exh.PC) as submitted by Barkhurdar (PW-5) to Zahid Mahmood, Inspector (PW-9) that the deceased had received a phone call on his mobile phone device made by the appellant and his co-accused , asking the deceased to come and meet them and thereafter the deceased , at about 12.10 a.m (night) proceeded to the place of occurrence, however, prosecution witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6), in their statements recorded by the learned trial court , claimed that the deceased had received the phone call as made by the appellant and his co-accused on his mobile phone device , after the receiving of which phone call , not only the deceased but also the prosecution witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6) proceeded to the place of occurrence but both prosecution witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6) were confronted with the improvement made by them with regard to the reason for their departure to the place of occurrence and the

learned trial court observed during the recording of the statement of Barkhurdar (PW-5) as under:-

> " I had got written in Ex.PC that accused Shahid alias Shara and Khizar Hayyat called my brother through cell phone. Confronted to Ex.PC where there **is no mention of cell phone"** (emphasis supplied).

The learned trial court also noted that the prosecution witness namely Muhammad Iqbal (PW-6) also improved his previous statement so as to claim that it was indeed after receiving of the phone call by Muhammad Ramzan (deceased), the deceased proceeded to the place of occurrence and during the cross-examination of Muhammad Iqbal (PW-6) , the learned trial court observed as under:-

> " I had got written in my statement u/s 161 Cr. P.C that accused Khizar Hayyat had telephonically called and summoned my deceased brother. **Confronted to Ex.DA where it is not so recorded."** (emphasis supplied).

During the cross-examination not only was this fact that the receiving of call by the deceased on his mobile phone before his departure from his house was not mentioned either in the written application (Exh. PC) or the statement under section 161 of the Code of Criminal Procedure, 1898 (Exh. DA) of Muhammad Iqbal (PW-6), it was also admitted by prosecution witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6) that the said mobile phone device under the use of deceased and the mobile phone device upon which he had allegedly received a call from the appellant and his co-accused, was not taken into possession by the Investigating Officer of the case. Barkhurdar (PW-5) during cross-examination, admitted as under:-

> " We produced the cell phone of my deceased brother to the I0 however, he did not take the same into his possession."

Zahid Mahmood, Inspector (PW-9), the Investigating Officer of the case, who arrived at the place of occurrence, denied the claim of the prosecution witness namely Barkhurdar (PW-5) that the mobile phone device on which the deceased had received a call from the appellant had been handed over to him rather stated that the said mobile phone device was never ever produced before him. Zahid Mahmood, Inspector (PW-9), the Investigating Officer of the case, during cross-examination, stated as under:-

> " In order to confirm the factum of telephone call by the accused to the deceased. I did not take the cell phone of deceased into my possession **because the same was not produced by the complainant or Pws to me**"(emphasis supplied).

It is also a fact that the prosecution witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6) during the investigation of the case and even before the learned trial court did not produce any evidence in the shape of Call Data Record (C.D.R.) of the mobile phone number under the use of Muhammad Ramzan (deceased) to establish that he had indeed received the telephonic call of the appellant and after receiving the said call the deceased and the prosecution witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6) had proceeded to the place of occurrence. Furthermore, Zahid Mahmood, Inspector (PW-9), the Investigating Officer of the case and Qamar Zia, SI (PW-8), the other Investigating Officer of the case, also did not collect any evidence during the investigation of the case so as to prove that Muhammad Ramzan (deceased) had indeed received a phone call of the appellant. The mobile phone device on which the deceased had received the call after which he proceeded to the place of

occurrence was also not found present at the place of occurrence by the Investigating Officer of the case, despite his presence at the place of occurrence for a continued period nor was produced by any witness during the investigation of the case nor was produced before the learned trial court. The Medical Officer who conducted the post-mortem examination of the dead body of the deceased also did not find any such mobile phone device at the time when he conducted the post-mortem examination. The prosecution witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6) were also confronted with the improvements made by them in their previous statements regarding that at what place the deceased had been asked to come. During the cross examination of Barkhurdar (PW-5), the learned trial court observed as under:-

> "I had got written in Ex.PC that the accused persons had called my brother Ramzan in their land i.e. the place of occurrence. **Confronted to Ex.PC where there is no mention of any land or place of occurrence."**

The failure of the prosecution to produce the mobile phone device under the use of Muhammad Ramzan (deceased) either during the investigation of the case or before the learned trial court has repercussions. The very inception of the prosecution case is put in doubt and the claimed reason of the prosecution witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6) to proceed to the place of occurrence has been proved to be a false reason due to the said failure of the prosecution to prove the claim of a call being received by the deceased on his mobile phone device before his departure to the place of occurrence.

