

## **JUDGMENT SHEET.**

### **ISLAMABAD HIGH COURT, ISLAMABAD,** **JUDICIAL DEPARTMENT.**

#### **Criminal Appeal No.71/2013**

**Dr. Aftab Ali Malik**

**Versus**

**Dr. Shahbaz Hanif & another**

Appellant by : Raja Rizwan Abbasi, Advocate &  
Mr. Sohail Akhtar, Advocate.

Respondent No.1 : In person alongwith Mr. Sher Afzal Khan,  
Advocate.

State by : Mr. Sarfraz Ali Khan, State Counsel &  
Ms. Saima Naqvi, State Counsel.

Date of hearing : 27.10.2017.

#### **JUDGMENT**

**MOHSIN AKHTAR KAYANI, J:-** Through the instant appeal, the appellant has assailed the judgment dated 24.05.2013 passed by learned Judicial Magistrate 1<sup>st</sup> Class (West) Islamabad in case FIR No.424, dated 05.08.2009, U/s 337-F(i)/ 337-A(ii)/506 PPC, P.S. Margalla, Islamabad whereby respondent No.1/ accused has been acquitted.

2. Brief facts as referred in complaint/ Ex.PA moved by Dr. Aftab Ali, complainant, are that on 04.08.2009, at about 10:00 PM, when he came out of Ali Medical Centre, after attending the patients, the accused, Dr. Shahbaz Hanif alongwith his accomplices, attacked upon him and caused serious injury on the left eye of complainant through a knuckle duster and also extended life threats. The appellant further alleged in the complaint that certain valuables including cash amount of Rs.51,000/-, wrist watch, credit card and ATM card were also snatched whereby he was rescued by the security guards and other employees of Ali Medical Centre.

3. After registration of FIR, police arrested the accused/ respondent No.1 and report U/S 173 Cr.P.C. was submitted in the Court. After completion of trial the accused has been acquitted vide impugned judgment dated 24.05.2013 by learned Judicial Magistrate 1<sup>st</sup> Class (West) Islamabad, hence, this appeal under Section 417 (2)-A Cr.P.C.

4. Learned counsel for appellant contended that the impugned judgment has not been passed in accordance with evidence on record whereby the place of occurrence, fight, and presence of appellant as well as accused was admitted but the learned trial Court has not considered the same; that the medical evidence corroborates with the ocular testimony of the appellant but the learned trial Court has acquitted the accused at wrong premises.

5. Conversely, learned counsel for respondent No.1 contended that no weapon of offence was recovered during the investigation and even no injury was taken place during the scuffle; that witnesses were subsequently arranged by the prosecution who were not present at the scene of occurrence and even the security guards were not made witnesses in the case; that the medical report has been tempered in connivance with appellant in order to establish the case against respondent No.1; that the learned trial Court has recommended action against the Investigation Officer as well as Dr. Farrukh Kamal, Medico Legal Officer; that all these factors give rise to a reasonable doubt and respondent No.1 is entitled for acquittal in this case; that both the star witnesses i.e. PW-2 Kausar Mehmood Kayani and PW-3 Zahid Hussain, have filed to substantiate their presence as they are not taxi drivers as claimed by the appellant and the tempering of medical report is evident with naked eye.

6. Arguments heard, record perused.

7. From the perusal of record, it has been observed from complaint/ Ex.PA filed by Dr. Aftab Ali Malik/ appellant, where he alleged that on 04.08.2009 when he came out of Ali Medical Centre, F-8 Markaz, Islamabad after completion of his duties, a car Baleno Suzuki RLX (number not known) came from which respondent No.1 alongwith two accomplices came out assaulted the appellant. Respondent No.1 was wearing a knuckle duster with which he gave fist blow upon the left eye of appellant and all the accused dragged him and extended life threats, who also snatched his wallet including cash of Rs.51,000/-, which contained nine notes of Rs.5,000/-, four notes of Rs.1,000/-, three notes of Rs.500/- and some change. Complainant/ appellant further alleged that they have also snatched his Al-Falah Bank's Credit Card and HBL's ATM card, whereby they fled away from the scene on the intervention of security guard and other employees of hospital.

