

H C J D A 38
JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE.
JUDICIAL DEPARTMENT

Criminal Appeal No. 36587 of 2019.

(Rafaqat Ali. Versus The State).

J U D G M E N T.

Date of hearing.	<u>07.03.2023.</u>
Appellant by:	Mr. Basharat Hussain Gondal, Advocate.
State by:	Mr. Nisar Ahmad Virk, Deputy Prosecutor General for the State.
Complainant by	M/s Mujtaba Hassan Tatla & Aftab Ahmad Toor, Advocates.

MALIK SHAHZAD AHMAD KHAN J.:- By this judgment, I proceed to decide **Criminal appeal No. 36587 of 2019**, titled '*Rafaqat Ali Vs The State*' filed by the appellant, namely, Rafaqat Ali against his conviction and sentence passed by the learned Addl. Sessions Judge, Daska District Sialkot *vide* judgment dated 30.04.2019. The appellant, namely, Rafaqat Ali along with Muhammad Adeel (co-convict tried separately being juvenile), Muhammad Ali & Sultan Bakhsh (co-accused since acquitted) was tried in case FIR No. 218 dated 09.06.2018 registered at Police Station Satrah District Sialkot offences under Sections 302/147/149 of PPC by the learned Addl. Sessions Judge, Daska District Sialkot and after conclusion of the trial *vide* judgment dated 30.04.2019, the learned trial Court convicted and sentenced the appellant as under:-

Under Section 302 (c) of PPC to undergo rigorous imprisonment for ten (10) years for committing the murder of Muhammad Adil deceased

Benefit of Section 382-B of Cr.P.C., was also extended in favour of the appellant. The learned trial Court however, acquitted Muhammad Ali & Rana Sultan Bakhsh co-accused by extending them the benefit of doubt.

2. Brief facts of the case as given by the complainant Abdul Sattar (PW-10) in his complaint (Ex.PB/1), on the basis of which the formal FIR (Ex.PB) was chalked out, are that on the intervening night of 08/09.06.2018 he (complainant) was sleeping on the roof of his house. At about 01:00 *a.m.*, (night) he suddenly woke up on hearing the noise of quarrel. The complainant went from his roof to the roof of his neighbour Rana Sultan Bakhsh (co-accused since acquitted) and in the light of electric bulb, he saw that Rafaqat (appellant), Muhammad Adeel (co-convict), Rana Muhammad Ali (co-accused since acquitted), Rana Sultan Bakhsh *alias* Sabir (co-accused since acquitted) and two unknown accused persons whom the complainant (PW-10) could identify on coming before him, were beating his (complainant's) son, namely, Muhammad Adil deceased with '*dandas*' and '*sotas*' while he (Muhammad Adil deceased) was lying on the ground. The complainant (PW-10) raised hue and cry to save his son on which Muhammad Iqbal (given up PW) and Muhammad Bilal (PW-11) reached at the spot. In the meanwhile, the accused persons kept on beating Muhammad Adil deceased with '*dandas*' and '*sotas*'. The complainant party rescued Muhammad Adil deceased from the clutches of the accused persons. Accused persons fled away from the spot while extending threats of dire consequences and giving abused to the complainant party. They (complainant party) picked Muhammad Adil deceased in injured condition and shifted him to the hospital for medical treatment but he succumbed to the injuries on the way to the hospital.

The motive behind the occurrence was that a few days prior to the occurrence, hot words were exchanged between Muhammad Adeel co-convict and Muhammad Adil deceased.

3. After submission of report under Section 173 of Cr.P.C., and completion of all the codal formalities, the learned trial Court framed charge against the appellant & his co-accused on 15.10.2018, to which they pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution produced twelve (12) witnesses during the trial. Prosecution also produced documentary evidence as Exh.PA to Exh.PN and closed its evidence. Statements of the appellant & his co-accused under Section 342 of Cr.P.C were recorded by the learned trial Court wherein they refuted the allegations levelled against them while stating that on the night of occurrence Muhammad Adil deceased entered the house of accused party to commit rape with

the niece of the appellant, namely, Sana, whereupon, the accused party raised hue and cry due to which people gathered at the spot and Muhammad Adil deceased was tortured by the mob. The appellant or his co-accused however, neither made their statements on oath as envisaged under Section 340 (2) of Cr.P.C., nor they produced any witness in their defence.