14. We have also noted with grave concern that the narrative of the prosecution witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6) that they and the deceased proceeded to meet the accused on their calling in the middle of the

night, at about 12.15 a.m (night), is opposed to natural human conduct and therefore not believable. In this regard, it has been observed that according to the prosecution witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6), an altercation had taken place between the accused and the deceased at 08.15 p.m. and after this altercation at 08.15 p.m, the deceased as well as the prosecution witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6) proceeded to the land of the accused. The prosecution witness namely Barkhurdar (PW-5), during cross-examination, stated as under:-

> " There was an altercation between my deceased brother Ramzan and the accused persons at 08:00 PM prior to the occurrence, however, we were not present at that time. Anyhow my deceased brother Ramzan told me and my brother Muhammad Iqbal PW at home at 08:15 P.M."

The prosecution witness namely Muhammad Iqbal (PW-6), admitted during cross-examination as under:-

> " The hot words were exchanged between the accused Fayyaz and deceased at about 08/09:00 P.M. When deceased Ramzan went to the accused persons at 12:15 A.M, he disclosed to us that he had exchanged hot words with accused Fayyaz. We did not forbid our deceased brother from going out to the accused. Soon after the departure of the deceased, we started to chase him"

Realizing this inherent flaw in their statements that if there had been an altercation between the accused and the deceased at 08.15 p.m then normally the deceased would not have gone running to meet the accused at 12.15 a.m (night), the prosecution witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6) came up with a claim that the deceased had proceeded to meet the accused in order to settle the matter, however, remained unable to explain as to why the matter was

to be settled in the middle of the night and that too in the middle of a field of sugarcane and not at the house of any of the accused. The prosecution witness namely Barkhurdar (PW-5) admitted during cross-examination as under:-

> " At 08:00 P.M when my deceased brother disclosed the fact of altercation with the accused persons to me, **we did not go to them in order to reconcile**"

Such behaviour, on the part of the deceased and the prosecution witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6) as deposed by the prosecution witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6) runs counter to natural human conduct and behaviour. Article 129 of the Qanun-e-Shahadat Order, 1984 allows the courts to presume the existence of any fact, which it thinks likely to have happened, regard being had to the common course of natural events and human conduct in relation to the facts of the particular case. Reliance in this regard is placed on the case of *Khuda-E-Dad Alias Pehlwan Versus The State* (**2017 S C M R 701**). We thus trust the existence of this fact, by virtue of the Article 129 of the Qanun-e-Shahadat Order, 1984, that the conduct of the deceased and the prosecution witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6) was opposed to the common course of natural events and human conduct and it was not possible at all that the deceased and the prosecution witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6) would have proceeded to the land of the same accused and that too in the middle of the night with whom the deceased had an altercation just four hours before. In this manner, we have come to an irresistible conclusion that the prosecution witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6) were not present at the place of occurrence and had not even witnessed the same.

15. Another aspect of the case noted by us with some gravity is the fact that both the prosecution witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6) admitted that the occurrence took place in the middle of a field at about 12.15 a.m (night) and **it was dark** at the time of occurrence, still none of the witnesses stated in their statements before the learned trial court that any source of light was present and lit at the place of occurrence, at the time of occurrence, which allowed the witnesses to observe the occurrence. During the course of the investigation and even before the learned trial court, no source of light was ever produced in the light of which the prosecution witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6) had witnessed the occurrence. Moreover, the prosecution witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6) candidly admitted that it was dark at the time of occurrence, however, made no effort to state that they had any source of light with them or that any source of light was available at the place of occurrence in the light of which they had seen the occurrence. The learned Additional Prosecutor General has rightly submitted that in the written application (Exh.PC) as submitted by Barkhurdar (PW-5) for the registration of the case, it had been mentioned that Barkhurdar (PW-5) had with him an electric torchlight, however, has also admitted that when the prosecution witness namely Barkhurdar (PW-5) got recorded his statement before the learned trial court, he did not claim that he was having with him an electric torchlight or that he had used the said electric torchlight for enabling him to witness the occurrence. When Barkhurdar (PW-5) himself never stated in his statement before the learned trial court that he was having with him an electric torchlight, we cannot presume the said fact on our own. Moreover, it is an admitted part of the prosecution case that no source of any light was produced either before the

Investigating Officer of the case or before the learned trial court, in the light of which source the prosecution witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6) had witnessed the occurrence. It is also a fact admitted by the prosecution witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6) that they were at a distance of as much as 15 feet when the occurrence took place and the ability of the prosecution witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6) who have minutely witnessed the occurrence in such darkness was not proved. The prosecution witness namely Barkhurdar (PW-5) during cross-examination stated as under:-

> "We had witnessed the occurrence from the distance of **14/15 feet**. We had told the I.O that we had witnessed the occurrence from the distance of 14/15 feet. " (emphasis supplied)

The prosecution witness namely Muhammad Iqbal (PW-6) during cross-examination stated as under:-

> "We both were at a distance of sixteen feet from the place of occurrence "

Moreover, Zahid Mahmood, Inspector (PW-9), the Investigating Officer of the case, also admitted the absence of any light source at the place of occurrence. Zahid Mahmood, Inspector (PW-9) during cross-examination admitted as under:-

> " I carried out all the proceedings at the spot in the light of official vehicle. The place of occurrence was a field in cultivation and had crop of millet and sugarcane."