8. The police completed the investigation and submitted the Challan in which respondent No.1 was placed in column No.3. As per evidence available on record, Dr. Farrukh Kamal, Deputy Director & Medico Legal Officer, PIMS, Islamabad appeared as PW-7 and recorded his statement on the basis of MLC Ex-PW-7/1 and identified his signatures on the said document whereby the following injuries were found on the body of appellant:-

1. *Laceration bellow left eye 1 to 2 cm swelling.*
2. *Swelling and abrasion around left supra orbital region and infra orbital region seen by eye department & the opinion given by eye department, assessing injury subconjunctival hemorrhage.*
3. *Swelling scalp, nature of injury was (Shajjah-Mudiah), 337-A(ii), KUO was kept under observation, with reference to injury No.3.*

However, he was cross-examined whereby he acknowledged certain discrepancies in the medical report as he was suggested that there is some difference in treatment sheet in line No.4, 5 & 3 however, he negated any tempering in the treatment sheet. He acknowledged that, "It is correct that there is no mentioning of swelling sculpt (injury no.3 of MLC) in the treatment sheet Ex-PW-7/1-1". He further acknowledged that, "I prepared the MLC on the basis of my own opinion. There is no value of the opinion in the treatment sheet".

Ex.P-7/1 was prepared on the strength of Ex.D-7/1-1, which is as follows:-

Original	Allegedly tempered
<p>"C/O: Trauma face @ infraorbital Region.</p> <p>Abrasion + swelling</p> <p>O/E: G.L.S = 15/15</p> <p>Swelling @ orbital region</p> <p>Abrasion over @ infraorbital Region.</p> <p>No other wound</p> <p>Adv: Inj. T.T.   1/m ST AT</p> <p>Inj. Dicloren"</p>	<p>"C/O: Trauma face @ infraorbital Region.</p> <p>Abrasion + swelling</p> <p><b><u>Laceration @ infraorbital region</u></b></p> <p>O/E: G.L.S = 15/15 <b><u>bone deep.</u></b></p> <p>Swelling @ orbital region</p> <p>Abrasion over @ infraorbital Region. <b><u>+ supraorbital</u></b></p> <p>No other wound</p> <p><b><u>Apply stitched – ASD.</u></b></p> <p>Adv: Inj. T.T.   1/m ST AT</p> <p>Inj. Dicloren"</p>

The above referred document is outdoor ticket which was used as initial treatment document of appellant wherein certain lines have been interpolated in between the spacing, for example at line No.4 words "*laceration @ infraorbital region bone deep*" were added and similarly at line No.8 words "*+ supraorbital.*" were added and at line No.10 words "*Apply stitches – ASD*" were added. The above referred interpolation has been referred by the learned counsel for respondent No.1 during the course of arguments, whereas the appellant tried to prove his case that all the interpolations have not been made and these are part of the document but I have gone through the record in which two separate documents are available with a clear difference of certain remarks and entries referred above. However, from the perusal of record, the original document Ex.D7/1-1 was found to be a photocopy and the same was exhibited by the learned trial Court, which clearly shows that the original document must be available at the time of trial, however, it was the duty of the prosecution to place the initial treatment outdoor ticket of appellant on record, whereas from the perusal of entire record no such document is available through which one can assume that the final medical report dated 05.08.2009 signed or prepared by Dr. Farrukh Kamal, which causes a serious situation in the entire case. Even there is no justification tendered as to why the original document has not been placed on record.

9. The prosecution produced two star witnesses, i.e. Kausar Mehmood Kayani PW-2 and Zahid Hussain PW-3, both are residents of village Jhang Syedan, Islamabad and claimed to be taxi drivers, who were outside Ali Medical Centre on the road waiting for passengers.