5. The learned trial Court *vide* its judgment dated 30.04.2019 found the appellant, namely, Rafaqat Ali guilty for the offence under Section 302 (c) of PPC and convicted and sentenced him as mentioned and detailed above. The learned trial Court however, *vide* the same judgment acquitted Muhammad Ali and Sultan Bakhsh co-accused while extending them the benefit of the doubt. Muhammad Adeel co-accused was separately tried being juvenile and he was convicted & sentenced for offence under Section 302(c) of PPC *vide* the judgment of even date *i.e.*, 30.04.2019 passed by the learned Addl. Sessions Judge, Daska District Sialkot.

6. It is contended by learned counsel for the appellant that the appellant is absolutely innocent and he has falsely been implicated in this case by the complainant being in league with the local police; that there is delay of more than six (06) hours in lodging the FIR which has created doubt in the prosecution story; that the occurrence was unseen and the prosecution eye witnesses are chance witnesses; that there is conflict between the ocular account and the medical evidence of the prosecution as the prosecution eye witnesses failed to explain injuries Nos. 8 to 11, which were burn marks of electric shocks, noted by the Medical Officer during postmortem examination on the dead body of Muhammad Adil deceased; that the prosecution has also failed to prove the motive part of the occurrence; that nothing has been recovered from the appellant and the alleged recovery of ‘*danda*’ has been planted against the appellant; that co-accused of the appellant, namely, Muhammad Ali and Sultan Bakhsh having the similar role have been acquitted by the learned trial Court and appeal against their acquittal has also been dismissed by this Court *vide* order dated 07.12.2022 therefore, the appellant cannot be convicted & sentenced on the basis of same prosecution evidence which is lacking independent corroboration; that the prosecution has miserably failed to prove its case against the appellant beyond the shadow of doubt therefore, his appeal may be accepted and he may be acquitted of the charge by extending him the benefit of doubt.

7. On the other hand, it is contended by learned Deputy Prosecutor General for the State assisted by learned counsel for the complainant that FIR in this case was promptly lodged which rules out the possibility of any fabrication or concoction; that the appellant was specifically named in the FIR with the role that he along with his co-accused while armed with '*dandas*' caused injuries on the body of Muhammad Adil deceased and the role attributed to the appellant by the prosecution eye witnesses is fully supported by the medical evidence; that the prosecution case against the appellant is further corroborated by the recovery of '*danda*' (P-1) on his pointation; that acquittal of co-accused is of no avail to the appellant because Sultan Bakhsh co-accused was declared innocent by the police, whereas, Muhammad Ali co-accused was not resident of the place of occurrence hence, case of acquitted co-accused is distinguishable from the case of the appellant; that the motive was also proved by the prosecution through reliable evidence of prosecution witnesses; that there is no substance in the appeal filed by the appellant hence, the same may be dismissed.

8. Arguments heard. Record Perused.

9. According to the prosecution's own case, the occurrence in this case took place in the house of the appellant at 01:00 *a.m.*, on the intervening night of 08/09.06.2018 but the FIR was lodged on 09.06.2018 at 07:15 *a.m.*, and as such, there is delay of 06 hours and 15 minutes in lodging the FIR. The distance between the police station and the place of occurrence was 5-kilometers. Abdul Sattar complainant (PW-10) has also stated during his cross-examination that he had the facility of car at his disposal on the night of occurrence through which he shifted Muhammad Adil deceased from the place of occurrence to the hospital. Relevant part of his statement in this respect reads as under:-

"I and my son Tahir took the deceased in injured condition in a car to hospital, situated at Satrah."

Under the circumstances, the abovementioned gross delay in reporting the matter to the police has created doubt regarding the truthfulness of the prosecution story. I am therefore, of the view that the FIR was not promptly lodged in this case therefore, possibility of deliberations and concoctions in the prosecution story cannot be ruled out in this case. Reliance in this respect may be placed on the cases reported as '*Akhtar Ali and others Vs The State*' (2008 SCMR 6), '*Nazeer Ahmad Vs Gehne*

Khan and others’ (2011 SCMR 1473) & Mehmood Ahmad and three others Vs The State and another’ (1995 SCMR 127).

