

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Criminal Appeal No.07 of 2019

Iqbal Hussain Swati

Versus

The State, etc.

Appellants by: Mr. Muhammad Aslam Choudhry, Advocate for appellant/Iqbal Hussain Swati.

*Mr. Mudassar Rizwan, Advocate for appellant/
Mst. Neelam.*

Respondent No.2 by: Malik Fakhar Ali, Advocate alongwith complainant.

*State by: Ms. Khadija Ali, State counsel, alongwith Naeemi,
Sub-Inspector.*

Date of hearing: 22.01.2021.

Ghulam Azam Qambrani, J.:- This judgment shall dispose of instant appeal bearing No.07 of 2019, Criminal Appeal No.18 of 2019 as well as Objection case vide diary No.872 of 2019, as they have arisen out of the same impugned judgment.

2. Succinctly, the facts leading to the filing of the above criminal appeals are that Muhammad Rafique / complainant lodged a complaint (Ex.PU) with Police Station Lohi Bher, Islamabad, alleging therein that his son namely Muhammad Raqeeb, aged 29 years, was working with Aqalzada PW Contractor at Jinnah Garden Islamabad, and was living with his wife, Mst. Tazeem Bibi. The couple was blessed with a son and daughter, but relations between them were strained. Mst.Tazeem Bibi had filed a case against his deceased son Muhammad Raqeeb, as a consequence of which he was sent to Jail and was released therefrom in April 2015. Thereafter, he married with Mst. Neelam (accused-appellant), but the said marriage also failed and ended into divorce. He added that on 19.07.2015, he had received a call from Aziz Khan (PW-11) brother of Aqalzada (PW-13), who informed that the Motorcycle of Muhammad Raqeeb was standing at house No.23 Gali No.105

Jinnah Garden, Phase-I, Islamabad, while Muhammad Raqeeb himself was lying dead there. On receipt of this information, the complainant alongwith his brother Idrees, son namely Waseem and brother, Muhammad Shafique, rushed to the spot and reached there at about 05:00 p.m. where Aqalzada alongwith other persons was present. The complainant found that the dead body of his son Muhammad Raqeeb was lying there having fire arm injuries. He was wearing only shalwar on his person. Aqalzada informed the complainant that on 15.07.2015, Muhammad Raqeeb had accompanied him to Murree for plumbing work and when the work was over, Muhammad Raqeeb deceased asked him that he wanted to go to his house back. They came from Murree to Tramri Chowk at about 01:30 p.m. and during all this period on the cell phone of Muhammad Raqeeb his wife Mst. Tazeem had been calling from Tramri Chowk Muhammad Raqeeb hired a taxi car and went to Jinnah Garden. He added that on 09.07.2015 when brother of Aqalzada went to check the abovesaid house, he found the dead body of Muhammad Raqeeb lying there. The complainant expressed his strong apprehension that Mst. Tazeem Bibi and her relatives had committed the murder of Muhammad Raqeeb. Upon his complaint Ex.PU, formal F.I.R Ex.PB was registered under Section 302/34 PPC.

3. On receiving the information, Habib-ur-Rehman S.I in the company of Ehsan Ullah (ASI), Ejaz, Ashiq Hussain and Abdur Rehman (Constables) through official vehicle driven by Usman driver reached the spot Jinnah Garden Phase-I, Gali No.105, house No.23, Islamabad, and went inside the room and found that the dead body of Muhammad Raqeeb was lying prone there. The complainant handed over to him a written complaint which he forwarded to the Police Station with his endorsement through Ashiq Constable for registration of formal FIR. After completing the necessary formalities, he sent the dead body of Muhammad Raqeeb deceased to the Hospital under the escort of Ehsan-Ullah ASI and Ejaz constable for post-mortem. On the pointation and instruction of complainant and other PWs, he prepared un-scaled