10. From the perusal of evidence of PW-2, who stated before the Court that on 04.08.2009, he heard scuffle and some people started assaulting one person and later on it revealed that all of them are assaulting a Doctor and a person who was extending life threats through Lalkaara is not present in the Court, however, he acknowledged that:-

"بلیسٹو گاڑی پارکنگ میں آکر کھڑی ہوئی جب میں نے لڑائی جھگڑا ختم کروایا تو ملزم حاضر عدالت کے ہاتھ میں پاس تھا اور گاڑی

کی طرف بھاگ رہا تھا۔ اور ڈاکٹر آفتاب زخمی تھے اور میں اس کو اپنی گاڑی میں بیٹھا کر تھانہ تک چھوڑ آیا۔ تھانہ مار گلہ لے گئے

تھے۔"

During the cross examination, he acknowledged that he owns a market comprising of eight shops and is also managing real estate business under the name and style of Al-Haram Property Dealer and Zahid PW-3 is my neighbor, living in the same street. He further conceded that:-

"یہ درست ہے کہ Ex.PB میں ڈاکٹر آفتاب کے زخمی والی بات درج نہ ہے۔ یہ درست ہے کہ ڈاکٹر آفتاب کو اپنی گاڑی میں تھانہ چھوڑنے والی بات درج نہ کروائی ہے۔ یہ درست ہے کہ Ex.PB میں درج نہ ہے کہ میں نے ڈاکٹر آفتاب کو ایک نمبر دیا تھا۔ یہ درست ہے کہ میں نے ڈاکٹر شہباز کے ہاتھ میں پرس دیکھنے والی بات Ex.PB میں نہ لکھوائی ہے۔"

However, he is neither aware of the apparel of accused nor even disclosed the description/ shape of the other two accused persons.

11. Similarly, PW-3 Zahid Hussain stated similar facts that on 04.08.2009 when he was waiting for passengers outside Ali Medical Centre, he stated that accused present in the Court came on a Baleno car and raised lalkara to murder Dr. Aftab Malik and the accused alongwith his two accomplices started assaulting Dr. Aftab Malik and injured him with a knuckle duster and he was holding a pars in his hand. He acknowledged that PW-2 is his friend and he has defined the punch in a manner that:-

"بچہ لو ہے کا تھا اور پنج پر کیل لگے ہوئے تھے۔ یہ درست ہے کہ میں نے اپنے بیان ExP/C میں درج نہ کروایا کہ ملزم نے پنج پہنا ہوا تھا۔ یہ درست ہے کہ Ex.PC جس میں نے ڈاکٹر آفتاب کو زخم آنے اور پرس چھیننے اور ملزم کے ہاتھ میں پرس دیکھنے کا ذکر نہ کیا ہے۔"

His statement was recorded on 11.08.2009, however he did not remember the number of vehicle of PW-2 but when he was confronted with his statement Ex.PC, wherein he has specifically written the number of vehicle.

12. If we put in comparison the statements of above mentioned two star witnesses, PW-2 & 3, it is clearly established that there is a clear difference in material points in their statements as PW-2 has never referred the knuckle duster in his statement and PW-2 referred that one of the accused present in the Court raised lalkara which means respondent No.1 had not raised any lalkara for extending life threats but PW-3 stated that respondent No.1 had raised Lalkara to commit murder, similarly both the star witnesses have improved their statements on number of material things which were not recorded in

earlier statements. Even otherwise, statement U/s 161 Cr.P.C. was recorded in a belated time and not on the day of occurrence. Both statements are full of contradictions. Even otherwise, their presence on the spot is doubtful, especially when one of the witness himself acknowledged that he is a property dealer and there is no occasion to justify his stance that he is a taxi driver. Furthermore, the Investigation Officer has not produced any document on record or evidence to substantiate that both the star witnesses are taxi drivers who were present on the scene.

13. In view of above, the testimony of both the witnesses has rightly been discarded having no significance as it seems that both the PWs were introduced later on by the prosecution to substantiate the case.