10. It is further noteworthy that postmortem examination on the dead body of Muhammad Adil deceased was conducted on 09.06.2018 at 11:40 a.m., i.e., with the delay of 10 hours and 40 minutes from the occurrence. The said delay is also suggestive of the fact that the prosecution eye witnesses were not present at the spot at the relevant time and the abovementioned delay was consumed in procuring the attendance of fake eye witnesses. In the case of Muhammad Ilyas Vs Muhammad Abid alias Billa and others’ (2017 SCMR 54), the Apex Court of the country was pleased to observe that delay of 09 hours in conducting the postmortem examination suggests that prosecution eye witnesses were not present at the spot at the time of occurrence therefore, the said delay was used in procuring the attendance of fake eye witnesses. Relevant part of the judgment at **page No. 55** reads as under:-

“2.Post-mortem examination of the dead body of Muhammad Shahbaz deceased had been conducted after nine hours of the incident which again was a factor pointing towards a possibility that time had been consumed by the local police and the complainant party in procuring and planting eye-witnesses and cooking up a story for the prosecution. ...”

Similar view was taken by the Hon’ble Supreme Court of Pakistan in the case of Zafar Vs The State and others’ (2018 SCMR 326).

11. Ocular account of the prosecution was furnished by Abdul Sattar complainant (PW-10) and Muhammad Bilal (PW-11). It was the case of the prosecution that on the night of occurrence, the complainant on hearing the noise of hue and cry, woke up and went to the roof of Rana Sultan Bakhsh (co-accused since acquitted) who was his neighbour, wherefrom, he witnessed the occurrence but during his cross-examination, he (complainant) stated that his house was not situated in the street in which the house of the accused persons was situated. He further stated that if one has to go from his house to the house of the accused persons then he had to enter his street and then to the street of the accused persons. Relevant parts of his statement in this respect read as under:-

“My house is not situated in the street in which house of accused persons is situated.....It is correct that my house is not adjacent to the house of the accused persons. If one wants to go from my house to the house of accused persons, he has to enter in my street and then towards the street of the accused persons. The

distance between the door of my house and that of house of accused persons is 30/35 feet. If one wants to go from my house to that of the house of accused persons, he has to cross two houses and two Havelis of other persons before entering the house of accused persons.”

The story narrated by the complainant during his cross-examination has negated the story narrated by him in the FIR.

12. It is further noteworthy that conduct of the prosecution eye witnesses in this case is highly unnatural. According to the prosecution case, the complainant party was comprising of three (03) adult male members, namely, Abdul Sattar complainant (PW-10), Muhammad Bilal (PW-11) and Iqbal (given up PW). Abdul Sattar complainant (PW-10) is real father of Muhammad Adil deceased. He also stated during his cross-examination that Muhammad Bilal (PW-11) was his paternal cousin. It was the case of the prosecution that the appellant and his co-accused were armed with ‘*dandas*’ at the time of occurrence and as such, the accused persons were not armed with any formidable weapon like gun, pistol *etc* but the abovementioned witnesses kept on standing like silent spectators and allowed the appellant and his co-accused to inflict, as many as, 17 injuries on the body of Muhammad Adil deceased. They did not try to rescue Muhammad Adil deceased from the appellant and his co-accused during the occurrence or to apprehend them at the spot, after the occurrence. The abovementioned conduct of the prosecution eye witnesses is highly unnatural which further shows that they were not present at the spot at the relevant time. The Hon’ble Supreme Court of Pakistan in the case of ‘Liaquat Ali Vs. The State’ (2008 SCMR 95) at Para No.7, observed regarding conduct of the witnesses of ocular account as under:-

“2. The prosecution story briefly stated is that on the fateful day at about 8.00 a.m. complainant Shameer (P.W.7) was going to the “Lumberdar” (Revenue Officer) to pay “Abyana” and at that time his cousin namely Fazil deceased was going ahead of him at some distance. Suddenly within his view Liaquat Ali appellant armed with a knife appeared and raised a Lalkara that Fazil would not be spared and thereafter gave him successive knife blows on various parts of his body. On hue and cries raised, Muhammad Siddique (P.W.8), Ranjha and Musa (not produced) were attracted to the spot. They tried to rescue Fazil but on being threatened by Liaquat they were unable to protect Fazil deceased and within their view he succumbed to the injuries and died.....

