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Judgment Sheet  
**IN THE LAHORE HIGH COURT,**  
**BAHAWALPUR BENCH, BAHAWALPUR.**  
JUDICIAL DEPARTMENT

**Capital Sentence Reference No. 01 of 2020**  
**(The State Vs. Muhammad Kashif)**

**Criminal Appeal No. 285- J of 2020**  
**(Muhammad Kashif Vs. The State.)**

Date of hearing:	06.02.2024
Appellant by:	Mr. Zeeshan Haider, Advocate. (Learned defence counsel appointed on State expense.)
State by:	Mr. Riaz Ahmad, Deputy Prosecutor General.
Complainant by :	Mr. Amjad Mahmood, Advocate.

**JUDGMENT.**

**SADIQ MAHMUD KHURRAM, J.**— Muhammad Kashif son of Mulazim Hussain (convict) was tried along with Muhammad Nasir (since acquitted) by the learned Additional Sessions Judge, Chishtian in the case F.I.R. No. 330 of 2019 dated 01.09.2019 registered in respect of offences under sections 295-C and 201 P.P.C. at the Police Station City A-Division Chishtian, District Bahawalnagar. The learned trial court, vide judgment dated 26.11.2020, convicted Muhammad Kashif son of Mulazim Hussain (convict) and sentenced him as infra:

**Muhammad Kashif son of Mulazim Hussain :**

Death under section 295-C P.P.C. and directed to pay fine of Rs.200,000/- and in case of default thereof, the convict was directed to undergo a further one year of simple imprisonment.

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

Muhammad Nasir son of Razzaq, the co-accused of the convict, was however acquitted of the charges by the learned trial court.

2. Feeling aggrieved, Muhammad Kashif son of Mulazim Hussain (convict) lodged Criminal Appeal No.285- J of 2020 through jail assailing his conviction and sentence. The learned trial court submitted Capital Sentence Reference No. 01 of 2020 under section 374 Cr.P.C. seeking confirmation or otherwise of the sentence of death awarded to the appellant namely Muhammad Kashif son of Mulazim Hussain. We intend to dispose of the Criminal Appeal No. 285- J of 2020 and Capital Sentence Reference No. 01 of 2020 through this single judgment.

3. Precisely, the necessary facts of the prosecution case, as narrated by the prosecution witnesses are that the appellant namely Muhammad Kashif had shared a printed representation (Exh.PF) ,defiling the sacred name of the Holy Prophet Muhammad (peace be upon him), in the *Whatsapp Messenger* group titled “*Ladai Walla Group*”, which printed representation (Exh.PF) was seen by the prosecution witnesses namely Muhammad Abid Ali (PW-1), Ahmad Mahmood (PW-2) and Muhammad Imran (PW-3).

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 22.01.2020 and again on 26.11.2020, 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 prosecution witnesses namely Muhammad Abid Ali (PW-1), Ahmad Mahmood (PW-2) and Muhammad Imran (PW-3) stated that on 29.08.2019, the prosecution witness namely Muhammad Abid Ali (PW-1) received a printed representation (Exh.PF) on his mobile phone device (P-1) , defiling the sacred name of the Holy Prophet Muhammad (peace be upon him), in the *Whatsapp Messenger* group titled “*Ladai Walla Group*” , which printed representation (Exh.PF) was seen by the prosecution witnesses namely Muhammad Abid Ali (PW-1), Ahmad Mahmood (PW-2) and Muhammad Imran (PW-3), whereafter the prosecution witness namely Muhammad Abid Ali (PW-1) reported the matter to the police and got lodged the F.I.R No.330 of 2019 (Exh.PD) while filing the written application (Exh.PA). Hamayoun Asghar 655/HC (PW-4) stated that on 01.09.2019, the prosecution witness namely Muhammad Abid Ali (PW-1) produced his mobile phone device (P-1) which was taken into possession by the Investigating Officer of the case and on 02.09.2019, he handed over the mobile phone device (P-1) to Muhammad Aslam, SI (PW-7) for its onward transmission to the office of the Punjab Forensic Science Agency, Lahore and on 03.09.2019, Sikandar Hayat, ASI (PW-6) handed over to him mobile phone device (P-2) recovered from the appellant which on 04.09.2019, he handed over to Muhammad Aslam, SI (PW-7) for its onward transmission to the office of the Punjab Forensic Science Agency, Lahore and on 10.12.2019, Muhammad Aslam, SI (PW-7) handed over to him one Digital

Versatile Disc (DVD) and one Universal Serial Bus (USB) storage device as received from the Punjab Forensic Science Agency, Lahore for keeping them in safe custody. Mumtaz Hassan, ASI, (PW-5) stated that on 03.09.2019, Rao Inam Ullah Khan, SI (PW-9) produced the mobile phone device (P-2) allegedly recovered from the possession of the appellant before Naeem ul Hassan Khan, SP (PW-10) and Naeem ul Hassan Khan, SP (PW-10) took the same into possession vide recovery memo (Exh.PC). Sikandar Hayat, ASI (PW-6) stated that on 03.09.2019, he took a sealed parcel said to contain the mobile phone device recovered from the appellant to the Police Station and handed over the same to Hamayoun Asghar 655/HC (PW-4) for keeping it in safe custody. Muhammad Aslam, SI (PW-7) stated that on 01.09.2019, he recorded the formal F.I.R (Exh.PD) and on 02.09.2019, Hamayoun Asghar 655/HC (PW-4) handed over the mobile phone device (P-1) to him for its onward transmission to the office of the Punjab Forensic Science Agency, Lahore and on 04.09.2019, Hamayoun Asghar 655/HC (PW-4) handed over to him mobile phone device (P-2) recovered from the appellant for its onward transmission to the office of the Punjab Forensic Science Agency, Lahore and on 10.12.2019, he handed over to Hamayoun Asghar 655/HC (PW-4) one Digital Versatile Disc (DVD) (P-3) and one Universal Serial Bus (USB) storage device (P-4) as received from the Punjab Forensic Science Agency, Lahore for keeping them in safe custody. Fayyaz Ahmad 30/HC (PW-8) stated that on 07.03.2020, Muhammad Aslam, SI (PW-7) handed over to him one Digital Versatile Disc (DVD) (P-3) and one Universal Serial Bus (USB) storage device (P-4) as received from the Punjab Forensic Science Agency, Lahore for keeping them in safe

custody. Rao Inam Ullah Khan, SI (PW-9) stated that on 03.09.2019, he produced the appellant before Naeem ul Hassan Khan, SP (PW-10) and also produced the mobile phone device (P-2) allegedly recovered from the possession of the appellant before Naeem ul Hassan Khan, SP (PW-10) and Naeem ul Hassan Khan, SP (PW-10) took the same into possession vide recovery memo (Exh.PC). Muhammad Tariq Sukhera, SP (PW-11), investigated the case from 26.03.2020 till 16.05.2020 and detailed the facts of the investigation as conducted by him in his statement before the learned trial court. Naeem ul Hassan Khan, SP (PW-10) investigated the case from 01.09.2019 till 15.10.2019, arrested the appellant on 03.09.2019 and detailed the facts of the investigation as conducted by him in his statement before the learned trial court.