site plan of the place of occurrence (Ex.P.DD), he had also collected blood through cotton from the spot and made the same into a sealed parcel and took the same into possession vide recovery memo Ex.PV. He also collected two bullets leads and three empties shells from the place of occurrence and took the same into possession through recovery memo Ex.PW. He had also taken into possession different miscellaneous articles lying there through recovery memo Ex.PH. He recorded the statements of five witnesses under Section 161 Cr.P.C and joined in the investigation 8 persons, who were present at the spot. He also prepared application to obtain the CDR record of the deceased Muhammad Raqeeb and other persons, who were under suspicion. He also prepared inquest report Ex.PB. He proceeded to Poly Clinic Hospital and moved an application for placing the dead body in the mortuary Ex.P.FF and recorded the statements of two witnesses under Section 161 Cr.P.C,. On 20.07.2015, the complainant and his brother had identified the dead body of Muhammad Raqeeb, upon which he prepared identification memo Ex.PY. He handed over the dead body of Muhammad Raqeeb to the legal heirs for burial. The MLO had handed-over the last worn clothes of the deceased which were taken into possession by him vide recovery memo Ex.PH. He had recorded the statement of four witnesses under Section 161 Cr.P.C. On his return, he handed over the case property to the Moharrar Malkhana for its safe custody. He got the scaled site plan of the spot prepared through Amer Shahzad draftsman/ PW-1. On 04.08.2015, the complainant expressed his suspicion for involvement of accused Mst.Neelam and Iqbal Hussain Swati in the occurrence and contended that the deceased Muhammad Raqeeb had made call from Cell No.0336-5369427 of Mehmood Akhtar on mobile No.0321-54691746, which is in the possession of accused Mst.Neelam and statement of Mehmood was recorded under Section 161 Cr.P.C. In support of complainant statement. On 10.8.2015, he had obtained the CDR record of accused nominated in the F.I.R vide recovery memo Ex.P.EE/1-25 and according to CDR, the accused nominated in the F.I.R were

not found at the place of occurrence. On 13.08.2015, he had sent the parcel of blood stained cotton through PW-8, Farrukh Aftab, to PFSL, Lahore.

4. He obtained additional mobile data consisting of 18 pages, which was taken into possession vide recovery memo Ex.PG/1-18. From the CDR record of mobile number, it came on record that the last call made from the mobile of Mehmood Akhtar by the deceased Muhammad Raqeeb was made on the mobile number of accused Mst. Neelum. It has also come from the mobile data that accused Mst. Neelum was in contact with accused Iqbal Hussain. On 25.08.2015, the complainant came in the Police Station and moved an application Ex.PU and his statement under Section 161 Cr.P.C was recorded. Thereafter, the investigation of the case was transferred to Muhammad Ishaq S.I. Subsequently, the investigation was again entrusted to him. He sent the recovered crime pistol 30-bore to NFSA Laboratory through PW-6, Iftikhar Hussain, 5276-C.

5. On 06.01.2016, accused Mst. Neelum was produced before the learned Magistrate for recording of her statement under Section 164 Cr.P.C in presence of accused Iqbal Hussain Swati. The forensic report of pistol 30 bore was received back. On 13.01.2016, he received the copy of statement of accused Neelum under Section 164 Cr.P.C. He prepared the challan under Section 173 Cr.P.C and sent the same to the Court concerned.

6. PW-17, Muhammad Ishaq S.I (Retd.) also partially investigated the case and deposed that on 27.08.2015, the investigation of the case was handed over to him. He arrested accused Farhana and obtained her two days physical remand. On 29.08.2015, the investigation of accused Farhana was conducted and then he went to District Swabi for arrest of rest of accused persons. On 30.8.2015, accused Farhana was produced before Court for physical remand but the Court remanded her to judicial custody. He arrested the accused Mst. Neelum and interrogated her. She was produced before Court and four days physical