3.....•

4.....•
5.....•

5-A. Having heard learned counsel for the parties and having gone through the evidence on record, we note that although P.W.7 who is first cousin and brother-in-law of Fazil deceased claims to have seen the occurrence from a distance of 30 ft. (as given in cross-examination) and two other witnesses namely Musa and Ranjha were also attracted to the spot but none rescued Fazil deceased and appellant had a free hand to inflict as many as 9 injuries on his person. The explanation given by these witnesses that since Liaquat Ali had threatened them, therefore, they could not go near Fazil deceased to rescue him is repellant to common sense as Liaquat Ali was not armed with a fire-arm which could have scared the witnesses away. He was a single alleged assailant and if the witnesses were there at the spot they could have easily overpowered him. This makes their presence at the spot doubtful.....”

Likewise, in the case of ‘Pathan Vs. The State’ (2015 SCMR 315) at Para No.4, the Apex Court of the country was pleased to observe as under:-

“.....The appellant was armed only with scissors not a formidable weapon of destruction. The complainant is the son of the deceased while Baradi and the other PW Muhammad Yousaf are also related to the deceased. The causing of such large number of injuries one after another to the deceased with scissors must have consumed reasonable time due to the pause in between the first injury and the last one but all the three PWs including the son with a strong stature and built remained as silent spectators. They did not react or showed any response when the accused was causing the injuries. No man on the earth would believe that a close relative would remain silent spectator in a situation like this because their intervention was very natural to rescue the deceased but they did nothing nor attempted to chase the accused and apprehend him at the spot.”

Similar view was taken in the case of ‘Zafar Vs. The State and others’ (2018 SCMR 326).

13. It is also noteworthy that there is conflict between ocular account and the medical evidence of the prosecution. Dr. Kamran Malik (PW-8) conducted postmortem examination on the dead body of Muhammad Adil deceased and found 17 injuries on his body. According to his evidence, injuries No. 8 to 11 were the marks of burns and electric shocks. Injury No. 11 was burn scars total 5 in number which means that there were, as many as, nine (09) burn scars and electric shock marks on the body of Muhammad Adil deceased but none of the prosecution eye witnesses stated in his evidence that as to how the abovementioned injuries were received by Muhammad Adil deceased. Had the prosecution witnesses been present at the spot at the relevant time then they should have explained the abovementioned injuries on the body of the deceased. I have further noted that no electric wire or any

other weapon which can cause burn marks or electric shock marks, has been recovered from the possession of the appellant. In the case of 'Irfan Ali Vs The State' (2015 SCMR 840), the Hon'ble Supreme Court of Pakistan in a similar situation observed in paragraph No. 11 at Page No. 844 as under:-

"11. The most striking feature of the case is that in the FIR complete photographic narration of the entire tragedy has been given so much so, Muhammad Khan acquitted accused and the appellant were attributed causing specific injuries with the fire shots of 30-bore pistols at the deceased. With such degree of accuracy each and every detail of the incident was given however, it was not due to mental disorientation that the dagger blows inflicted on the deceased found during the autopsy on the dead body, could not be noticed by the complainant. This doubt of reasonable nature and substance would strongly suggest that the complainant and the other eye-witnesses were not present at the spot, therefore, lodging the report after more than 3 hours and spending 1-1/2 hour at the spot with the dead body, no room was left for this glaring omission. This omission is very fatal to the prosecution case and it is established that crime was an unwitnessed one."

Likewise in the case of 'Usman alias Kaloo Vs The State' (2017 SCMR 622), while reiterating the abovementioned principle of appreciation of evidence in criminal cases, the august Supreme Court of Pakistan extended the benefit of doubt of the accused of the said case, inter-alia, on the ground that the eye witnesses could not mention in their statements the exact number of injuries sustained by the deceased during the occurrence. Relevant part of the abovementioned judgment at page No. 625 reads as under:-

"3.....Some of the above mentioned eye-witnesses had maintained that the deceased had received only one injury at the hands of the appellant but the Postmortem Examination Report shows that the deceased had received as many as 8 injuries on different parts of his body....."

It is further noteworthy that Dr. Kamran Malik (PW-8) has neither mentioned the probable time that elapsed between the injuries and death, as well as, probable time that elapsed between death and postmortem examination in the postmortem report (Exh.PH) nor he mentioned the abovementioned details in his evidence recorded by the learned trial Court. He frankly conceded during his cross-examination that he normally mentions the duration between the injuries and death and between death and postmortem examination in the postmortem reports. Under the circumstances, it is not determinable in this case that what was the probable time

of occurrence when Muhammad Adil deceased received injuries on his body. Under all the abovementioned circumstances, I have come to this conclusion that the ocular account of the prosecution is not supported by the medical evidence.