6. On 21.11.2020, the learned Assistant District Public Prosecutor gave up the prosecution witnesses Muhammad Sajid 525/C and Faiz Ahmad, ASI as being unnecessary and closed the prosecution evidence after tendering in evidence the report of Punjab Forensic Science Agency, Lahore (Exh. PH/1-5).

7. After the closure of prosecution evidence, the learned trial court examined the appellant namely Muhammad Kashif son of Mulazim Hussain under section 342 Cr.P.C. and in answer to the question *why this case against you and why the P.W.s have deposed against you*, he replied that he had been involved in the case falsely and was innocent. The appellant namely Muhammad Kashif son of Mulazim Hussain opted not to get

himself examined under section 340(2) Cr.P.C. and did not adduce any evidence in his defence.

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

9. The contention of the learned counsel for the appellant precisely is that the whole case is fabricated and false and the prosecution remained unable to prove the facts in issue and did not produce any unimpeachable, admissible, and relevant evidence. Learned counsel for the appellant further contended that the story of the prosecution mentioned in the statements of the witnesses, on the face of it, was highly improbable. Learned counsel for the appellant further contended that the statements of the prosecution witnesses were not worthy of any reliance. The learned counsel for the appellant also argued that the appellant had been involved in the occurrence due to suspicion alone. The learned counsel for the appellant finally submitted that the prosecution had totally failed to prove the case against the accused beyond the shadow of a doubt.

10. On the other hand, the learned Deputy Prosecutor General along with the learned counsel for the complainant, contended that the prosecution had proved its case beyond the shadow of a doubt by producing independent witnesses. The learned Deputy Prosecutor General along with the learned counsel for the complainant, further argued that it was the appellant namely Muhammad Kashif who had shared the printed representation (Exh.PF) , defiling the sacred name of the Holy Prophet Muhammad (peace be upon him), in the *Whatsapp Messenger* group titled “*Ladai Walla Group*”, which

printed representation (Exh.PF) was seen by the prosecution witnesses namely Muhammad Abid Ali (PW-1), Ahmad Mahmood (PW-2) and Muhammad Imran (PW-3). The learned Deputy Prosecutor General along with the learned counsel for the complainant contended that there was no occasion for the prosecution witnesses to falsely involve the appellant. Lastly, they prayed for the rejection of the appeal.

11. We have heard the learned counsel for the appellant, the learned counsel for the complainant, the learned Deputy Prosecutor General and with their able assistance, perused the record and evidence recorded during the trial.

12. The Holy Qur'an has unequivocally described the glorification and exaltation of the Holy Prophet Muhammad (peace be upon him) and has ordered Muslims to strictly observe maximum respect and be extremely careful in this regard, to the extent of using the most appropriate words and even lowering their voices, failing to do will render all their good deeds in vain, as mentioned in the following Verses.

“Among the Jews are those who distort words from their [proper] usages and say, "We hear and disobey" and "Hear but be not heard" and "Ra'ina" (راعنا) twisting their tongues and defaming the religion. And if they had said [instead], "We hear and obey" and "Wait for us [to understand]," it would have been better for them and more suitable. But Allah has cursed them for their disbelief, so they believe not, except for a few. [An-Nisa (4:46)]

"O ye who believe! raise not your voices above the voice of the Prophet ﷺ, nor shout when speaking to him as you shout one to another, lest your deeds be rendered vain while you perceive not." [Al-Hujurat (4:46)]

Allah Almighty declared the enemy of the Holy Prophet Muhammad (peace be upon him) as the enemy of Allah and ordained that, in this temporary world and also in the eternal life hereinafter, there is a punishment of the highest degree for those who disbelieve or disrespects him. For reference, some of the Verses of the Holy Quran are mentioned hereinbelow:

"Ask forgiveness for them, [O Muhammad], or do not ask forgiveness for them. If you should ask forgiveness for them seventy times - never will Allah forgive them. That is because they disbelieved in Allah and His Messenger, and Allah does not guide the defiantly disobedient people". [At-Tawbah (9:80)]

"And thus, have We made for every prophet an enemy from among the criminals. But sufficient is your Lord as a guide and a helper". [Al-Furqan (25:31)]

"Have you not considered those who were forbidden from private conversation, then they return to that which they were forbidden and converse among themselves about sin and aggression and disobedience to the Messenger? And when they come to you, they greet you with that [word] by which Allah does not greet you and say among themselves, "Why does Allah not punish us for what we say?" Sufficient for them is Hell, which they will [enter to] burn, and wretched is the destination." [Al-Mujadila (58:8)]

"May the hands of Abu Lahab be ruined, and ruined is he. His wealth will not avail him or that which he gained. He will [enter to] burn in a Fire of [blazing] flame. And his wife [as well] - the carrier of firewood. Around her neck is a rope of [twisted] fiber." [Al-Masad (111:1-5)]

"How wretched is that for which they sold themselves - that they would disbelieve in what Allah has revealed through [their] outrage that Allah would



send down His favor upon whom He wills from among His servants. So, they returned having [earned] wrath upon wrath. And for the disbelievers is a humiliating punishment." [Al-Baqarah (2:90)]

"Indeed, those who disbelieve in Allah and His messengers and wish to discriminate between Allah and His messengers and say, "We believe in some and disbelieve in others," and wish to adopt a way in between - Those are the disbelievers, truly. And We have prepared for the disbelievers a humiliating punishment." [An-Nisa (4:150-151)]

"Lo! Those who malign Allah and his Messenger, Allah hath cursed them in the world and the Hereafter, and hath prepared for them the doom of the disdained". [Al-Ahzab (33:57)]

Thus, all of these Verses of the Holy Qur'an, mention in clear terms, that these abusers and contemners of the Holy Prophet Muhammad (peace be upon him) are actually the opponents of Allah and His Holy Prophet Muhammad (peace be upon him). These Verses clearly prescribe the severe punishment of death for the opponents of Allah and his Holy Prophet Muhammad (peace be upon him) , who include contemners of the Holy Prophet Muhammad (peace be upon him) . Thus, no one, by words, either spoken or written, directly or indirectly, is allowed to disobey, disregard and rebel against the Holy name of Holy Prophet Muhammad (peace be upon him) and if found guilty of disrespecting the name, they are liable to be punished. History has remained a witness to the incidents pertaining to any attempts of defiance made regarding the name of our Beloved Holy Prophet Muhammad (peace be upon him). The Muslim communities that exist around the globe have always acted against any such act of contempt and have openly reacted to such, followed by serious

repercussions. That is why Section 295-C P.P.C. had to be enacted to bring such contemners before the Court of Law. In this backdrop, we shall now consider the facts of the instant case.