remand was obtained and accused Farhana after being medically examined was sent to Adyala Jail on 01.09.2015. During the investigation, the accused Mst. Neelam disclosed that she can point out the place of occurrence. On her pointation he prepared memo of identification of the crime spot Ex.PS. He arrested Iqbal accused and upon his personal search one stamp paper pertaining to Talaq of accused Mst. Neelam Ex.P.I was recovered, which was taken into possession vide memo Ex.P.KK. He recorded the statements of witnesses under Section 161 Cr.P.C. He submitted an application for recording of statement of accused Mst. Neelam under Section 164 Cr.P.C. He arrested the remaining accused. The accused Iqbal made a disclosure and lead to the recovery of pistol 30 bore P.2. On unloading the pistol, 05 live bullets were recovered. On the same day the accused Iqbal got recovered last worn shirt of the deceased P.3, which was taken into possession vide recovery memo Ex.P.T. Iqbal accused also made pointation of the crime spot.

7. After completion of the codal formalities, charge was framed against the appellants by the learned trial Court to which they pleaded not guilty and claimed trial. In order to prove the guilt against the appellants, the prosecution examined as many as 17 (seventeen) witnesses in all.

8. On closure of the prosecution evidence, statements of appellants under Section 342 Cr.P.C were recorded, wherein all the incriminating evidence recorded in their presence was put to them, which they denied and claimed trial. They neither produced any witness in their defence nor opted to make statements on oath as envisaged under Section 340 (2) Cr.P.C.

9. On conclusion of trial and hearing arguments of both the sides, the learned trial court, vide the impugned judgment, convicted both the appellants and sentenced to Life Imprisonment. Being aggrieved, thereby, the appellants have filed the instant appeals seeking their acquittal.

10. Learned counsel for the appellant/ Iqbal Hussain alias Swati argued that this is an unseen occurrence and a blind murder; that whole case is based on circumstantial evidence wherein, according to law, all links must be connected with each other and if a single link is missing, whole case is collapsed; that the necessary links are missing, which has made whole case doubtful; that in the complaint firstly Mst. Tazeem and others were named as accused, but subsequently discharged; then Mst Neelam and her relatives were nominated but except Mst. Neelam all others were discharged; that entire case is based on presumptions, which how-so-ever strong may be, cannot take the place of proof; that there was no evidence worth the name against Iqbal Hussain Swati accused and he was involved in this case only on the statement of Mst. Neelam co-accused; that statement of Mst. Neelam under Section 164 Cr.P.C was recorded after expiry of her physical remand and 03 months after her arrest and that the said statement is inconsequential and no legal sanctity or authenticity can be attached to the same; that the prosecution has to stand on its own legs and not on the statement of the accused persons; that even the statement of Mst. Neelam accused having been recorded after 03 months of her arrest is dubious and cannot be relied upon; that the evidence led by the prosecution was so weak and feeble that the same could not result into conviction; that the learned trial Court has failed to appreciate the facts and circumstances of the case and law on the subject; that the prosecution has badly failed to bring home guilt to the accused and the evidence produced by it is shaky, weak, doubtful and unworthy of reliance, hence, the accused-appellant deserve acquittal.

11. Learned counsel for Mst. Neelam accused-appellant while reiterating the above arguments argued that Mst. Neelam, remained on physical remand but nothing incriminating could be recovered from her; that after expiry of remand period, she was sent to Judicial lock up; and that after 03 months of her confinement, her statement was recorded under Section 164 Cr.P.C; that there was no evidence on record to suggest that

Mst. Neelam, accused-appellant, has aided, abetted or committed the Qatl-e-Amd of Muhammad Raqeeb; that the learned trial Court has failed to appreciate the facts of the case and law on the subject in true perspective and arrived at an incorrect conclusion; that the impugned judgment is based on presumptions, hence the same cannot be sustained, and the appellant deserve acquittal.