The non-production of any light source, available and lit at the place of occurrence, at the time of occurrence and the failure of the complainant of the case as well as the Investigating Officer of the case to produce the same before the learned trial court leads to only one conclusion and that being that no such source of light was available with the witnesses or available at the place of occurrence which could

have enabled the eye witnesses to have identified the assailant and also spectate the role of the assailant as acted by him during the occurrence. The prosecution witnesses failed to establish the fact of availability of any light source at the place of occurrence, at the time of occurrence and in the absence of their ability to do so, we cannot presume the existence of such a light source. The absence of any light source has put the whole prosecution case in the murk. It was admitted by the witnesses themselves that it was a dark night and as the prosecution witnesses failed to prove the availability of any light source, their statements with regard to them identifying the assailant cannot be relied upon. The failure of the prosecution witnesses to prove the presence of any light source at the place of occurrence, at the time of occurrence, has repercussions, entailing the failure of the prosecution case. Reliance is placed on the case of "*Gulfam and another v. The State"* **(2017 SCMR 1189)** wherein the august Supreme Court of Pakistan observed as under:-

> *"The occurrence in this case had taken place at about 11.45 p.m. during the fateful night and the source of light at the spot had never been established by the prosecution. It had been presumed by the courts below that as the occurrence had taken place at a medical store, therefore, some electric light must be available at the spot. The courts below ought to have realized that presumptions have very little scope in a criminal case unless such presumption is allowed by the law to be raised"*

Reliance is also placed on the case of "*Hameed Gul v. Tahir and two others"* **(2006 SCMR 1628)** wherein the august Supreme Court of Pakistan observed as under:-

> *"Next is the identification of the accused on the spot. The torch in the light of which the accused were identified, was produced before the Investigating Officer sixteen days after the occurrence. The one Haid Akbar who produced the same before he Investigating Officer was never produced at the trial and hence there is no satisfactory evidence that the torch produced in the given circumstances was the same, available at the time of occurrence. It was never found on the spot along with other recoveries though there was no occasion for the injured and the deceased to have carried it along."*

Reliance is also placed on the case of "*Basar Vs. Zulfiqar Ali and others"* (**2010 SCMR 1972**) wherein the august Supreme Court of Pakistan observed as under:-

> *"7. It is also alleged by the prosecution that the witnesses had identified the culprits on torch lights. The complainant and P.Ws. did not produce the torches before the police immediately but the same were produced after 10 days of the incident.*
>
> *8. Considering all aspects of the case, we are of the view that the prosecution has failed to prove the case against the respondents beyond any reasonable doubt."*

Reliance is also placed on the case of "*Azhar Mehmood and others v. The State"* **(2017 SCMR 135)** wherein the august Supreme Court of Pakistan observed as under:-

> "*It has straightaway been noticed by us that the occurrence in this case had taken place after dark and in the FIR no source of light at the spot had been mentioned by the complainant. Although in the site-plan of the place of occurrence availability of an electric bulb near the spot had been shown yet no such bulb had been secured by the investigating officer during the investigation of this case."*

Reliance is also placed on the case of "*Arshad Khan v. The State"* **(2017 SCMR 564)** wherein the august Supreme Court of Pakistan observed as under:-

> *"The occurrence in this case had taken place before Fajar prayers at about 05.00 a.m. and according to the FIR the occurrence in issue had been witnessed by the eye-witness in the light of an electric bulb but during the investigation no such electric bulb had been secured by the investigating officer*."

16. We have also noted that both the prosecution witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6) were not mentioned either in column No.4 of the inquest report (Exh.PK) as being the witnesses who had identified the dead body of the deceased at the time of preparation of the inquest report (Exh.PK) nor were mentioned at page 4 of the inquest report (Exh.PK) as witnesses who were present at the place of occurrence at the time of preparation of the inquest report (Exh.PK). Zahid Mahmood, Inspector (PW-9), the Investigating Officer of the case, stated during cross-examination that he had prepared the inquest report (Exh.PK) at the place of occurrence as the dead body was present there when he

arrived at the spot. Zahid Mahmood, Inspector (PW-9), the Investigating Officer of the case, stated during cross-examination as under:-

> "I received information regarding occurrence at 01:30 a.m (night) and reached at the spot at 02:30 am (night). There were 08/10-persons men and women, present at the place of occurrence. **The dead body was lying on the same place where the deceased was done to death** " (emphasis supplied)