14. The complainant himself appeared as PW-1 in this case and stated in his evidence that:-

"ملزم حاضر عدالت نے میری بائیں آنکھ پر مکمار اور ایک لوہے کی چیز آنکھ پر ماری۔"

Whereas, in Ex.PA, he has specifically written that:-

"ڈاکٹر شہباز حنیف کے ہاتھ لوہے کا punch تھا جس سے اس نے مجھے بائیں آنکھ کے نیچے مارا جس سے میں شدید زخمی ہو گیا۔"

The above referred comparison of both the statements clearly reveals a difference that the complainant, at the very outset in Ex.PA, had referred "لوہے کا چٹخ" whereas in his examination-in-chief, he stated "ایک لوہے کی چیز آنکھ پر ماری" hence, it can safely be concluded that complainant has changed his stance. Similarly, he recorded his statement in the Court that:-

"اتنے میں لوگ وہاں جمع ہو گئے اور انہوں نے میری جان چھڑائی۔"

Wherein, in Ex.PA he stated that:-

"اتنے میں ہسپتال کے سیکورٹی گارڈ اور دیگر عملہ بھی آگیا جنہوں نے مجھے چھڑایا۔"

Whereas, not a single security guard or hospital employee has been produced as a prosecution witness, even the Investigation Officer has not placed any material to justify this particular stance. This clearly demonstrates that the complainant maneuvered the witnesses, PW-2 & 3, whose statements have been recorded after seven days of occurrence in order to justify the allegations of complainant/ appellant in this case,

whereas the actual witnesses, if any i.e. security guards and the employees of the hospital, have not been made witnesses due to some reasons which were best known to the complainant or the Investigation Officer. The entire episode of non-inclusion of natural witnesses, who were present on the scene, give rise to a situation that if those witnesses would have been produced, the prosecution case might be different, hence, the best available evidence has not been produced in terms of Article 129-G of the Qanun-e-Shahadat Order, 1984, therefore, it can safely be assumed that if those natural witnesses would have been produced, those might not have supported the case of either side.

15. . During the course of cross examination, the complainant/ PW-1 acknowledged that:-

"ملزم نے میرے خلاف ایک تحریری شکایت مورخہ 14.03.2008 کو پولی کلینک دی تھی۔ یہ درست ہے کہ میں نے ملزم حاضر عدالت کو ڈانٹا تھا۔ جس کی وجہ سے تحریری شکایت ملزم نے کی تھی۔"

The above referred fact clearly reveals that a clandestine reason behind the inimical and hostile conduct of appellant against respondent No.1 was available prior to the said incident and they had certain differences in their place of posting and certain disciplinary actions were initiated on the complaint of respondent No.1 as it was suggested by the respondent side that appellant was declared guilty after inquiry on the complaint of respondent No.1 however, there is no documentary proof to that extent available on record. The appellant further confirmed in his testimony that:-

"یہ درست ہے کہ درخواست Ex.PA میں درج کروائی تھی کہ سیکورٹی اور دیگر عملہ کا ذکر کیا ہے۔ یہ درست ہے کہ سیکورٹی گارڈ اور دیگر عملہ کے علاوہ کوئی اور نہ تھا۔ یہ درست ہے کہ میں نے درخواست Ex.PA میں ذکر کیا تھا کہ مجھے لوہے کا پیچ مارا تھا۔ یہ درست ہے کہ میں نے Ex.PA میں درج کر دیا تھا کہ لوہے کا پیچ مارا تھا۔ میں علی میڈیکل سینٹر میں ملزم سے تین چار ماہ قبل سے join کیا تھا۔"

The above referred factor clearly proves that PW-2 & 3 were not present as per the statement of PW-1/appellant in his own statement and he has improved his case tremendously to involve respondent No.1, in this case. He further improved his case by stating therein that:-

"یہ درست ہے کہ میرا خون بہہ رہا تھا اور میں نے Ex.PA میں لکھ دیا تھا۔"

When confronted with the fact, it has been proved that the said fact has not been referred in Ex.PA. He also acknowledged that except respondent No.1 no other accused was

investigated in this case nor even any other person has been challaned in this case and even he has not identified the other two accomplices of respondent No.1. He also acknowledged that:-

"تویر میر صاحب ASJ اسلام آباد نے میرے خلاف تفتیش اور پڑچہ بردر خواست ملزم کا حکم کیا تھا۔ یہ درست ہے کہ اس حکم پر تفتیش ہوئی تھی۔ یہ کہ اس پڑچہ کے بعد ملزم کے بھائی اور میرے بھائی کے درمیان راضی نامہ کی بات ہوئی تھی اور میرے ساتھ کوئی راضی نامہ نہ ہوا تھا۔ یہ درست ہے کہ میں نے ہائی کورٹ میں بیان دیا تھا۔ اور ضمانت ہونے پر کوئی اعتراض نہ ہے۔"

