

Judgment Sheet

PESHAWAR HIGH COURT, ABBOTTABAD BENCH

JUDICIAL DEPARTMENT

Criminal Appeal No.140-A/2022
with Murder Reference No.4-A/2022

Shahzad Kiyani... (Appellant)

versus

The State etc ... (Respondents)

Present: M/S Atif Ali Jadoon and Noyasar Khan, Advocates for appellant.

Sardar Waqar-ul-Mulk, Assistant Advocate General for State.

Qazi Muhammad Arshad,
Advocate for complainant/
respondent No.2.

Date of hearing: **22.11.2023.**

JUDGMENT

MUHAMMAD IJAZ KHAN, J.- This single judgment is directed to decide the instant Criminal Appeal No.140-A/2022 titled “Shahzad Kiyani vs. The State etc” as well as the connected Criminal Appeal No.143-A/2022 titled “Taimoor Faridoon vs. The State etc” and Criminal Appeal No.148-A/2022 titled “Muhammad Khalid Umar vs. State” as all of them are outcome of the one and same judgment of learned Judge, Anti-

Terrorism Court, Hazara Division, Abbottabad dated 26.05.2022 in a case registered vide FIR No.14 dated 10.12.2016 under sections 302 PPC, 21-I, 21-J, 7 of Anti-Terrorism Act, 1997 read with section 15 of The Khyber Pakhtunkhwa Arms Act, 2013 at Police Station CTD Hazara Division, Abbottabad, whereby accused Shahzad Kiyani (appellant herein), Taimoor Faridoon (appellant in connected Cr.A No.143-A/2022) and Muhammad Khalid Umer (appellant in connected Cr.A No.148-A/2022) were convicted and sentenced as under:

I. (i) **Taimour Faridoon son of Muhammad Faridoon, (ii) Shehzad Kiani son of Ghulam Mustafa and (iii) Muhammad Khalid Umer son of Muhammad Hanif being held guilty of *Qatl-e-Amd* of Yousaf Hussain, therefore, they are CONVICTED AND SENTENCED TO DEATH under section 302/120-B PPC read with section 21-I of ATA, 1997 and also to pay Rs.15,00,000/- Fifteen Lac each as fine or in default thereof to further suffer simple imprisonment for one**



year each. The accused be hanged by neck till declare as dead by competent Medical Officer, however, subject to its Confirmation by Honourable Peshawar High Court. The amount of fine if recovered shall be paid to the legal heirs of deceased Yousaf Hussain as compensation within the meaning of section 544-A Cr.PC.

II. (i) Taimour Faridoon son of Muhammad Faridoon, (ii) Shehzad Kiani son of Ghulam Mustafa and (iii) Muhammad Khalid Umer son of Muhammad Hanif being held guilty of *Qatl-e-Amd* of Yousaf Hussain which created fear, panic and sectarian hatred in the society, therefore, they are ***CONVICTED AND SENTENCED TO DEATH U/S 7(a) Anti Terrorism Act 1997***. The accused be hanged by neck till declare as dead by competent Medical Officer, however, subject to its Confirmation by Honourable Peshawar High Court.

III. (i) Taimour Faridoon son of Muhammad Faridoon, (ii) Shehzad Kiani son of Ghulam Mustafa and (iii) Muhammad Khalid Umer son of Muhammad Hanif are also found

guilty of members of Proscribed Organization u/s 11-F(2) ATA, 1997 and ***CONVICTED AND SENTENCED TO UNDERGO RIGOROUS IMPRISONMENT FOR SIX MONTHS EACH.***

IV. (i) Taimour Faridoon son of Muhammad Faridoon, (ii) Shehzad Kiani son of Ghulam Mustafa and (iii) Muhammad Khalid Umer son of Muhammad Hanif are also found guilty of members of Proscribed Organization, participating in its activities, solicit, arrange and managed its meetings to support the banned Organization in all fields u/s 11-F (6) ATA, 1997 and ***CONVICTED AND SENTENCED TO UNDERGO RIGOROUS IMPRISONMENT FOR ONE YEAR EACH.***

V. (i) Taimour Faridoon son of Muhammad Faridoon, (ii) Shehzad Kiani son of Ghulam Mustafa and (iii) Muhammad Khalid Umer son of Muhammad Hanif are also found guilty of members of Proscribed Organization by disseminating sectarian, religious hatred through electronic media and other means u/s 11-W ATA, 1997 and

***CONVICTED AND SENTENCED
TO UNDERGO RIGOROUS
IMPRISONMENT FOR FIVE
YEARS EACH.***

- VI. (i) Taimour Faridoon son of Muhammad Faridoon, (ii) Shehzad Kiani son of Ghulam Mustafa and (iii) Muhammad Khalid Umer son of Muhammad Hanif are also found guilty of members of hatching criminal conspiracy for the murder of Yousaf Hussain belonging to Shia Sect u/s 120-B PPC and ***CONVICTED AND SENTENCED
TO UNDERGO RIGOROUS
IMPRISONMENT FOR SIX
YEARS EACH.***