This fact also point towards the absence of the prosecution witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6) at the place of occurrence, at the time of preparation of the inquest report (Exh.PK) by Zahid Mahmood, Inspector (PW-9), the Investigating Officer of the case. We have also noted that the prosecution witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6) claimed that their clothes were smeared with the blood of the deceased ,however at the same time also admitted that they did not hand over the said clothes to the Investigating Officer of the case. Barkhurdar (PW-5), during cross-examination, stated as under: -

> "The clothes of my brother Iqbal were blood stained. We did not produce the blood stained clothes of the PW Iqbal to the I.O."(emphasis supplied)

Zahid Mahmood, Inspector (PW-9), the Investigating Officer of the case, did not take any such blood-stained clothes of the prosecution witness namely Muhammad Iqbal (PW-6) in possession during the investigation of the case, however, if Zahid Mahmood, Inspector (PW-9), the Investigating Officer of the case had taken the clothes of prosecution witness namely Muhammad Iqbal (PW-6), which clothes according to the prosecution witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6) were stained with blood, into possession and if these were sent to the Punjab Forensic Science Agency, Lahore for examination and

grouping with that of the blood-stained clothes of the deceased, the same would have provided the strongest corroboration to the testimony of the prosecution witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6), but now the omission creates doubt of equal magnitude. Guidance is sought from the principle enunciated by the august Supreme Court of Pakistan in the case of *Mst. SUGHRA BEGUM and another versus QAISER PERVEZ and others* (**2015 S C M R 1142**) and in the case of *Mst. MIR ZALAI versus GHAZI KHAN and others* (**2020 S C M R 319**) and in the case of *NADEEM alias KALA versus The State and others* (**2018 S C M R 153**).

17. We have also noted with disquiet that the postmortem examination of the dead body of the deceased was conducted with much delay. According to the Post Mortem Examination Report (Exh.PH) as well as the statement of Dr. Muhammad Asif Imam (PW-7) , the post mortem examination of the dead body of the deceased namely Muhammad Ramzan son of Noor Muhammad was conducted **at 08.00 a.m**. on 20.08.2016. Furthermore, according to the Post Mortem Examination Report (Exh.PH) as well as the statement of Dr. Muhammad Asif Imam (PW-7), the police papers were received at **07.30 a.m on 20.08.2016** and thereafter the post mortem examination of the dead body of the deceased was conducted. Dr. Muhammad Asif Imam (PW-7) explained during cross-examination as under:-

> " It is correct that I did not receive the police documents at 07:30 A.M on 20.08.2016. I cannot tell the name of the person from our staff who received the police papers. **I received the police papers at 07:30 A.M**.
>
> ……..
>
> I did not start the postmortem because the police papers were not given to me with the dead body" (emphasis supplied)

The perusal of the Post Mortem Examination Report (Exh.PH) as well as the statement of Dr. Muhammad Asif Imam (PW-7) clearly establishes the fact the post mortem examination of the dead body of the deceased was delayed and the delay was due to the late submission of police papers. No explanation was offered to justify the said delay in conducting the post mortem examination. This clearly establishes that the witnesses claiming to have seen the occurrence were not present at the time of occurrence and the delay in the post mortem examination was used to procure their attendance and formulate a false narrative after consultation and concert. It has been repeatedly held by the august Supreme Court of Pakistan that such delay in the post mortem examination is reflective of the absence of witnesses and the sole purpose of causing such delay is to procure the presence of witnesses and to further advance a false narrative to involve any person. The august Supreme Court of Pakistan in the case of "*Khalid alias Khalidi and two others vs. The State"* **(2012 SCMR 327)** has held as under:

> "*The incident in the instant case took place at 2.00 a.m, FIR was recorded at 4/5 a.m, Doctor Muhammad Pervaiz medically examined the injured person at 4.00 a.m. but conducted the post mortem examination of the deceased at 3.00 p.m i.e. after about ten hours, which fact clearly shows that the FIR was not lodged at the given time".*

The august Supreme Court of Pakistan in the case of "*Mian SOHAIL AHMED and others vs. The State and others"* **(2019 SCMR 956)** has held as under:

> "*According to the Doctor (PW-10), who did the post-mortem examination, the dead-body of the deceased was brought to the mortuary at 11:15 a.m. on 01.9.2006 and the post-mortem examination took place at 12 noon after a delay of 15 hours. This delay in the post-mortem examination, when the occurrence was promptly reported at 8:45 p.m. and formal FIR was registered at 9.00 p.m. on 31.8.2006 gives rise to an inference that the incident was not reported as stated by the prosecution"*

The august Supreme Court of Pakistan in the case of "*MUHAMMAD RAFIQUE alias FEEQA vs. The State"* **(2019 SCMR 1068)** has held as under:

> *"More importantly, the only person who can medically examine the dead body during the said police custody of the dead body is the medical officer, and that too, when the same is handed over to him by the police for its examination. For the purposes of the present case, it is crucial to note that, at the time of handing over a dead body by the police to the medical officer, all reports prepared by the investigating officer are also to be handed over in order to assist in the examination of the dead body.*
>
> *10. Thus, once there is suspicion regarding the death of a person, the following essential steps follow: firstly, there is a complete chain of police custody of the dead body, right from the moment it is taken into custody until it is handed over to the relatives, or in case they are unknown, then till his burial; secondly, post mortem examination of a dead person cannot be carried out without the authorization of competent police officer or the magistrate; thirdly, post mortem of a deceased person can only be carried out by a notified government Medical Officer; and finally, at the time of handing over the dead body by the police to the Medical Officer, all reports prepared by the investigating officer are also to be handed over to the said medical officer to assist his examination of the dead body.*
>
> *11.* ***It is usually the delay in the preparation of these police reports, which are required to be handed over to the medical officer along with the dead body, that result in the consequential delay of the post mortem examination of the dead person****. To repel any adverse inference for such a delay, the prosecution has to provide justifiable reasons therefor, which in the present case is strikingly wanting."*

18. The learned Additional Prosecutor General and the learned counsel for the complainant have stressed that for the fact that Barkhurdar (PW-5) had submitted the written application (Exh. PC) for the registration of the case on 20.08.2016 at about 01.30 a.m., when the occurrence had taken place on 20.08.2016 at about 12.15 a.m, therefore, the promptitude in reporting the matter to the police also offered support of the prosecution case. A perusal of the statements of the witnesses produced by the prosecution during the course of trial reveals that they made contradictory and mutually destructive statements regarding the registration of the F.I.R and the arrival of the police at the place of occurrence. According to the prosecution witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6) , after the occurrence , the deceased was taken in an injured condition on a car to RHC Talumba where he was pronounced dead and thereafter the prosecution witness namely Barkhurdar (PW-5) proceeded to the Police Station and submitted

the written application (Exh.PC) at the Police Station for the registration for the formal F.I.R. The prosecution witness namely Barkhurdar (PW-5) claimed in his statement before the learned trial court , as under:-

> "We took Muhammad Ramzan in an injured condition at RHC Talumba where he succumbed to the aforesaid injuries.
>
> ……
>
> Within the 5/7 minutes we picked the deceased form (sic) the spot and took him to R.H.C. Tulamba. We took the deceased on the car of Shabbir Wattoo r/o chak No.21/8R. Fortunately Shabbir Wattoo came there on his vehicle who stopped there and subsequently took us to the hospital .
>
> ……
>
> Ex.PC had got written at R.H.C. Tulamba at about 01:15 A.M. The application was preferred at police station at 01:30 AM"

A similar statement was made by the prosecution witness namely Muhammad Iqbal (PW-6) , however, Zahid Mahmood, Inspector (PW-9), the Investigating Officer of the case, stated during cross-examination that he received the information regarding the occurrence at 01.30 a.m and reached at the place of occurrence at 02.30 a.m and still the dead body was available at the place of occurrence at the same place where the deceased had received the injuries and it was him who then sent the dead body of the deceased to the RHC for post mortem examination at about 03.30 a.m. Zahid Mahmood, Inspector (PW-9), the Investigating Officer of the case, stated during cross-examination as under:-

> "I received information regarding occurrence at 01:30 a.m (night) and reached at the spot at 02:30 am (night). There were 08/10-persons men and women, present

> at the place of occurrence. **The dead body was lying on the same place where the deceased was done to death.** I remained at the place of occurrence for about 02:00/02:30 hours (night). **The dead body was shifted to mortuary on private van arranged by complainant at about 03:30 am (night).** The dead body was escorted by Khalid constable and Munir etc**.** " (emphasis supplied)

The above referred portion of the cross-examination of Zahid Mahmood, Inspector (PW-9), the Investigating Officer of the case, clearly proves that neither the written application (Exh.PC) was submitted at the Police Station at the time as claimed by the prosecution witness namely Barkhurdar (PW-5) nor the prosecution witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6) knew about the presence of the dead body at the place of occurrence till 03.30 a.m. This absence of knowledge of the prosecution witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6) that the dead body was available at the place of occurrence till 03.30 a.m. is in itself sufficient to prove that the prosecution witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6) were not present at the place of occurrence, at the time of occurrence. The scrutiny of the statements of the prosecution witnesses reveals that written application (Exh. PC) was a contrived, manufactured and compromised document. No corroboration of the prosecution evidence can be had from the said written application (Exh. PC). Sufficient doubts have arisen and inference against the prosecution has to be drawn in this regard.