13. A perusal of the prosecution evidence reveals that the prosecution witnesses namely Muhammad Abid Ali (PW-1), Ahmad Mahmood (PW-2) and Muhammad Imran (PW-3) stated that on 29.08.2019, the prosecution witness namely Muhammad Abid Ali (PW-1) received the printed representation (Exh.PF) on his mobile phone device (P-1), defiling the sacred name of the Holy Prophet Muhammad (peace be upon him), in the *Whatsapp Messenger* group titled “*Ladai Walla Group*”, which printed representation (Exh.PF) was seen by the prosecution witnesses namely Muhammad Abid Ali (PW-1), Ahmad Mahmood (PW-2) and Muhammad Imran (PW-3), whereafter the prosecution witness namely Muhammad Abid Ali (PW-1) reported the matter to the police and got lodged the F.I.R No.330 of 2019 (Exh. PD) while filing the written application (Exh.PA). It is a fact of the prosecution case itself that neither in the written application (Exh.PA) as submitted by the prosecution witness namely Muhammad Abid Ali (PW-1) nor in the F.I.R, the appellant was mentioned as the one who had shared the printed representation (Exh.PF), defiling the sacred name of the Holy Prophet Muhammad (peace be upon him), in the *Whatsapp Messenger* group titled “*Ladai Walla Group*”, which printed representation (Exh. PF) was seen by the prosecution witnesses namely Muhammad Abid Ali (PW-1), Ahmad Mahmood (PW-2) and Muhammad Imran (PW-3). A further fact of the prosecution case is that the prosecution witness namely Muhammad Abid Ali (PW-1) never stated that it

was the appellant who had shared the printed representation (Exh.PF), defiling the sacred name of the Holy Prophet Muhammad (peace be upon him), in the *Whatsapp Messenger* group titled “*Ladai Walla Group*” rather Muhammad Abid Ali (PW-1), in his statement before the learned trial court, did not state that it was the appellant who he identified as being involved in the commission of the hateful crime. Moreover, the prosecution witness namely Muhammad Abid Ali (PW-1), during cross-examination, went on to admit that he had no knowledge as to who had shared the printed representation (Exh.PF) , defiling the sacred name of the Holy Prophet Muhammad (peace be upon him), in the *Whatsapp Messenger* group titled “*Ladai Walla Group*”. Muhammad Abid Ali (PW-1), during cross-examination , admitted as under:-

“I do not know from where and **by whom**, above said derogatory material was sent at the time of sending. ” (emphasis supplied)

The importance of the above-mentioned reply of the prosecution witness namely Muhammad Abid Ali (PW-1) is enhanced by the fact that the above-mentioned statement was made by Muhammad Abid Ali (PW-1) during the cross-examination and all the facts of the prosecution case were already in his knowledge. The reply of Muhammad Abid Ali (PW-1) that he did not know as to from where and , more importantly, *by whom*, the printed representation (Exh.PF) ,defiling the sacred name of the Holy Prophet Muhammad (peace be upon him), was shared in the *Whatsapp Messenger* group titled “*Ladai Walla Group*”, hits at the very roots of the prosecution case as against the appellant and denudes the same to be absolutely false.

Furthermore, the prosecution witnesses namely Muhammad Abid Ali (PW-1), Ahmad Mahmood (PW-2) and Muhammad Imran (PW-3) also made contradictory and mutually destructive statements regarding the time when the prosecution witness namely Muhammad Abid Ali (PW-1) received the printed representation (Exh.PF) and through what information system the said printed representation (Exh.PF) was received by him. Muhammad Abid Ali (PW-1) in his written application (Exh.PA), had stated that it was on **29.08.2019 at about 02.43 p.m** that he received a message on his mobile phone device (P-1) , through the *Whatsapp Messenger*, which message had the representation (Exh.PF) in it and which representation (Exh.PF) was also seen by Ahmad Mahmood (PW-2) and Muhammad Imran (PW-3) at the same time, however, Muhammad Abid Ali (PW-1), during cross-examination admitted that he had received the message on his mobile phone device (P-1) , through the *Whatsapp Messenger*, which message had the representation (Exh.PF) in it , at **night time** and after receiving the said message, he had a consultation with Ahmad Mahmood (PW-2) and Muhammad Imran (PW-3) regarding the said message. Muhammad Abid Ali (PW-1) ,during cross-examination, stated as under:-

“As per Report of PFSA, Lahore, above said Whatsapp Messenger post was received to me on 29.08.2019 at about 02:43.40-.AM. **It is correct that I have received Whatsapp Messenger post at night time.** After receiving the Whatsapp Messenger post, I consulted with Ahmad Mehmood and Imran. ”  
(emphasis supplied)

The above mentioned reply of Muhammad Abid Ali (PW-1) culls the whole prosecution case with regard to there being any exactitude regarding the

receiving of the message on the mobile phone device (P-1) belonging to Muhammad Abid Ali (PW-1), through the *Whatsapp Messenger*, which message had the representation (Exh.PF) in it, as in the application (Exh.PA), the time of receiving the message was mentioned as 29.08.2019 at about **02.43.p.m** and furthermore it was also mentioned that Muhammad Abid Ali (PW-1) had shown the said message having the representation (Exh.PF) in it to Ahmad Mahmood (PW-2) and Muhammad Imran (PW-3) at the very same time i.e on 29.08.2019 at about 02.43 p.m, whereas Muhammad Abid Ali (PW-1) changed his version entirely as discussed above and stated that he had received the message on 29.08.2019 at about **02:43.40-.a.m.** and thereafter had a consultation with Ahmad Mahmood (PW-2) and Muhammad Imran (PW-3) regarding the said message. It is also a fact of the prosecution case itself that the prosecution witness namely Ahmad Mahmood (PW-2), during cross-examination, stated that the message having the representation (Exh.PF) in it was not received by Muhammad Abid Ali (PW-1) through sharing on “*Ladai Walla Group*” rather the said message was received by Muhammad Abid Ali (PW-1) directly. Ahmad Mahmood (PW-2) , during cross-examination , stated as under:-

“ The derogatory material/picture was received by the complainant personally/directly. It is correct that derogatory material/picture **was not received by the complainant in Whatsapp Messenger group.**” (emphasis supplied)

Contradicting both the witnesses namely Muhammad Abid Ali (PW-1) and Ahmad Mahmood (PW-2) , the prosecution witness namely Muhammad Imran (PW-3) had entirely a different narration to make during the trial and

stated that Muhammad Abid Ali (PW-1) had received the message on 29.08.2019 at 02.43 p.m and he immediately shared the same with him. The prosecution witness namely Muhammad Imran (PW-3) , during cross-examination , stated as under:-

“Derogatory material/picture was received to complainant on 29.08.2019 at about 02:43PM. When the complainant received derogatory material/picture, he immediately opened the post. It is correct that the reports of PFSA, Lahore is true. As per report of PFSA in the instant case, the time 02:43.40AM is mentioned on derogatory material/picture. Volunteered that complainant opened the Whatsapp Messenger post at 02:43PM in our presence. The complainant received derogatory material/picture in a Whatsapp Messenger group namely "Larai group”

The above referred portions of the replies made by the prosecution witnesses namely Muhammad Abid Ali (PW-1) , Ahmad Mahmood (PW-2) and Muhammad Imran (PW-3) prove that the very receiving of the representation (Exh.PF) was not proved with any consistency.