The above referred development subsequent to lodging of criminal case clearly reveals that on the complaint of accused/ respondent No.1, the present appellant was arrayed accused in a criminal case however, the parties entered into a compromise during the course of proceedings before the High Court and complainant/ appellant recorded his statement for bail of respondent No.1. During the course of cross examination, he acknowledged that:-

"یہ درست ہے کہ کیل کافی مقدار میں تھے یہ کہ اگر پنج مارا جائے تو کم از کم پانچ دس زخم ضرور ہونگے۔"

The above referred injury description clearly demonstrates that no such weapon has been used which is apparent and confirmed from the evidence of appellant, even the original injury sheet/ OPD ticket Ex.D-7/1-1 does not refer any such account of injury on the day of incident. The value of medical/ medical report is corroborative as held in **2017 SCMR 728 "Abid Mehmood & others versus The State & others"** that:-

"ماہر طب کی رائے تائیدی شہادت کا درجہ نہیں رکھتی بلکہ صرف تو ثبوتی درجہ رکھتی ہے جس سے صرف اس امر کی نشاندہی ہوتی ہے کہ مجروح یا مقتول کو کس آلہ کے ذریعے ضربات پہنچا کر مجروح یا قتل کیا گیا۔ ضربات چونکہ کسی مجرم یا مجرموں کی نشاندہی نہیں کر سکتیں لہذا ان کو تائیدی شہادت قرار دینے سے گریز کرنا چاہیے۔"

In view of above, such difference and contradiction in complainant's version with medical report confirms the stance of defence side as no such weapon (knuckle duster) having nails was used as in ordinary course use of such kind of weapon gives grievous injury of punctured wounds on the body whereas the medical evidence is silent. Although certain tempering has been observed to the extent of stitching which is not available in original document. If we see the entire resume of the medical evidence with the statement of appellant, it reveals that no such injury was caused to the appellant and



there is a mark difference of ocular and medical evidence on record. It has also been settled in **2017 SCMR 633 "Intizar Hussain versus Hamza Amir & others"** that:-

"اگر دو مختلف نوع کے رپورٹ یا شہادت فوجداری مقدمہ مثل میں آجائے تو عدالت اس شہادت اور مواد کو ترجیح دے گی جو ملزم کو فائدہ دے تاکہ اس شہادت اور مواد کو جو کہ استغاثہ کے حق میں جاتا ہو۔"

16. The prosecution produced Investigation Officer, Sattar Baig S.I. P.S. Margalla, as PW-6 who recorded his statement and submitted that after completion of entire evidence, he submitted the Challan however, during the course of cross examination, he acknowledged that:-

"مجھے مقدمہ ہذا کی تفتیش کی منتقلی کا کوئی تحریری حکم مثل / چالان پر موجود نہ ہے اور نہ حکم ملا ہے۔ مجھے جو تفتیش کی منتقلی کا جو زبانی حکم ملا تھا اسکی ضمنی میں نے مرتب کی تھی۔ مجھے SHO نے زبانی حکم دیا تھا کہ تفتیش آپکے سپرد ہو گئی ہے۔"

The above referred answer clearly demonstrates that Sattar Baig S.I. was not legally authorized to investigate the matter unless the same would have been transferred to him through a valid order, the SHO is competent to transfer the investigation but the Investigation Officer has failed to substantiate from the record that he was authorized in this regard and he has acknowledged this fact, therefore, the investigation conducted by him is not legally justified. He also confirmed that he met witnesses on 11.08.2009 for the first time, this means that both the star witnesses PW-2 & PW-3 recorded their statement on 11.08.2009, after elapse of 07 days, while it is settled proposition that statement U/S 161 Cr.P.C. if recorded with delay has no legal worth. Reliance is placed upon **2017 YLR 724 [Lahore] "Shaukat Ali and 2 others versus The State"** wherein it has been held that:-