12. On the other hand, learned State counsel as well as learned counsel for the complainant vehemently opposed the arguments advanced by learned counsel for the appellants by contending that the prosecution has produced sufficient and reliable evidence against the accused-appellants; that during the investigation, Mst. Neelam accused-appellant has made pointation of the place of occurrence; that she also made statement under Section 164 Cr.P.C before the Magistrate in which she has fully implicated herself as well as her co-accused; that she is eye witness of the occurrence; that her statement being inculpatory in nature can be safely relied upon; that the threatening messages made by Iqbal Hussain accused to PW Waseem were also produced, which fully incriminate the accused Iqbal Hussain; that last worn shirt of deceased was recovered at the pointation of Iqbal Hussain accused; that crime pistol was also recovered from the possession of Iqbal Hussain accused-appellant, which fully connect them with the commission of the crime; that the impugned judgment is well reasoned and passed in accordance with law and does not warrant any interference.

13. I have given my anxious consideration to the contentions raised by the learned counsel for the parties and perused the record. It is better and appropriate to give an outline of role of PWs and to reproduce important facts in chronological order to resolve the controversy between the parties;

- i) PW-1 is Malik Aamer Shahzad draftsman, who visited the spot, took rough notes, prepared, on the basis whereof, he prepared the site plan Ex.P.A and handed over the same to the police*

ii) PW-2 Dr. Ghulam Mustafa Solangi, who conducted the post mortem of the dead body of deceased Muhammad Raqeeb. According to him, it was a decomposed dead body of a young male. He observed the following injuries:-

- 1) Lacerated circular entry wound left mid axillary line 10 c.m. deep;
- 2) Lacerated circular entry wound 21 c.m deep below left scapula;
- 3) Lacerated circular exit wound 12cm back of right chest;
- 4) Lacerated wound on exit lateral to right groin 22 c.m

In his opinion the deceased died due to shock and hemorrhage due to fire shot wounds. All the injuries were ante-mortem in nature and were sufficient to cause death in ordinary course of nature. He prepared the post mortem report Ex.P.C.

iii) Azhar Hussain ASI appeared as PW-3. He was posted as Moharrar at P.S Lohi Bher. He received the parcels and case property from the I.O from time to time, placed them in Malkhana in safe custody and dispatched the same to the concerned quarters.

iv) Ejaz Shah constable appeared as PW-4. He remained associated with the I.O. He received parcels from the Moharrar of crime empties and deposited the same in Forensic Science Agency F-10/3, Islamabad. He collected the post mortem report, call detail reports etc and produced the same before the I.O

v) Ejaz Hussain Shah LHC appeared as PW-5. He received the last worn clothes of deceased from the Doctor and produced the same before the I.O, who secured the same into police possession vide memo Ex.P.H signed by him.

vi) Iftikhar Hussain HC appeared as PW-6 and deposed to have received parcel of pistol with five live bullets from the Moharrar and deposited the same in the NFSL, Islamabad,.

vii) Murtaza Qamar ASI appeared as PW-7. He was posted as Moharrar Malkhana. He handed over parcel said to contain pistol 30 bore with 05 live bullets to Iftikhar Hussain HC for onward transmission of the same to the office of NFSL.

viii) Farukh Aftab constable appeared as PW-8. He had taken the parcel of blood stained cotton from the

Moharrar and deposited the same in the office of PFSA. He also witnessed the recovery of crime pistol at the pointation of accused Iqbal Swati