14. It is also a fact of the prosecution case that according to the written application (Exh.PA) as submitted by the prosecution witness namely Muhammad Abid Ali (PW-1) , the copy of the printed representation (Exh.PF) was produced by him at the time of submission of written application (Exh.PA), however, Muhammad Abid Ali (PW-1) , in his statement before the learned trial court , never stated that he had produced the copy of the printed representation (Exh.PF) before the Investigating Officer of the case at the time of submitting the written application (Exh.PA). Muhammad Abid Ali (PW-1) in his statement before the

learned trial court also did not identify the printed representation (Exh.PF) as being the same of which he had produced a copy of at the time of submitting the written application (Exh.PA). The relevant portion of the examination in-chief of Muhammad Abid Ali (PW-1) recorded by the learned trial court reads as under:-

“After the consultation on 01.09.2019, I submitted computerized written application Exh.PA bearing my signature Exh.PA/1 before the police station for registration of FIR, on the basis of which FIR was registered ”

When Muhammad Abid Ali (PW-1) himself neither gave any statement with regard to him having received the particular printed representation (Exh.PF) nor identified the printed representation (Exh.PF) as being the same which he had received then it cannot be proved that Muhammad Abid Ali (PW-1) had received the said particular printed representation (Exh.PF). Similarly, Muhammad Aslam, SI (PW-7) , to whom Muhammad Abid Ali (PW-1) had submitted the written application (Exh.PA) for the registration of the F.I.R also did not make any statement before the learned trial court regarding the identification of the printed representation (Exh.PF) as being the same which was produced by Muhammad Abid Ali (PW-1) before him at the time of submission of the written application (Exh.PA). It was only the prosecution witness namely Naeem ul Hassan Khan, SP (PW-10) who in his statement recorded by the learned trial court stated that Muhammad Aslam, SI (PW-7) produced before him the printed representation (Exh.PF), however, as mentioned above, neither Muhammad Aslam, SI (PW-7) nor Muhammad Abid Ali (PW-1) made any statements before the learned trial court

identifying the printed representation (Exh.PF). In this manner, the prosecution failed to prove that the printed representation (Exh.PF) was the same which was received by Muhammad Abid Ali (PW-1) on his mobile phone device (P-1).

15. It is also a fact of the prosecution case that according to the written application (Exh.PA) as submitted by the prosecution witness namely Muhammad Abid Ali (PW-1), it was the printed representation (Exh.PF) which was produced by him at the time of submission of written application (Exh.PA) and not the screenshot of the conversation ongoing in the *Whatsapp Messenger* group titled “*Ladai Walla Group*”, during which conversation the printed representation (Exh.PF) was also shared, however, Muhammad Abid Ali (PW-1) admitted during cross-examination that he had not saved the printed representation (Exh.PF) in his mobile phone device (P-1) rather only had the conversation ongoing in the *Whatsapp Messenger* group titled “*Ladai Walla Group*”, during which conversation the printed representation (Exh.PF) was also shared, saved in his data of the *Whatsapp Messenger*. Muhammad Abid Ali (PW-1), during cross-examination, stated as under:-

“ When I opened Whatsapp Messenger Group namely "Larai Group", at about 02:43PM and saw the derogatory picture/remarks, **I did not save the derogatory picture/remarks**” (emphasis supplied)

A perusal of the printed representation (Exh.PF) itself reveals that it is a pictograph unaccompanied by any other messages and is not at all a screenshot of the conversation ongoing in the *Whatsapp Messenger* group



titled “Ladai Walla Group”. Furthermore, there is no identity of the contact who had shared the said printed representation (Exh.PF) in the *Whatsapp Messenger* group titled “Ladai Walla Group”, which detail must have been there if the printed representation (Exh.PF) was a copy of the message which was received by Muhammad Abid Ali (PW-1) on his mobile phone device (P-2) . This also proves that the printed representation (Exh.PF) is not what was received by Muhammad Abid Ali (PW-1) on 29.08.2019 because, according to Muhammad Abid Ali (PW-1), he had not saved the said printed representation (Exh.PF) and according to the document itself , it was a copy of the representation, unaccompanied by other messages related to the conversation ongoing in the *Whatsapp Messenger* group titled “Ladai Walla Group”, or even the details or the title of the contact who had shared the said printed representation (Exh.PF) in the *Whatsapp Messenger* group titled “Ladai Walla Group”. These facts also disclose huge flaws in the prosecution case, reflecting adversely on the same.

16. The learned Deputy Prosecutor General and the learned counsel for the complainant have submitted that as the printed representation (Exh.PF) was shared through a message received on *Whatsapp Messenger* application and as the contact who had shared the said printed representation (Exh.PF) was identified by his mobile phone number i.e 0307 1225434 in the *Whatsapp Messenger* group titled “*Ladai Walla Group*” and as the appellant was found to be using the said mobile phone number i.e 0307 1225434, therefore, it was proved that it was the appellant who had shared the printed representation (Exh.PF). In this regard, it is observed that the prosecution witnesses themselves admitted

that the mobile phone number i.e 0307 1225434 was not registered in the name of the appellant. Naeem ul Hassan Khan, SP (PW-10), the Investigating Officer of the case, stated in his statement before the learned trial court that the mobile phone number i.e 0307 1225434 was registered in the name of Muhammad Asif and Rao Inam Ullah Khan, SI (PW-9) was directed to produce the said Muhammad Asif before Naeem ul Hassan Khan, SP (PW-10), however, not only Muhammad Asif but the appellant was also produced before Naeem ul Hassan Khan, SP (PW-10) by Rao Inam Ullah Khan, SI (PW-9) on 03.09.2019. Naeem ul Hassan Khan, SP (PW-10), in his statement before the learned trial court, stated as under:-

“ I verified Sim No.03071225434 which was **belong (sic) to Muhammad Asif resident of Ahmadpur East.** Inam Ullah SI/SHO member of the team was deputed to produce Muhammad Asif before me.” (emphasis supplied)