*"Injured prosecution witness had recorded her statement under S.161, Cr.P.C., before Investigating Officer after 18 days of the occurrence and prosecution had failed to advance any reason for such delay---Such belated statement, had no value in the eyes of law and same could not be believed."*

PW-6 further acknowledged during the cross examination that:-

"FIR میں ملزم کے خلاف چوری، رقم چھیننے، گھڑی، ATM کارڈ، (valet) پر س چھیننے کے الزامات جو لگائے ہیں اس کی بابت دفعات ہم نے اس لیے نہ لگائے کیونکہ ان الزامات کی تصدیق نہ ہو سکی کیونکہ لوگ غلط طور پر لاکھوں روپے کے الزامات لگاتے ہیں۔ مدعی مقدمہ نے مجھے جو بیان زیر دفعہ 161 ض.ف. دیا اس میں انہوں نے ATM کارڈ، گھڑی اور رقم کا کوئی ذکر نہ کیا ہے۔"

PW-6 further stated that security cameras installed at Ali Medical Centre do not cover the parking area and the alleged incident took place at the outer area of Ali Medical Centre, taxi stand, however, he further confirmed that:-

"یہ درست ہے کہ میں نے گواہان کا ذکر FIR میں نہ کیا ہے۔ گواہان کو وقوعہ کے چھ روز بعد ذکر ہوا ہے۔"

PW-6 confirmed that he had not put any effort for the identification of the accused through witnesses and no recovery of knuckle duster was made during the remand of respondent No.1.

17. The entire resume of the above referred evidence clearly demonstrates that the eye witnesses had not been able to establish their presence at the scene of occurrence and crime remained un-witnessed, whereas prosecution was bound to prove the case against accused beyond any reasonable doubt throughout and this burden can never be shifted to accused, therefore, conviction cannot be awarded in such like cases. Reliance is placed upon 2011 SCMR 941 "Abdul Majeed versus The State". Even otherwise, the statements of witnesses, whose presence at the crime spot is doubtful, it would be sufficient to discard the same as a whole. Although, prosecution tried to prove that PW-2 & PW-3 are chance witnesses but it was necessary for the prosecution to prove that in the normal course chance witnesses were not to be present on the spot unless he offered cogent, convincing and believable explanation justifying their presence there whereas, both the witnesses, PW-2 & PW-3, have failed to demonstrate their presence due to material contradictions between their statements and no corroboration is available on record among their statements, therefore, their evidence has no worth for conviction. Reliance is placed upon 2017 SCMR 596 "Rukhsana Begum & others versus Sajjad and others".

18. Despite the above referred position on record, respondent No.1 has also recorded his version through defence evidence 340(2) Cr.P.C. in which he has taken the stance with the following words:-

"مورخہ 4.08.2009 کو رات تقریباً 9.45 بجے کے قریب جب میں اپنا آخری مریض دیکھ کر باہر نکلا تو

ڈاکٹر آفتاب نے نذیراں بی بی کا reference دیتے ہوئے مجھے پہلے گالیاں دی اور میرے منہ پر تھپڑ مارا یہ سب

کچھ علی میڈیکل سنٹر کی پارکنگ میں لگے ہوئے C.C.T.V کیمرہ کے سامنے ہوا۔ جب میں نے انہیں روکنے

کی کوشش کی تو انہوں نے میرے پیٹ میں کئے مارے میں نے انکے بازو پکڑنے کی کوشش کی جس سے یہ نیچے گر

گئے اس آؤھے منٹ کی لڑائی میں ارد گرد کھڑے ہوئے Security Guards بہت سارے patients اور انکے لواحقین نے بھی دیکھا انہوں نے فوراً بچاؤ کروایا ڈاکٹر آفتاب نے مجھے قتل کرنے کی دھمکیاں دیں اور اسکے بعد اپنے گاڑی میں بیٹھ کر خود drive کر کے وہاں سے چلے گئے۔"