- ix) Ehsan-ullah ASI appeared as PW-9. He had accompanied the I.O Habib-ur-Rehman S.I to the spot and escorted the dead body to the Hospital for post mortem. After post mortem, he handed over the dead body to its legal heirs.*
- x) Syed Jawad Muzaffar PW-10 was posted as Assistant Commissioner. He had recorded the statement of the accused Mst. Neelam under Section 164 Cr.P.C, Ex.P.N, in presence of Iqbal Hussain accused.*
- xi) Aziz Khan appeared as PW-11. He has visited under construction house No.23, Street No.105 Phase-I, Jinnah Garden , Islamabad, and found that main gate of the house was open and Motor cycle of the deceased was standing in the car porch and in the adjacent room dead body of deceased was lying. He immediately informed the chowkidar of Jinnah garden and relatives of the deceased.*
- xii) Waseem Ahmad PW-12 is brother of the deceased, who deposed that on 19.07.2015, he was present in his house, when Aziz Khan PW informed his father about the murder of Muhammad Raqeeb. He along with his father and others visited the spot and found that Aqalzada, Aziz Khan PWs present at the spot. Police was also present at the spot. He is also witness of various recovery proceedings.*
- xiii) PW-13 is Aqalzada. He deposed that the deceased was working with him as plumber. On 15.07.2015, he had taken Muhammad Raqeeb deceased to Nathyagali for work and returned therefrom on the same day. During the travelling the deceased was continuously receiving calls. After reaching Islamabad, Muhammad Raqeeb deceased hired a taxi and went to Jinnah Garden. On 19.07.2015, he asked his brother Aziz Khan to visit House No.23 Jinnah Garden to check the under-construction water tank. Aziz Khan reached Jinnah Garden and informed him of the murder of Muhammad Raqeeb deceased.*
- xiv) PW-14 is Muhammad Rafiq is the complainant of the case, who reproduced the contents of the complaint (Ex.PU) In addition to that, he deposed that on 25.08.2015, he nominated accused Mst. Neelam and others for the murder of Muhammad Raqeeb through his application Ex.P.AA.*

On 21.12.2015, he moved an application to SSP, Islamabad, in which he also nominated Iqbal Husain Swati accused.

xv) PW-15 is Mehmood Akhtar, who deposed that he and Muhammad Raqeeb on 15.8.2015 had gone to Nathiya Gali and on return they dropped Muhammad Raqeeb at Tramri Chowk. Subsequently, he came to know that Muhammad Raqeeb has been murdered.

xvi) PW-16 is Habib-ur-Rehman S.I, who is I.O of the case and crux of his evidence has been reproduced above. Similarly, Muhammad Ishaq S.I appeared as PW-17. His statement has also been reproduced above.

14. After closure of prosecution case, statements of accused were recorded under Section 342 Cr.P.C wherein all incriminating evidence was put to them to them. Iqbal Swati accused in his statement stated as under:-

"It is a case of unseen occurrence and was involved to save the original culprits who were nominated in the FIR and others who were involved in statement recorded after that"

15. Mst. Neelam accused in her statement came up with the following version:-

"I have no concern with the alleged offence. Occurrence took place in my presence. I tried to save the deceased but could not save him"

16. Both the accused persons denied to appear as their own witness under Section 340 (2) Cr.P.C.

17. I have gone through the entire evidence and other material available on record with the above assistance of learned counsel for the parties. After doing the said exercise, I have gathered that in this case that it is an unseen occurrence and exact time, mode and manner of occurrence is not mentioned in the complaint or in the F.I.R. The factum of murder of deceased was discovered only when on 19.07.2015, Aziz Khan PW visited the spot and found that the dead body of deceased Muhammad Raqeeb was lying there in pool of blood having maggots thereon. He informed the father of

deceased about the unfortunate occurrence through telephone. On receipt of information about the occurrence, the complainant reached the spot and lodged a complaint (Ex.PU) with Habib-ur-Rehman S.I, wherein, Mst. Tazeem and others were named as accused. All of them were found innocent during the investigation and were discharged. The record reveals that subsequently, the complainant through supplementary statement nominated Mst.Neelam and others as accused and then through an application moved to the SSP, (Ex.P.CC) he nominated Iqbal Hussain Swati as accused. However, all others were discharged while the present accused were challaned to face trial.