Not only the prosecution could not produce any evidence that the mobile phone number i.e 0307 1225434 was registered in the name of the appellant but also Muhammad Asif, the person in whose name the mobile phone number i.e 0307 1225434 was registered, was not cited as a prosecution witness, so as to prove that the mobile phone number i.e 0307 1225434, registered in his name, was being used by the appellant. It is also a fact that Muhammad Asif was not even tried as an accused. It was also stated by the learned Deputy Prosecutor General and the learned counsel for the complainant that the mobile phone device (P-2) was recovered from the possession of the appellant and therefore, it was the appellant who had shared the printed representation (Exh.PF) by using the

mobile phone device (P-2). In this regard, it has been noted by us that according to Rao Inam Ullah Khan, SI (PW-9) it was he who handed over the mobile phone device (P-2) to Naeem ul Hassan Khan, SP (PW-10), who then took the same into possession through the recovery memo (Exh.PC) however Rao Inam Ullah Khan, SI (PW-9) never stated that the said mobile phone device (P-2) had been recovered from the possession of the appellant or even when or from which place the said mobile phone device (P-2) had been recovered. In his statement before the learned trial court, Rao Inam Ullah Khan, SI (PW-9), did not even state as to from where he had arrested the appellant or that it was at the time of the personal search of the appellant that he had taken over the possession of the mobile phone device (P-2) or that the appellant had led to the recovery of the mobile phone device (P-2). It will be advantageous to reproduce the statement of Rao Inam Ullah Khan, SI (PW-9) as got recorded by him before the learned trial court. Rao Inam Ullah Khan, SI (PW-9) stated as under:-

“ Stated that on 01.09.2019. I was posted as SI/SHO at police station City A-Division, Chishtian. On the same day, FIR 330/2019 U/S 295-C PPC was registered at police station City A- Division, Chishtian, The investigation of this case was entrusted to Naeem-ul-Hassan SP/Investigation. A team was constituted for completion of this case. I was member of this team. On 02.09.2019, Naeem-ul-Hassan SP/Investigation Officer depute me to produce accused Muhammad Asif. On 03.09.2019, I produced Muhammad Asif and Muhammad Kashif accused to Naeem-ul-Hassan SP/Investigation officer who recorded the version of the accused Muhammad Kashif and Muhammad Asif. After obtaining the incriminating material against accused Muhammad Kashif

he sent to judicial lock up Bahawalnagar. I produced Q-mobile P2 of accused Muhammad Kashif to Naeem-ul- Hassan SP/Investigation Officer in the presence of Faiz Ahmad ASI and Mumtaz Ahmad ASI. Naeem-ul-Hassan SP/Investigation officer took the same and secured into sealed parcel vide recovery memo Exh.PC which was duly attested by Faiz Ahmad ASI and Mumtaz Ahmad ASI. On the same day, I.O recorded my statement U/S 161 Cr.P.C in this regard”

Rao Inam Ullah Khan, SI (PW-9) never prepared any recovery memo reflecting the recovery of the mobile phone device (P-2) from the appellant nor ever identified the place from where the said recovery was made .Similarly, Mumtaz Hassan, ASI, (PW-5) stated that on 03.09.2019, Rao Inam Ullah Khan, SI (PW-9) produced the mobile phone device (P-2) allegedly recovered from the possession of the appellant before Naeem ul Hassan Khan, SP (PW-10) and Naeem ul Hassan Khan, SP (PW-10) took the same into possession vide recovery memo (Exh.PC), however, this witness also never stated that the mobile phone device was ever recovered from the appellant in his presence. Even Naeem ul Hassan Khan, SP (PW-10), Investigating Officer of the case ,in his statement before the learned trial court , stated that the mobile phone device (P-2) was produced by Naeem ul Hassan Khan, SP (PW-10) and was not recovered from the appellant in his presence. Naeem ul Hassan Khan, SP (PW-10), in his statement before the learned trial court , stated as under:-

**“Inam Ullah SI/SHO produced before me Q-Mobile Touch P2** in the presence of Faiz Ahmad ASI and Mumtaz Ahmad ASI which was taken into possession vide recovery memo Exh.PC and secured into sealed parcel for onward transmission to PFSA Lahore.” (emphasis supplied)

In this manner, the prosecution failed to prove that the mobile phone device (P-2) was ever recovered from the possession of the appellant.

17. The learned Deputy Prosecutor General and the learned counsel for the complainant have also submitted that after his arrest on 03.09.2019, the appellant, *while in the custody of the police*, confessed to his guilt before the Investigating Officer of the case and other police officials, therefore, the same be considered as proof against the appellant. Articles 38 and 39 of the Qanun-e-Shahadat Order, 1984 are quite clear on the subject and such admission, in view of the above said Articles of the Qanun-e-Shahadat Order, 1984, is inadmissible. Both the Articles of the Qanun-e-Shahadat Order, 1984 are re-produced as under:-

"38. Confession to police-officer not to be proved.---No confession made to a police-officer shall be proved as against a person accused of any offence.

39. Confession by accused while in custody of police not to be proved against him.---Subject to Article 40, no confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person."

The learned Deputy Prosecutor General and the learned counsel for the complainant have referred to the provisions of article 40 of the Qanun-e-Shahadat Order, 1984 also. The discovery of any fact on the information of the accused in the custody of Police is admissible under article 40 of the Qanun-e-Shahadat Order, 1984, which reads as under:-

"40. How much of information received from accused may be proved. When any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."

A perusal of above article 40 of the Qanun-e-Shahadat Order, 1984 reveals firstly that it serves as a proviso to Articles 38 and 39 of the Qanun-e-Shahadat Order, 1984. It comes into operation only if and when certain facts are deposed to as discovered in consequences of information received from an accused person in police custody. Thus, in order to apply Article 40 of the Qanun-e-Shahadat Order, 1984, the prosecution must establish that information given by the accused led to the discovery of some fact deposed by him and the discovery must be of some fact which the police had not previously learnt from any other source. According to the prosecution case itself, no new fact was discovered in consequence of the statement of the appellant namely Muhammad Kashif on 03.09.2019. Hence, the alleged statement of the appellant namely Muhammad Kashif made in police custody cannot be read in evidence and would remain inadmissible. Reliance in this regard is placed on the case of “*Hayatullah vs. The State*”( **2018 S C M R 2092**) wherein the august Supreme Court of Pakistan took an exception to the recording of such statements of the accused made in police custody by the learned trial court and observed as under:-

“6. While going through the evidence adduced by the prosecution, we observe, with great concern, that inadmissible evidence has been brought on the record in the shape of admission of the appellant before police, memos of pointing out of place of occurrence and place from where the motorcycle was recovered which were already known to the police and the complainant party. Such inadmissible pieces of evidence, according to law, should not be brought on the record. Astonishingly, the whole disclosure was incorporated/dictated by the trial court when witnesses were giving evidence. Neither the prosecutor nor the defence made any objection upon bringing the said inadmissible pieces of evidence on record. The trial court while recording the statement of police officials, who recorded the confession of the appellant Hayatullah about the commission of the crime, had totally ignored Articles 38 and 39 of the Qanun-e-Shahadat Order, 1984 according to which this type of evidence was inadmissible as no new facts were discovered on the admission/disclosure of the appellant. The pointing out of the place of incident and the place of recovery of motorcycle cannot be termed as discovery as a consequence of information received from the appellant within the meanings of Article 40 of the Qanun-e-Shahadat Order, 1984

as the said places were already in the knowledge of the police and the complainant party so it was also inadmissible evidence. The memos about pointing out of place of occurrence without recovery prepared by the investigating officer should not be allowed by the trial court to bring on the record but unfortunately such pieces of evidence were allowed to be brought on the record although were inadmissible.