- VII. (i) Taimour Faridoon son of Muhammad Faridoon and (ii) Shehzad Kiani son of Ghulam Mustafa are also found guilty for breach of license of pistol u/s 15-AA KPK read with section 19-AA KPK and ***CONVICTED AND
SENTENCED TO UNDERGO
SIMPLE IMPRISONMENT FOR
ONE YEAR EACH.***

All the sentences shall run concurrently. Benefits of section 382-B Cr.PC are also extended in favour of accused.”

2. Precisely, the facts of the present case as per record are that the complainant namely Mst.Zohra Bibi resident of Stadium Road Kurram Agency (then) residing at Badalzai Colony, Sheikhul-Bandi Abbottabad (PW-12) alongwith dead body of her husband namely Yousaf Hussain lodged a report to Cadel Abdul Ghafoor (then) SHO Police Station Cantt Abbottabad (PW-15) in Emergency Ward of DHQ Hospital Abbottabad on 10.12.2016 at 20.20 hours to the effect that her husband was serving as Officer in WAPDA and those days he was posted in Kohat and were here at Abbottabad on leave. On that date, on the eventful evening, they all family members went to Abbottabad city for shopping in official pick-up No.0494-PKP Peshawar driven by her husband; after shopping her husband dropped them at their rented house and after parking the vehicle at WAPDA Colony, he was coming to home by foot. At about 7.30 p.m. when reached opposite Shamah Bakery Street, Murree Road

near the house of Gul Zaman, unknown persons by disseminating fear and terror made indiscriminate firing with intent to murder him as a result of which he died on the spot; she further reported that they have got no enmity with anyone and stated that the occurrence seems to be in pursuance of sectarian terrorism; voice of firing was also heard by the inhabitants of nearby Abadi. She charged unknown culprit(s)/terrorist(s) for the commission of offence. The said SHO prepared the injury-sheet and inquest-report (Ex.PW-15/1 and Ex.PW-15/2) of the deceased and reduced the report of the complainant into writing in shape of Murasila (Ex.PA) and the same was sent to the Police Station through constable Tariq Zaman No.697 for registration of case; resultantly instant FIR (Ex.PW-1/1) was registered.

3. On registration of the case, a full-fledged investigation was carried out and then complete challan was put in court against the appellants and the absconding co-accused

namely Raja Mustafa Sultan. After observing the codal formalities, the trial court framed charged against all the accused under the relevant sections of law to which they pleaded not guilty and claimed trial which accordingly commenced. In support of its case, prosecution produced and examined as many as eighteen (18) witnesses including the important statements of Muhammad Tanveer Khan (then) SHO Police Station CTD Hazara at Abbottabad. He chalked out FIR and stood marginal witness to recovery memo Ex.PW-1/2 vide which garments and other belongings of the deceased were taken into possession. PW-2 is Rustam Khan ATI Police Station CTD Abbottabad. He stood marginal witness to recovery memo Ex.PW-2/1 vide which mobiles with their respective SIMs produced by appellants Khalid Umer and Shahzad Kiyani were taken into possession. He also stood marginal witness to recovery memo Ex.PW-2/9 vide which I.O. allegedly took into

possession 9 MM crime pistol having five live rounds of 9MM loaded in it, at the pointation of appellant Taimour Faridoon as well as Nokia mobile alongwith SIM produced by him. Similarly, he stood marginal witness to the recovery memo Ex.PW-2/3 vide which I.O. allegedly took into possession motorcycle No.LOY-8087 on pointation of the co-accused Raja Mustafa as well as Nokia mobile alongwith SIM produced by him. He further stood marginal witness to recovery memo Ex.PW-2/4 vide which license copy of 9 MM pistol allegedly produced by relative of appellant Shahzad Kiyani was taken into possession by the I.O. He is also marginal witness to recovery memo Ex.PW-2/5 vide which I.O. took into possession mobile phone of Taimour Faridoon which was allegedly used by him at the time of occurrence and the same was lost was produced by one Muhammad Parvez. PW-7 is Dr.Zia Qamar, who conducted autopsy on the dead body of

the deceased. He exhibited post mortem report as Ex.PM. PW-11 is Wasim Abbas who is son of the deceased. Though during the days of occurrence he was in Islamabad in connection with his studies, however, on information being conveyed to him by his mother he came to Abbottabad. He stated that investigation and recoveries made them believed that his father was murder by the accused and thus he recorded his statement under section 164 Cr.PC wherein he charged them for the commission of offence. PW-12 is Mst.Zohra Bibi who is the complainant of the instant case. She narrated pre and post events regarding the occurrence and exhibited her report as Ex.PA. PW-13 is Rizwan Habib (then) SP CTD Hazara Region at Abbottabad. He recorded confessional statement of appellant Taimour Faridoon on 05.03.2017 as well as confessional statements of appellants Shahzad Kiyani, Muhammad Khalid Umer and the absconding co-accused namely Raja