18. From the evidence led by the prosecution, it is evident that the prosecution is relying on circumstantial evidence to prove the offence, but circumstantial evidence can be believed if all pieces of such evidence are interlinked and inter-laced in such a manner that their appraisal may conclusively lead to an inescapable conclusion that the accused has committed the offence. The circumstantial evidence, if corroborated by such pieces of evidence, which, if joined together make the case conclusively proved, then the same must be accepted. It is a prominent rule of appreciation of evidence that the entire evidence has to be examined and conclusion has to be drawn from it. But while examining each piece of evidence their infirmities and weakness cannot be ignored. In case where any piece of part of evidence is defective, unreliable, false, contradictory, inadmissible and not credible, it cannot be made part and parcel of the other pieces of evidence for the purposes of deducing the inferences and accumulative effect of the entire evidence. It is a settled proposition of law that where the chain of circumstances established against the accused persons raises a strong probability that he is guilty of the offence charged, the same must be considered in a positive manner. I am also conscious of the fact that before guilt of an accused can be inferred merely from inculpatory circumstances those circumstances must be found to be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of

guilt of the accused. It is also equally well settled that the circumstances sought to be relied upon must have been established beyond all doubts but this only means a reasonable doubt i.e. a doubt such as would assail a reasonable mind and not any and every kind of doubt and much less a doubt conjured up by a pre-conceived notions. The fundamental principle of criminal justice is that circumstantial evidence should point inevitable to the conclusion that it was the accused and the accused only, who was/ were the perpetrators of the offence and such evidence should be incompatible with the innocence of the accused.

19. In the instant case during the course of investigation, the accused initially nominated in the complaint were found innocent, hence, they were discharged from the case. On the supplementary statement of the complainant, present accused-appellant Mst. Neelam and her relatives were involved and subsequently through an application moved to the SSP, the appellant Iqbal Hussain Swati was nominated as accused. However, during the investigation both of them were found guilty by the investigation officer and challaned to the learned trial Court to face trial.

20. As reproduced above, in this case, the prosecution is relying on the statement of Mst. Neelam appellant recorded under Section 164 Cr.P.C. wherein, she held her co-accused Iqbal Hussain Swati responsible for murder of Muhammad Raqeeb, deceased. The record reveals that Mst. Neelam appellant was arrested in this case on 30.08.2015 and after exhausting her physical remand period, prescribed under the law, she was remanded to Judicial custody. Subsequently, on 21.12.2015, an application was moved before the learned Area Magistrate for recording of statement of Mst. Neelam appellant under Section 164 Cr.P.C and her statement was recorded on 16.01.2016. There is no provision in the Criminal Procedure Code, where-under, after expiry of statutory remand period of 14 days, an accused person once having been remanded to Judicial custody can again be associated into investigation and his/ her statement under Section 164 Cr.P.C can be recorded. No plausible explanation is available on behalf of the prosecution as to

why she was not produced before the Magistrate for recording of statement under Section 164 Cr.P.C, while she was on physical remand. In absence of the same, it would be presumed that the statement of Mst.Neelam, appellant made under Section 164 Cr.P.C after a period of more than three months, is an afterthought and the entire process of the same having been made in violation of the law, renders the above said statement legally invalid and not acceptable; hence the same is excluded from consideration. In this regard, I am fortified by the law laid down by the Hon'ble Supreme Court of Pakistan reported as "Muhammad Pervez and others V. The State and others" (2007 SCMR 670). First question in the instant case is that how the investigation officer came to know that the appellant Neelam was willing to record her statement under Section 164 Cr.P.C. Whereas, as per record, prosecution has failed to produce on record the source of any information with regard to the confessional statement, which the appellant Neelam wanted to record before the learned Illaq Magistrate when the challan had already been submitted before the learned trial Court after completion of the investigation. The confessional statement made by the appellant Neelam can in no way be treated as a confessional statement made voluntarily and made without duress. During proceedings of the instant case, vide order dated 15.01.2021, learned counsel for the complainant submitted that the parties have arrived into a compromise with the appellant Neelam and sought time for placing on record the said compromise deed.