A heavy responsibility lies upon the court as well as the prosecution and defence counsel to be alert so that inadmissible evidence should not come on the record. If any party tender such evidence during the trial the other party should immediately raise objection to the admissibility of such evidence and the court should decide the same then and there before proceeding further and prevent it from coming on the record if it is found to be inadmissible in evidence. It is the duty of the trial judge to check such evidence without waiting for any such objection from either side because the judge is required to be vigilant and to play an active role while recording the evidence of witnesses.

It is the duty of the court to make distinction between admissible and inadmissible evidence and only admissible evidence should be allowed to come on record. If any inadmissible evidence is brought on the record then it will expose the ability and knowledge of law of the prosecutor and defence counsel. If the trial judge allows to bring the inadmissible evidence on record then it must reflect adversely regarding the knowledge of law and the ability of said Judge. We have observed that in certain cases the case files were found filled with inadmissible evidence which is ultimately to be discarded. It is the duty of the court to stop the witness at the moment he utters inadmissible evidence and should not allow to bring on record such inadmissible evidence.”

Reliance is also placed on the case of “GUL MUHAMMAD and another Versus The STATE through Prosecutor-General Balochistan” (2021 S C M R 381)

wherein the august Supreme Court of Pakistan has held as under:-

“It is strange enough that the extra judicial confession recorded in the presence of police personnel when they were under arrest and at the time of making statement they were also in handcuffs. This practice of recording extra judicial confession by the police officials in presence of police officers is nullity in the eye of law and no credence can be extended to this piece of evidence.”

Reliance is also placed on the case of “SAJJAN SOLANGI Versus The STATE” (2019 S C M R 872) wherein the august Supreme Court of Pakistan has held as under:-

“Both the courts below had illegally relied upon the statements of these two witnesses. Sikandar Ali Malkani claimed that on 24.09.2003 petitioner Sajjan Solangi while in police custody during interrogation made extra judicial confession before him and the other witness but admittedly under the Qanun-e-Shahadat Order, 1984 the said disclosure under the custody before the police is inadmissible whereas Muhammad Nawaz (PW-3) who is also a witness of the said confession, did not utter any word regarding such confession. The reliance made by the courts below on such inadmissible evidence was an unfortunate aspect of this case.”

18. The learned Deputy Prosecutor General and the learned counsel for the complainant have placed reliance on the report of the Punjab Forensic Science Agency, Lahore (Exh.PH/1-5) and submitted that according to the said report(Exh.PH/1-5), the printed representation (Exh.PF) was extracted from the mobile phone device sent to it for analysis and therefore the same provided ample proof against the appellant . We have noted that there is an unbreachable flaw in the prosecution case itself regarding the transmission of the mobile phone devices which were taken into possession during the investigation of the case to the Punjab Forensic Science Agency, Lahore for analysis. According to the prosecution witnesses, Muhammad Abid Ali (PW-1) produced the mobile phone device (P-1) which was in his use before the Investigating Officer of the case on **01.09.2019** and the prosecution witness namely Hamayoun Asghar 655/HC (PW-4) stated that on 01.09.2019, the prosecution witness namely Muhammad Abid Ali (PW-1) produced his mobile phone device (P-1) which was taken into possession by the Investigating Officer of the case and on **02.09.2019**, he handed over the mobile phone device (P-1) to Muhammad Aslam, SI (PW-7) for its onward transmission to the office of the Punjab Forensic Science Agency, Lahore and on **03.09.2019**, Sikandar Hayat, ASI (PW-6) handed over to him mobile phone device (P-2) recovered from the appellant which on **04.09.2019**, he handed over to Muhammad Aslam, SI (PW-7) for its onward transmission to the office of the Punjab Forensic Science Agency, Lahore. Similarly Mumtaz Hassan, ASI, (PW-5) stated that on **03.09.2019**, Rao Inam Ullah Khan, SI (PW-9) produced the mobile phone device (P-2) allegedly recovered from the possession of the appellant before Naeem ul Hassan



Khan, SP (PW-10) and Naeem ul Hassan Khan, SP (PW-10) took the same into possession vide recovery memo (Exh.PC). Sikandar Hayat, ASI (PW-6) stated that on **03.09.2019**, he took a sealed parcel said to contain the mobile phone device recovered from the appellant to the Police Station and handed over the same to Hamayoun Asghar 655/HC (PW-4) for keeping it in safe custody. Muhammad Aslam, SI (PW-7) stated that on 01.09.2019, he recorded the formal F.I.R (Exh.PD) and on 02.09.2019, Hamayoun Asghar 655/HC (PW-4) handed over the mobile phone device (P-1) to him for its onward transmission to the office of the Punjab Forensic Science Agency, Lahore and on **04.09.2019**, Hamayoun Asghar 655/HC (PW-4) handed over to him the *mobile phone device (P-2)* under the use of the appellant for its onward transmission to the office of the Punjab Forensic Science Agency, Lahore. In this manner, all the prosecution witnesses, related to the transmission of the mobile phone device (P-2), allegedly under the use of the appellant, from the Police Station to the Punjab Forensic Science Agency, Lahore, stated that the said mobile phone device (P-2) was handed over to Hamayoun Asghar 655/HC (PW-4) on **03.09.2019** and on **04.09.2019**, Hamayoun Asghar 655/HC (PW-4) handed over the mobile phone device (P-2) under the use of the appellant to Muhammad Aslam, SI (PW-7) for its onward transmission to the office of the Punjab Forensic Science Agency, Lahore. Muhammad Aslam, SI (PW-7), in his statement before the learned trial court, stated as under:-

“ On **04.09.2019**, Moharrar of police station handed over to me one sealed parcel said to contain **cell phone of accused Muhammad Kashif** for its onward transmission to the office of PFSA, Lahore which I deposited in the office of

PFSA, Lahore on 05.09.2019, intact. I.O recorded my statement U/S 161 Cr.P.C on 07.09.2019 in this regard.” (emphasis supplied)

However, according to the report of the Punjab Forensic Science Agency, Lahore (Exh.PH/1-5) , the mobile phone devices were received by it on **03.09.2019** . The relevant portion of the report of the Punjab Forensic Science Agency, Lahore (Exh.PH/1-5) reads as under:-

**“ 1. Description of Evidence Submitted**

The following sealed evidence items were **submitted on 03-09-2019** by Mr. Muhammad Aslam (SI) at PFSA along with the request:

- i. Recovery of the data of Whatsapp Messenger 'Ladai walla Group' in which accused shared derogatory remarks.
- ii Examine that the derogatory remarks mentioned in the picture are original/fabricated or otherwise.
- iii Any other hate material against the Almighty Allah and His Holy Prophet Hazrat Muhammad (PBUH) or otherwise in the mobile received or shared may also be examined recovered.
- iv All the recovered data may be developed on CD and send to submitting office.