19. The learned Additional Prosecutor General and the learned counsel for the complainant have also relied upon the recovery of the *Pistol (P-3, mentioned as P-1 in the statement of PW-6)* from the appellant namely Shahid alias Shahra and have submitted that the said recovery from the appellant offered sufficient

corroboration of the ocular account of the occurrence as furnished by the prosecution witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6).The recovery of the *Pistol (P-3, mentioned as P-1 in the statement of PW-6)* from the appellant namely Shahid alias Shahra cannot be relied upon as the Investigating Officer of the case did not join any witness of the locality during the recovery of the *Pistol (P-3, mentioned as P-1 in the statement of PW-6)* from the appellant namely Shahid alias Shahra, which action of his was in clear violation of the provisions of the section 103 Code of Criminal Procedure, 1898. Qamar Zia, SI (PW-8) admitted during cross-examination as under:-

> "I did not join into recovery proceedings any respectable of the vicinity "

The provisions of section 103 Code of Criminal Procedure, 1898 , unfortunately, are honoured more in disuse than compliance. To appreciate it better, this section is being reproduced:-

> "103.--(1) Before making a search. under this chapter, the officer or other person about to make it **shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search and may issue an order in writing to them or any of them so to do**."

Therefore the evidence of the recovery of the *Pistol (P-3, mentioned as P-1 in the statement of PW-6)* from the appellant namely Shahid alias Shahra cannot be used as incriminating evidence against the appellant, being evidence which was obtained through illegal means and hence hit by the exclusionary rule of evidence. The august Supreme Court of Pakistan in the case of *Muhammad Ismail and others Vs. The State*(**2017 SCMR 898**) at page 901 has held as under:-

> *"For the above mentioned recovery of weapons the prosecution had failed to associate any independent witness of the locality and, thus, the mandatory*

> *provisions of section 103, Cr.P.C. had flagrantly been violated in that regard."*

Moreover, the prosecution witness namely Muhammad Iqbal (PW-6), admitted during cross-examination that the Pistol (P-3, mentioned as P-1 in the statement of PW-6) was recovered from the room of a house which was accessible to all. Muhammad Iqbal (PW-6), during cross-examination , stated as under:-

> " All the accused persons namely Shahid alias Shara, Shah Muhammad and Ramzan are living in one and the same house.
>
> ……
>
> We also entered the said house with police. Their house was consisting of three rooms. The doors of those rooms open towards East. The recovery was effected from the room which situated towards Northern side of the rooms. The said room was open. The box from which the recovery was effected was locked. The key of the said box was given to the I.O by the mother of the accused."

In this manner, the prosecution witnesses failed to prove the exclusive possession of the appellant regarding the recovered Pistol (P-3, mentioned as P-1 in the statement of PW-6) .In this manner, the recovery of the *Pistol (P-3, mentioned as P-1 in the statement of PW-6)* from the appellant namely Shahid alias Shahra could not be proved and cannot be considered as a relevant fact for proving any fact in issue. Even otherwise, as we have disbelieved the ocular account in this case, hence, the evidence of recovery of the Pistol (P-3, mentioned as P-1 in the statement of PW-6) would have no consequence. It is an admitted rule of appreciation of evidence that recovery is only a corroborative piece of evidence and if the ocular account is found to be unreliable, then the recovery has no evidentiary value.

20. The learned Additional Prosecutor General and the learned counsel for the complainant have also relied upon the evidence of motive and submitted that it corroborated the ocular account. The motive of the occurrence as stated by the prosecution witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6) was that the appellant used to bring women of ill repute near the house of the deceased and the deceased restrained him which then motivated the appellant to commit the occurrence. A perusal of the statements of the prosecution witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6) reveals that they failed to prove the motive of the occurrence as narrated by them in their statements before the learned trial court. The prosecution witness namely Barkhurdar (PW-5) was exposed to having made dishonest improvements in his previous statement regarding the motive and the learned trial court observed during cross-examination as under:-

> " I had got written in Ex.PC that Shahid alias Shara and Khizar Hayyat accused persons used to bring the women of bad character near our house on the cots. **Confronted to Ex.PC where it is not mentioned that Shahid alias Shara and Khizar Hayyat accused used to bring women of bad character near our house on cots rather it is mentioned in Ex.PC that slut women and men were the visitors of the accused persons.** I had got written in Ex.PC that my deceased brother Ramzan used to forbid the accused persons to bring the women of sluttish character. **Confronted to Ex.PC where it is written that we forbid the accused persons for bringing the women of bad character and there is no mention of forbidding the accused by the deceased**" (emphasis supplied)

Furthermore, the prosecution witness namely Barkhurdar (PW-5) also admitted during cross-examination that the act of the appellant of bringing women of ill

repute to the house of the deceased was never reported to the police and stated as under:-

> "We did not inform the police that accused bring the women of ill repute near our house "