14. Motive behind the occurrence was that few days earlier to the occurrence, hot words were exchanged between Muhammad Adil deceased and Muhammad Adeel co-convict. No specific date, time and place of the motive occurrence has been brought on the record by any of the prosecution witnesses. No reason of the earlier quarrel which took place between Muhammad Adil deceased and Muhammad Adeel co-convict has been stated by any of the prosecution witnesses. A vague motive was alleged by the prosecution which has not been proved in this case and the learned trial Court has rightly disbelieved the motive part of the prosecution case in the impugned judgment. Moreover, the prosecution story of motive does not appeal to a prudent mind because if there was any earlier quarrel between the deceased and Muhammad Adeel co-convict, then what was deceased doing in the house of accused persons at the odd hours of night (01:00 *a.m.*). The prosecution evidence in this respect is completely silent, which makes the prosecution story further doubtful.

15. Insofar as the recovery of '*danda*' (P-1) on the pointation of the appellant is concerned, it is noteworthy that as per prosecution case, the aforementioned '*danda*' (P-1) was recovered after the joint disclosure of the appellant along with his co-convict, namely, Muhammad Adeel and Muhammad Ali (co-accused since acquitted) and as such, the said recovery becomes doubtful in the eye of law. It is further noteworthy that the aforementioned '*danda*' (P-1) was not stained with blood and as such, there is nothing on record to connect the said recovery with the occurrence. Moreover, the recovered '*danda*' (P-1) is of common pattern and is available in the markets easily and as such, the same can be planted against the appellant. Under the circumstances, it is not safe to rely upon the aforementioned recovery of '*danda*' (P-1) against the appellant and the said recovery was rightly disbelieved by the learned trial Court.

16. It is further noteworthy that Rafaqat Ali appellant along with Muhammad Ali and Rana Sultan Bakhsh (co-accused since acquitted) was assigned the joint role of inflicting '*danda*' blows on the body of Muhammad Adil deceased by the prosecution eye witnesses. Abovementioned Muhammad Ali and Rana Sultan Bakhsh co-accused have been acquitted by the learned trial Court *vide* impugned

judgment dated 30.04.2019, whereas, Crl. Appeal No. 36580 of 2019 filed against the acquittal of the said co-accused has already been dismissed as having been withdrawn after arguing the same at length, by this Court *vide* order dated 07.12.2022. Although learned counsel for the complainant has tried to distinguish the case of the appellant from the case of Rana Sultan Bakhsh @ Sabir co-accused since acquitted on the ground that the abovementioned acquitted co-accused was declared innocent by police, whereas, the appellant was found guilty by the Investigating Officer but it is by now well settled that the police opinion becomes irrelevant after recording of prosecution evidence by the learned trial Court, as observed by the Hon'ble Supreme Court of Pakistan in the case of 'Muhammad Ahmad (Mahmood Ahmed) and another Vs The State' (2010 SCMR 660), therefore, the case of the appellant cannot be distinguished from the case of acquitted co-accused merely on the basis of police opinion. Under the circumstances, the prosecution evidence which has been disbelieved against the abovementioned co-accused cannot be believed against the appellant without independent corroboration which is very much lacking in this case. Reliance in this respect may be placed on the cases of 'Akhtar Ali and others Vs The State' (2008 SCMR 6), 'Muhammad Ali Vs The State' (2015 SCMR 137), 'Muhammad Akram Vs The State' (2012 SCMR 440) & 'Ulfat Hussain Vs The State' (2018 SCMR 313).

17. Learned Deputy Prosecutor General assisted by learned counsel for the complainant has next argued that the appellant has admitted in his statement recorded under Section 342 of Cr.P.C., as well as, in the suggestions given to the prosecution eye witnesses that the occurrence took place in his house where Muhammad Adil deceased was done to death by a mob but the appellant did not produce any defence evidence in support of his claim and as such, he admitted the occurrence therefore, he was rightly convicted & sentenced by the learned trial Court. There is no substance in the abovementioned argument of learned Deputy Prosecutor General assisted by learned counsel for the complainant because the appellant has nowhere admitted in his abovementioned statement or in the suggestions given to the prosecution eye witnesses that he committed the murder of Muhammad Adil deceased rather he stated that on the night of occurrence when Muhammad Adil deceased entered his house to commit the rape of sister of