**Item No. Physical Description**

1 One (01) Mobile Phone, Make: SAMSUNG, Model: SM-C7000, Color: Pink Gold.

1.1 One (01) SIM card labelled as 'Jazz | warid 8992300083987120378" (taken out from Item 1)

2. One (01) Mobile Phone, Make: QMobile, Model: 12 PRO, IMEI 1: 355545080741767, IMEI 2: 355545080741775

2.1 One (01) SIM card labelled as 'Jazz 8992300000627316190' (taken out from Item 2)

2.2 One (01) SIM card labelled as 'ZonG 4G A NEW DREAM 899204140119328136' (taken out from Item 2)

2.3 One (01) Memory card labelled as 'MicroSD HC 4GB' (taken out from Item 2)” (emphasis supplied)

The learned Deputy Prosecutor General and the learned counsel for the complainant are unable to explain that when according to the prosecution witnesses themselves, the mobile phone device (P-2) under the use of the appellant was handed over to Hamayoun Asghar 655/HC (PW-4) on **03.09.2019** and it was on **04.09.2019** that Hamayoun Asghar 655/HC (PW-4) handed over the mobile phone device (P-2) to Muhammad Aslam, SI (PW-7) for its onward transmission to the office of the Punjab Forensic Science Agency, Lahore then in how the mobile phone device regarding which the report (Exh.PH/1-5) has been issued by the Punjab Forensic Science Agency, Lahore and which mobile phone device had been received by the Punjab Forensic Science Agency, Lahore on **03.09.2019**, can be considered to be the same as the mobile phone device (P-2) which was sent to the Punjab Forensic Science Agency, Lahore on **04.09.2019** and received by it on **05.09.2019**. In this manner it is proved on record that the report of the Punjab Forensic Science Agency, Lahore with regard to the analysis of the mobile phone device (P-2) was never brought on record by the prosecution. Reliance in this regard is placed on the case of “*The state through P.G. Sindh and others Versus Ahmed Omar Sheikh and others*” (**2021 S C M R 873**) wherein the august Supreme Court of Pakistan, in somewhat similar circumstances, rejected such an analytical report and held as under:-

“26. In this case the recovery of Laptop through which the emails were sent to Mrs. Daniel Pearl was affected on the night of 11.2.2002 from the house of Fahad Nasim Ahmed. Admittedly the Laptop of Mrs. Daniel Pearl or any one else on which these emails were received were not traced out by the police. Even it is not known as to who delivered the said email to Mrs. Daniel Pearl if she had not received the emails on her own Laptop. In order to prove the recovery of Laptop the Investigating Officer claimed that it was Sheikh Naeem (PW-14) who pointed out the house of Fahad Nasim Ahmed on the night between 10/11.2.2002 and he also got recovered a scanner and a hard drive. Muhammad Ali (PW-19) who was a computer expert, working in Anti Car Lifting Cell in Karachi claimed that he received the Laptop and two emails at 1:00 pm. on 11.2.2002, from the Investigating Officer for examination. Muhammad Ali (PW-19) stated that as he was not having the required equipments so he was directed by his superiors to handover the Laptop to US consulate as FBI Officer had arrived to inspect the same. According to him he delivered the said Laptop on 12.2.2002 to US consulate through a letter. This Laptop was having most importance, as according to FBI forensic expert, through this Laptop vital information was retrieved and the emails were sent from this Laptop.

(i) Ronald Joseph (PW-8) in his evidence admitted that he arrived at Karachi on 4.2.2002; that he received the Laptop on 4.2.2002 in the US Consulate; that he was not aware of the name of the person who handed over to him the said Laptop but he was told that the Laptop is to be processed; that the Laptop was delivered to him from the locker-room of the US consulate; that he took six days in examining and processing the said Laptop. It is also a circumstance that when he left USA, he had knowledge that in Pakistan he was required to process the Laptop. According to his evidence he was briefed to process the Laptop/computer two days before he left for Pakistan, meaning thereby that he was aware on 28th or 29th January 2002 that while going to Pakistan he has to process a Laptop/computer because he left USA on 31.1.2002. Whereas according to prosecution's own case the second email was sent to Mrs. Daniel Pearl on 30.1.2002. It is also a circumstance that the emails were delivered by Mrs. Daniel Pearl on 5.2.2002 to the police and prior to that the FBI expert had received the recovered Laptop and started to examine it. The argument of learned counsel for the prosecution that Ronald Joseph (PW-8) may have been briefed regarding the Laptop of Mrs. Daniel Pearl or Mrs. Nomani, but surprisingly no such Computer from these ladies was ever recovered. The name of the sender of the said email to the computer of Mrs. Daniel Pearl or Mrs. Nomani could be traced out on which the said email have been received. So only one laptop was in the field which was allegedly recovered on 11.2.2002 from the residence of Fahad Nasim Ahmed whereas Ronald Joseph (PW-8) came to Pakistan on 4.2.2002 only to examine the said Laptop. So one thing is quite clear that the Laptop which was shown to be recovered on 11.2.2002 from the residence of Fahad Nasim Ahmed, was already available in the locker-room of US consulate on 4.2.2002. This fact by itself is indicative of the fact that all the recoveries were fabricated and planted to create an evidence against the accused persons which evidence was already available in the locker-room of US consulate. It is admitted by Ronald Joseph that he left Pakistan on 15.2.2002 and Laptop was shown to be recovered on 11.2.2002, as alleged by the prosecution, and given to the FBI on 12.2.2002 via Embassy. According to Ronald Joseph (PW-8) he completed the examination of the Laptop in six days, meaning thereby that he completed the examination of the alleged recovered Laptop on 18.2.2002, whereas according to his own version he left Pakistan on 15.2.2002. The learned counsel appearing on behalf of the prosecution are unable to explain as to recovery of the Laptop on 11.2.2002 was genuine or the evidence of Ronald Joseph (PW-8) and his expert report was truthful and genuine. If the prosecution's version

regarding the recovery of Laptop on 11.2.2002 is believed then the examination of the laptop by the FBI expert on 4.2.2002 would not be possible. If we believe that FBI expert did examined the recovered Laptop, then there is no evidence from where, when and from whom this Laptop was recovered and under what circumstances. The whole prosecution story became doubtful so far recovery of Laptop and other recovered articles are concerned. So the recoveries along with Laptop and the expert report generated from the said Laptop are clouded in the doubts and no reliance can be place on such recovery and expert report.”