The above referred portions of the statement of Barkhurdar (PW-5) clearly prove that the prosecution witnesses failed to provide evidence enabling us to determine the truthfulness of the motive alleged. The prosecution witnesses failed to prove the fact that the said motive was so compelling that it could have led the appellant to have committed the *Qatl-i-Amd* of the deceased. There is a haunting silence with regard to the minutiae of motive alleged. No independent witness was produced by the prosecution to prove the motive as alleged. Moreover, it is an admitted rule of appreciation of evidence that motive is only corroborative piece of evidence and if the ocular account is found to be unreliable then motive alone cannot be made basis of conviction. Even otherwise a tainted piece of evidence cannot corroborate another tainted piece of evidence. The august Supreme Court of Pakistan has held in the case of *Muhammad Javed v. The State* **(2016 SCMR 2021)** as under:

> "*The said related and chance witnesses had failed to receive any independent corroboration inasmuch as no independent proof of the motive set up by the prosecution had been brought on the record of the case.*"

21. The only other piece of evidence left to be considered is the medical evidence with regard to the injuries observed on the dead body of the deceased by Dr. Muhammad Asif Imam (PW-7) but the same is of no assistance in this case as medical evidence by its nature and character, cannot recognize a culprit in case of an unobserved incidence. As all the other pieces of evidence relied upon by the prosecution in this case have been disbelieved and discarded by us, therefore, the

appellant's conviction cannot be upheld on the basis of medical evidence alone. The august Supreme Court of Pakistan in its binding judgment titled "*Hashim Qasim and another Vs. The State*" **(2017 SCMR 986)** has enunciated the following principle of law:

> *"The medical evidence is only confirmatory or of supporting nature and is never held to be corroboratory evidence, to identify the culprit."*

The august Supreme Court of Pakistan in its binding judgment titled "*Naveed Asghar and two others Vs. The State*" **(P L D 2021 Supreme Court 600)** has enunciated the following principle of law:

> *"31. The prosecution has attempted to complete the chain of circumstantial evidence by medical evidence relating to the post mortem examinations of the deceased persons. This evidence proves only the factum that death of the deceased persons was caused by cutting their throats through some sharp edge weapon; it does in no way indicate who had cut their throats and with what particular weapon. Medical evidence is in the nature of supporting, confirmatory or explanatory of the direct or circumstantial evidence, and is not "corroborative evidence" in the sense the term is used in legal parlance for a piece of evidence that itself also has some probative force to connect the accused person with the commission of offence. Medical evidence by itself does not throw any light on the identity of the offender. Such evidence may confirm the available substantive evidence with regard to certain facts including seat of the injury, nature of the injury, cause of the death, kind of the weapon used in the occurrence, duration between the injuries and the death, and presence of an injured witness or the injured accused at the place of occurrence, but it does not connect the accused with the commission of the offence. It cannot constitute corroboration for proving involvement of the accused person in the commission of offence, as it does not establish the identity of the accused person.[32] Therefore, the medical evidence is of little help to the prosecution for bringing home the guilt to the petitioners."*

22. Considering all the above circumstances, we entertain serious doubt in our minds regarding the involvement of Shahid @ Shahra son of Jalal (appellant) in the present case. It is a settled principle of law that for giving the benefit of the doubt it is not necessary that there should be so many circumstances rather, if only a single circumstance creating reasonable doubt in the mind of a prudent person is available, then such benefit is to be extended to an accused not as a matter of

concession but as of right. The august Supreme Court of Pakistan in the case of "*Muhammad Mansha Vs. The State"* (**2018 SCMR 772**) has enunciated the following principle:

> *"Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted". Reliance in this behalf can be made upon the cases of Tariq Pervez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Muhammad Akramv.The State (2009 SCMR 230) and Muhammad Zamanv.The State (2014 SCMR 749)."*

Reliance is also placed on the judgment of the august Supreme Court of Pakistan "*Najaf Ali Shah Vs. the State"* (**2021 S C M R 736**) in which it has been held as infra:

> *"9. Mere heinousness of the offence if not proved to the hilt is not a ground to avail the majesty of the court to do complete justice. This is an established principle of law and equity that it is better that 100 guilty persons should let off but one innocent person should not suffer. As the preeminent English jurist William Blackstone wrote, "Better that ten guilty persons escape, than that one innocent suffer." Benjamin Franklin, who was one of the leading figures of early American history, went further arguing "it is better a hundred guilty persons should escape than one innocent person should suffer." All the contradictions noted by the learned High Court are sufficient to cast a shadow of doubt on the prosecution's case, which entitles the petitioner to the right of benefit of the doubt. It is a well settled principle of law that for the accused to be afforded this right of the benefit of the doubt it is not necessary that there should be many circumstances creating uncertainty and if there is only one doubt, the benefit of the same must got to the petitioner. This Court in the case of Mst. Asia Bibi v. The State (PLD 2019 SC 64) while relying on the the earlier judgments of this Court has categorically held that "if a single circumstance creates reasonable doubt in a prudent mind about the apprehension of guilt of an accused, then he/she shall be entitled to such benefit not as a matter of grace and concession, but as of right. Reference in this regard may be made to the cases of Tariq Pervaiz v. The State (1998 SCMR 1345) and Ayub Masih v. The State (PLD 2002 SC 1048)." The same view was reiterated in Abdul Jabbar v. State (2010 SCMR 129) when this court observed that once a single loophole is observed in a case presented by the prosecution, such as conflict in the ocular account and medical evidence or presence of eye-witnesses being doubtful, the benefit of such loophole/lacuna in the prosecution's case automatically goes in favour of an accused."*