This specific stance gives a counter version of respondent No.1's side in a completely different manner while admitting the presence and scuffle on record. Similarly, respondent No.1 produced Muhammad Ejaz as DW-2, who was patient of the appellant and referred certain reservations against the treatment of appellant. Muhammad Latif, Constable was produced as DW-3 who was posted in PIMS emergency ward on behalf of Rescue 15 Service of the police department, stated before the Court that Ghulam Abbas/ constable brought Dr. Aftab Malik to emergency. The respondent No.1 produced Shafiq-ur-Rehman Head Constable as DW-4 who stated before the Court that at 10:15 pm, Dr. Aftab Malik reached at police station in injured condition whereafter injury statement was prepared that he was sent to PIMS hospital. Mehmood Sultan Raja, Account Officer, Ali Medical Centre was produced as DW-5 who stated before the Court that Investigation Officer has taken the entire material including the CCTV footage from the hospital.

19. Beside the defence version raised by respondent No.1, it is not necessary that if the defence has taken a specific stance in his statement U/S 342 Cr.P.C. or in his defence in statement under section 340(2) Cr.P.C. even then it is duty of the prosecution to prove the entire case at their own strength. It is settled proposition of law that instead of offering explanation the accused remained silent or offered a false explanation he cast a shadow upon himself, but this does not mean that the burden of proof had shifted onto the accused, as it was for the prosecution to prove its case. Reliance is placed upon 2015 SCMR 710 "Saeed Ahmed versus The State".

20. There is no cavil to the proposition that accused could take different stance during the course of cross examination which was merely in terms of suggestion. Accused could take several defences, but the prosecution could not improve the case by such kind of admission as accused being the favorite child of law was not debarred by any canon of law, not to take as much defences as he could, even inconsistent pleas taken by accused in cross-examination, would not give any benefit to the prosecution, nor same would be

made a reason for conviction of accused. Reliance is placed upon 2016 P.Cr.L.J Note 9 "Gul Muhammad versus The State & another".

21. It is also settled duty of prosecution to prove the guilt of the accused beyond any reasonable shadow of doubt and once the Court entertained reasonable doubt/doubts in the prosecution case, its benefit must be extended to the accused not as a grace but as of right. Reliance is placed upon 2016 SCMR 2073 "Wajahat Ahmed & others versus The State & others".

22. The core question raised in the entire case, as to whether the defence taken in the cross examination or in the statement U/S 340(2) Cr.P.C. will give any benefit to the appellant to prove the case of prosecution? It is settled proposition that any stance taken by the accused in the cross examination was merely in form of suggestion and even defence taken by the accused would not prove the entire case which stands on its own evidence, therefore, this Court come to the conclusion that the defence version brought on record by the respondent side will not give any benefit to the appellant/ prosecution in any manner. Reliance is placed upon 2010 SCMR 1009 "Muhammad Shah versus The State".

23. The entire discussion referred above in this case clearly demonstrates that the prosecution has failed to prove the case beyond any shadow of doubt against respondent No.1, there are material contradictions between the medical and eye witness account, prosecution witnesses PW-2 & 3 are planted witnesses who are in clear contradiction with each other on material points and even the complainant/ appellant has improved his case on manifolds which was not initially established and later on tried to fill-in the gaps. The testimony of PW-7 is full of contradictions with reference to the medical treatment given to the appellant in the hospital, the original document Ex.D.7/1-1 is not available on record whereas the two different documents referred in the original Court file reveal that there is a clear interpolation/ tempering in the medical evidence and the MLR referred in the statement of PW-7 is based upon outdoor ticket which was tempered and not available on record and even no explanation is available. The Investigation Officer has dishonestly investigated the matter as he has neither brought the CCTV footages nor even recorded the statements or evidence of the security guards of Ali Medical Centre and even he had recorded the statements of PW-2 & PW-3 eye witnesses after seven days

of alleged occurrence, hence, the entire prosecution evidence collected by the Investigation Officer has no worth as he himself was not authorized to investigate the matter, as he acknowledged the same before the Court.

24. In view of above reasons, instant appeal is devoid of merits and the same is hereby **dismissed**.

(MOHSIN AKHTAR KAYANI)  
JUDGE

**Announced in open Court on 03.11.2017.**

**Approved for Reporting.**

JUDGE

Irfan Ali