19. The plea of the learned Deputy Prosecutor General and the learned counsel for the complainant that because the complainant party had no enmity to falsely implicate the appellant in such a heinous crime thus, the evidence adduced should be believed, is entirely a misconceived one. It is a cardinal principle of justice and law that only the intrinsic worth and probative value of the evidence would play a decisive role in determining the guilt or innocence of an accused person. Even evidence of an uninterested witness, not inimical to the accused, may be corrupted deliberately while evidence of an inimical witness, if found consistent with the other evidence corroborating it, may be relied upon. Reliance in this regard may be placed on the case of “*Waqar Zaheer vs. The State*” (1991 PSC 281). It is a known and settled principle of law that the prosecution primarily is bound to establish guilt against the accused without a shadow of reasonable doubt by producing trustworthy, convincing and coherent evidence enabling the Court to draw a conclusion whether the prosecution has succeeded in establishing accusation against the accused or otherwise and if it comes to the conclusion that charges, so imputed against the accused, have not been proved beyond a reasonable doubt, then the accused becomes entitled to acquittal. In such a situation the Court has no jurisdiction to abridge such right of the accused. To ascertain as to whether

the accused is entitled to the benefit of the doubt the Court can conclude by considering the agglomerated effect of the evidence available on record as held in the cases of “Safdar Ali v. The Crown” (PLD 1953 FC 93) and “Muhammad Luqman v. The State” (PLD 1970 SC 10). In the instant case we have scanned the prosecution evidence in-depth and we are persuaded to hold that the prosecution has failed to produce trustworthy, confidence-inspiring and consistent evidence against the appellant. Conversely, the evidence so brought on record appears to have been fabricated to prove the prosecution case. Even otherwise the prosecution evidence suffers from material discrepancies, contradictions and omissions and for such reasons it has not proved the case against the appellant intrinsically and if the evidence of such defective quality is accepted it would produce an illusory judgment which apparently would not be sustainable in the eyes of the law in view of the principles laid down by the august Supreme Court of Pakistan. Even otherwise the prosecution evidence is inconsistent and flawed, thus, on the basis of the same, the appellant cannot further be immured because he has every right to claim the guarantee of the Constitution of the Islamic Republic of Pakistan, 1973 which provides that every citizen of the country shall be dealt with in accordance with the law. We cannot dismiss the appellant's plea of being a faithful Muslim nor can possibly take exception to it, in the absence of evidence to the contrary to his acclaimed unflinching conviction in the injunctions of his faith. The Constitution of the Islamic Republic of Pakistan, 1973 guarantees freedom to an individual to hold and profess the faith of his choice; in his divine pursuits, he is sovereign and there is no intermediary between his soul and its Comforter, therefore,

the appellant's declaration of faith is to be preferred over divergent imputations. Citizens, regardless of religion, are equal before law and entitled to equal protection thereof and it is so guaranteed under the Constitution. A criminal charge is to be essentially settled on positive proof alone and not on perceptual or optical paradigms. It is a well settled principle of law that one who makes an assertion has to prove it. Thus, the onus rests on the prosecution to prove guilt of the accused beyond reasonable doubt throughout the trial. Presumption of innocence remains throughout the case until such time the prosecution on the evidence satisfies the Court beyond reasonable doubt that the accused is guilty of the offence alleged against him. There cannot be a fair trial, which is itself the primary purpose of criminal jurisprudence, if the judges are not able to clearly elucidate the rudimentary concept of the standard of proof that the prosecution must meet in order to obtain a conviction. Two concepts i.e., "proof beyond reasonable doubt" and "presumption of innocence" are so closely linked together that the same must be presented as one unit. If the presumption of innocence is a golden thread to criminal jurisprudence, then proof beyond a reasonable doubt is silver, and these two threads are forever intertwined in the fabric of the criminal justice system. As such, the expression "proof beyond reasonable doubt" is of fundamental importance to the criminal justice: it is one of the principles which seeks to ensure that no innocent person is convicted. Where there is any doubt in the prosecution story, benefit should be given to the accused, which is quite consistent with the safe administration of criminal justice. Further, suspicion however grave or strong can never be a proper

substitute for the standard of proof required in a criminal case, i.e. beyond reasonable doubt.

20. Considering all the above circumstances, we entertain serious doubt in our minds regarding the involvement of the appellant namely Muhammad Kashif son of Mulazim Hussain , 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 Akram v. The State (2009 SCMR 230) and Muhammad Zaman v. 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 go to the petitioner. This Court in the case of *Mst. Asia Bibi v. The State* (PLD 2019 SC 64) while relying on 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.”

The august Supreme Court of Pakistan in the case of “*The State through P.G. Sindh and others Versus Ahmed Omar Sheikh and others*” (2021 S C M R 873) has observed as under :-

“32. After careful reappraisal of the entire evidence, as discussed above, we are entertaining no amount of doubt that prosecution has failed to bring home guilt of the accused/respondents and appellant as the evidence furnished during the trial is full of factual and legal defects. In this case, regarding each and every piece of evidence the doubts are emerging from the mouth of the witnesses, and it is settled since centuries that benefit of doubt automatically goes in favour of an accused. Even if a single circumstance create reasonable doubt in a prudent mind regarding guilt of an accused then the accused shall be entitled to such benefit not as a matter of grace and concession but as a matter of right and such benefit must be extended to the accused person(s) by the Courts without any reservation. Reliance can be made upon the case of *Muhammad Mansha v. The State* (2018 SCMR 772) in which this Court held as under:

"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 then 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 Akram v. The State* (2009 SCMR 230) and *Muhammad Zaman v. The State* (2014 SCMR 749)."

Reliance in this behalf can also be made upon the cases of Muhammad Imran v. The State (2020 SCMR 857), Abdul Jabbar and another v. The State (2019 SCMR 129), Mst. Asia Bibi v. The State and others (PLD 2019 SC 64), Muhammad Ashraf alias Acchu v. The State (2019 SCMR 652), Gul Dast Khan v. The State (2009 SCMR 431) and Daniel Body (Muslim name Saifullah) and another v. The State (1992 SCMR 196).”

21. For what has been discussed above, Criminal Appeal No.285- J of 2020 lodged by Muhammad Kashif son of Mulazim Hussain (appellant) is **allowed** and the conviction and sentence of the appellant awarded by the learned trial court through the impugned judgment dated 26.11.2020 are hereby **set-aside**. Muhammad Kashif son of Mulazim Hussain (appellant) is ordered to be acquitted by extending him the benefit of the doubt. Muhammad Kashif son of Mulazim Hussain (appellant) is in custody and is directed to be released forthwith if not required in any other case.

22. **Capital Sentence Reference No. 01 of 2020** is answered in **Negative** and the sentence of death awarded to Muhammad Kashif son of Mulazim Hussain is **Not Confirmed**.

(TARIQ SALEEM SHEIKH) (SADIQ MAHMUD KHURRAM)  
JUDGE JUDGE