21. The next proposition which boils down for determination is whether the positive report of the Forensic Science Laboratory qua the crime pistol can be made basis for recording or maintaining conviction of the appellants or not. Perusal of the record reveals that the crime pistol was allegedly recovered at the pointation of Iqbal Hussain Swati appellant on 09.09.2015 and the same was allegedly sent to the Forensic Science Laboratory on 09.12.2015 i.e. with an inordinate and unexplained delay of (3) three months. Therefore, such a report cannot be relied upon. I am supported in my view from the law enunciated in 2009 P.Cr.L.J 506

(Muhammad Nawaz and another Vs. the State). In addition to above, the crime pistol was allegedly got recovered by the Iqbal Hussain appellant from a room situated near to Jinnah Garden. Admittedly, no respectable person from the locality was joined into recovery proceedings which is a violation of the provisions of Section 103 Cr.P.C. Delay in dispatch of the crime weapon to the Forensic Science Laboratory has rendered the positive report of the Forensic Science Laboratory as unreliable. Reliance is also placed upon the case reported as 1999 Cr.L.J 649 Lahore Sarfaraz etc. Vs. the State. The report of FSL, according to which the crime empties recovered from the spot matched with the pistol recovered from his possession cannot its best be taken as corroborative and not evidence of charge. This, *per-se* cannot prove the guilt of the appellant where his identification has not been established beyond doubt.

22. As reproduced above, it is an unseen occurrence and there is no direct evidence in this case; there is no eye witness account; there is no evidence of last seen; no direct evidence has come on record to suggest or prove the time, mode and manner of the occurrence; motive for the crime has also not come on record; the complainant has nominated different persons as accused in this case, who were proved innocent and discharged from the case; Mst.Neelam appellant was involved through a supplementary statement which cannot be equated with F.I.R; even in the supplementary statement suspicion were expressed against Mst.Neelam as to her involvement in this case; Mst.Neelam appellant was arrested, investigated and remanded to judicial custody; her statement under Section 164 Cr.P.C was got recorded after three months of her lodgment in judicial lock-up, after exhausting her prescribed period of physical remand, which is a glaring violation of law, therefore, the same cannot be safely relied upon; the recoveries were also effected in violation of the provisions of Section 103 Cr.P.C, though the report of Forensic Science laboratory qua pistol and empties is positive, but the same could not safely relied upon as the pistol was sent to the laboratory

after 03 months. All these factors cast serious doubts upon the prosecution story and render the same highly doubtful.

23. The learned trial Court while passing the impugned judgment has not taken into consideration the material legal aspects and proceeded to record conviction on the basis of a highly cryptic, infirm and incredible evidence resulting into mis-carriage of justice, hence the same cannot be sustained.

24. For the aforesaid reasons, this Court hardly finds any reliable and confidence inspiring evidence to connect the appellants with the commission of the alleged offence, therefore, by extending the benefit of doubt to the appellants, both the criminal appeals No.07 and 18 of 2019 filed by Iqbal Hussain Swati and Mst. Neelam, appellants, are **allowed** and sentences awarded to them vide impugned judgment dated 15.12.2018 passed by the learned Additional Sessions Judge-East, Islamabad, is hereby set-aside. The appellants Iqbal Hussain alias Swati and Mst. Neelam are acquitted of the charges. The appellants, being in custody, are ordered to be released forthwith, if not required in any other case.

25. Since, main appeal bearing No.07 of 2019 has been filed by the same appellant, against same impugned judgment and with the same prayer, therefore, second appeal on the same subject is not maintainable, therefore, office has rightly raised objection vide diary No.872/ 2019, which is accordingly sustained. File of the same shall also be consigned.

(GHULAM AZAM QAMBRANI)
JUDGE

Announced in open Court on this 25th day of February, 2021.

JUDGE

Saeed Akhtar

Approved for reporting.