23. For what has been discussed above, Criminal Appeal No.953-J of 2018 lodged by Shahid @ Shahra son of Jalal (appellant) is **allowed**. The conviction and sentence of Shahid @ Shahra son of Jalal (appellant) awarded by the learned trial court through the impugned judgment dated 06.11.2018 are hereby set-aside. Shahid @ Shahra son of Jalal (appellant) is ordered to be acquitted by extending him the benefit of doubt. The appellant namely Shahid @ Shahra son of Jalal is in custody and he is directed to be released forthwith if not required in any other case.

24. The complainant of the case namely Barkhurdar filed Criminal Appeal No.1154 of 2018, assailing the acquittal of Khizar Hayat ,Shah Muhammad and Muhammad Fayyaz alias Kali (all since acquitted), by the learned trial court. We have observed that the learned trial court has rightly acquitted the said accused. The prosecution witnesses namely Barkhurdar (PW-5) and Muhammad Iqbal (PW-6) not only failed to prove their own presence at the time of occurrence,at the place of the occurrence but also failed to establish the presence of the accused namely Khizar Hayat , Shah Muhammad and Muhammad Fayyaz alias Kali (all since acquitted) at the place of the occurence. It is important to note that according to the established principle of the criminal administration of justice once an acquittal is recorded in favour of the accused facing criminal charge he enjoys double presumption of innocence, therefore, the courts competent to interfere in the acquittal order should be slow in converting the same into conviction, unless and until the said order is patently illegal, shocking, based on misreading and non-reading of the record or perverse. The said principle has been enunciated by the august Supreme Court of Pakistan in the judgment reported as "*Ghulam Sikandar and another Versus Mamaraz Khan and Others"* (**P L D 1985 Supreme Court 11**) wherein it has been held as under:

> *"The Court would not interfere with acquittal merely because on re-appraisal of the evidence it comes to the conclusion different from that of the Court acquitting the accused provided both the conclusions are reasonably possible. If however. the conclusion reached by that Court was such that no reasonable person would conceivably reach the same and was impossible then this Court would interfere in exceptional cases on overwhelming proof resulting in conclusion and irresistible conclusion; and that too with a view only to avoid grave miscarriage of justice and for no other purpose. The important test visualised in these cases, in this behalf was that the finding sought to be interfered with, after scrutiny under the foregoing searching light, should be found wholly as artificial, shocking and ridiculous."*

Reliance is placed on the case of "*Muhammad Inayat Versus The State"* (**1998 SCMR 1854**) wherein it has been held as under:

> *"The judgment of acquittal qua Muhammad Yousaf, Muhammad Sated and Muhammad Nawaz cannot, in the given situation, be termed as perverse or foolish inasmuch as the view having been taken by the High Court can possibly be taken for acquitting them in the peculiar facts and circumstances of this case. It cannot be said that the impugned judgment of the High Court acquitting Muhammad Yousaf and two others is fanciful, artificial, shocking or ridiculous. 1t is based on convincing reasons"*

The august Supreme Court of Pakistan in the case of "*Mst. Sughran Begum and another Vs. Qaiser Pervaiz and others"* (**2015 SCMR 1142**) has held as under:

> "*On acquittal, an accused person earns twofold innocence particularly, in the case when there are concurrent findings to that effect by the trial Court and the Court of First Appeal (High Court), is the bedrock principle of justice. In a case of acquittal, the standard and principle of appreciation of evidence is entirely different from that in a case of conviction. Unless the concurrent findings of the two Courts below are found perverse, fanciful, arbitrary and are based on misreading and non-reading of material evidence causing miscarriage of justice, the Supreme Court would not lightly disturb the same because on reappraisal, another view might be possible therefore, sanctity is attached under the law to such concurrent findings in ordinary course."*

Pursuant to the discussion made and conclusions arrived at above, the Criminal Appeal No.1154 of 2018, lodged by the complainant of the case namely Barkhurdar assailing the acquittal of Khizar Hayat ,Shah Muhammad and

Muhammad Fayyaz alias Kali by the learned trial court from the charges is hereby **dismissed.**

25. Consequently, the **Murder Reference No. 11 of 2019** is answered in **Negative** and the sentence of death awarded to Shahid @ Shahra son of Jalal , is **Not Confirmed**.

(MUHAMMAD AMJAD RAFIQ)
JUDGE

(SADIQ MAHMUD KHURRAM)
JUDGE

Approved for Reporting.

Judge