Muhammad Adeel co-convict, namely, Sana Tabassum, they (appellant and his co-accused) raised hue and cry, whereupon, a mob gathered at the spot and gave beating to Muhammad Adil deceased. It is therefore, evidence that the appellant did not admit that he gave beating to Muhammad Adil deceased on the night of occurrence. It is by now well settled that it is first and foremost duty of the prosecution to prove its case and if the prosecution fails to prove its case then statement of an accused is to be accepted or rejected in toto. It is legally not permissible to accept inculpatory part of the statement of an accused and to reject exculpatory part of the said statement. Reference in this context may be made to the case of 'Muhammad Asghar Vs. The State' (PLD 2008 Supreme Court 513). The relevant paragraph of the said judgment at page 520 is reproduced hereunder for ready reference:-

'It is settled law by now that a statement of an accused recorded under section 342, of Cr.P.C. is to be read in its entirety, is to be accepted or rejected as a whole and reliance should not be placed on that portion of the statement which goes against the accused person. Reference can be made to the case of 'Shabbir Ahmad v. The State' PLD 1995 SC 343 and 'The State v. Muhammad Hanif and 5 others' 1992 SCMR 2047. It has been held by this Court in the judgment reported as 'Waqar Ahmad v. Shaukat Ali and others' 2006 SCMR 1139, that prosecution is bound to establish its own case independently instead of depending upon the weakness of the defence, and the assertion of the accused in his statement under section 342, of Cr.P.C. was not sufficient to establish the prosecution case regarding guilt of the accused and such statement of the accused could be accepted in toto in the absence of any other prosecution evidence. In the case in hand, the High Court should have either accepted appellant's statement in its entirety or rejected it altogether, but it had misdirected itself while choosing a portion of the statement, which went against the appellant, and convicting him.'

If after rejection of the prosecution evidence, abovementioned statement of the appellant is accepted in toto then no offence is made out against the appellant. It is also noteworthy that Muhammad Ali and Rana Sultan Bakhsh @ Sabir (co-accused since acquitted) also made statements on the same lines as that of the statement of Rafaqat Ali appellant has been recorded under Section 342 of Cr.P.C., and their defence counsel also gave the same suggestions to the prosecution eye

witnesses but the abovementioned co-accused, namely, Muhammad Ali and Rana Sultan Bakhsh @ Sabir have been acquitted by the learned trial Court and appeal against their acquittal has already been dismissed by this Court vide order dated 07.12.2022 therefore, the appellant cannot be convicted & sentenced merely on the basis of his abovementioned statement or suggestions given by his counsel to the PWs.

18. I have considered all the aspects of this case and have come to this irresistible conclusion that the prosecution could not prove its case against the appellant beyond the shadow of doubt. It is by now well settled law that if there is a single circumstance which creates doubt regarding the prosecution case, the same is sufficient to give benefit of doubt to the accused, whereas, the instant case is replete with number of circumstances which have created serious doubts regarding the truthfulness of the prosecution story. In *‘Tariq Pervez Vs The State’* (1995 SCMR 1345), the Hon’ble Supreme Court of Pakistan, at page 1347, was pleased to observe as under:-

‘5.....The concept of benefit of doubt to an accused person is deep-rooted in our country. For giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right.’

The Hon’ble Supreme Court of Pakistan while reiterating the same principle in the case of *‘Muhammad Akram Vs The State’* (2009 SCMR 230), at page 236, observed as under:-

‘13.....It is an axiomatic principle of law that in case of doubt, the benefit thereof must accrue in favour of the accused as matter of right and not of grace. It was observed by this Court in the case of Tariq Pervez v. The State 1995 SCMR 1345 that for giving the benefit of doubt, it was not necessary that there should be many circumstances creating doubts. If there is circumstance which created reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of doubt not as a matter of grace and concession but as a matter of right.’

19. In the light of above discussion, the instant appeal (**Criminal Appeal No. 36587 of 2019**) filed by Rafaqat Ali appellant is **allowed**, his conviction and sentence recorded by the learned Addl. Sessions Judge, Daska District Sialkot *vide*

impugned judgment dated 30.04.2019 is hereby set-aside and he is acquitted of the charge by extending him the benefit of doubt. He is in custody. He be released forthwith if not required to be detained in any other case.

(MALIK SHAHZAD AHMAD KHAN)
JUDGE.

**Ajmal Rana.*

APPROVED FOR REPORTING.

(MALIK SHAHZAD AHMAD KHAN)
JUDGE.