Mustafa on 08.03.2017. PW-14 is Ghulam Hamid (then) Judicial Magistrate, Alpuri Shangla who on 09.02.2018 after observing the codal formalities, recorded confessional statements of all the four accused (including three appellants) who were produced before him by Major Nadeem of Military Intelligence, and exhibited the same as Ex.PW-14/1, Ex.PW-14/4, Ex.PW-14/7 and Ex.PW-14/10), questionnaires as Ex.PW-14/2, Ex.PW-14/5, Ex.PW-14/8 and Ex.PW-14/11 and issued certificates to this effect which are Ex.PW-14/3, Ex.PW-14/6, Ex.PW-14/9 and Ex.PW-14/12 and thereafter handed over the accused to Military Officer. PW-16 is Abdur Rasheed Khan (then) Inspector Police Station CTD Hazara who conducted investigation in the instant case. PW-17 Shakir Iqbal who procured and provided the CDR and NADRA Verysis of different numbers and also conducted Geo fencing and exhibited i2 flow chart as Ex.PW-16/19. When prosecution

Jamil *(D.B.) Hon'ble Mr.Justice Kamran Hayat Miankhel.*
Hon'ble Mr.Justice Muhammad Ijaz Khan.

closed its evidence, statements of the appellants were recorded under section 342 Cr.P.C before the learned trial court, wherein they claimed innocence, however, they neither wished to produce the defense evidence nor desired to be examined as witness under section 340(2) Cr.PC. Then after hearing arguments of learned counsel for the parties, the learned trial court vide order and judgment dated 26.5.2022 convicted and sentenced the appellants as mentioned in Para No.1 of this judgment, whereas co-accused namely Raja Mustafa Sultan was declared as a Proclaimed Offender as he absconded during trial. The three appellants have now called in question their convictions and sentences recorded vide the aforesaid order and judgment through the aforesaid criminal appeals.

4. Arguments of learned counsel for the parties and learned Assistant Advocate General were heard in detail and record perused with their able assistance.

5. The main arguments of learned counsel for the appellants were that the impugned capital punishment has been recorded against the appellants on the basis of their delayed confessional statements either before the Superintendent of Police/PW-13 or before the court which unreasonable delay casts serious doubt on the voluntariness of the same. He further argued that even the recovery of the pistol from appellant Taimoor Faridoon and sending the same to FSL alongwith recovered empties has not been proved beyond the doubt, therefore, the positive Forensic Science Laboratory Report too is of no benefit for the prosecution and thus the learned trial court has wrongly awarded capital punishment to the appellants. As against this, learned counsel representing complainant and learned Assistant Advocate General submitted that the appellants belong to the Proscribed Organization and they have



murdered the deceased in an organized manner, therefore, they have rightly been convicted and sentenced to death.

6. Before dilating upon the aforesaid submissions of the learned counsel for the parties, there is a consensus on both ends to the effect that:-

- i) In this case, there is no ocular or direct evidence available,
- ii) The appellants have been awarded the capital punishment (death) on the basis of:
 - (a) Their confessional statements and
 - (b) Positive Report of FSL viz-a-viz matching report of the pistol and crime empties recovered from the spot.



Thus in view of the above admitted position, this court would proceed to analyze and evaluate the prosecution evidence qua the guilt or otherwise of the appellants.

7. It is the case of prosecution as reported by Mst.Zohra Bibi/widow of the deceased namely Yousaf Hussain (PW-12)

to the effect that her husband was serving as Officer in WAPDA and during those days he was posted in Kohat, however, on the day of occurrence, he was at Abbottabad as he was on leave. On that day, in the evening time they all family members went to Abbottabad city for shopping in the official pick-up driven by her husband and then after shopping her husband dropped them at their rented house and after parking the vehicle at WAPDA Colony, he was on way back to home on foot when at about 7.30 p.m. he reached at the place of occurrence, some unknown persons made indiscriminate firing at him due to which he died on the spot. She further stated that they have got no enmity with anyone, however, she apprehended that the occurrence may be the result of sectarian terrorism, therefore, she charged unknown accused/terrorist(s) for the murder of her husband.



8. It is an admitted fact and as spelling out from the record that initially nobody was charged in the FIR as the instant FIR was registered against the unknown persons, however, at the very outset they were suspected to be terrorists and the occurrence was stated to be the result of sectarian terrorism. The very foundation of the instant case is a report (Ex.PA) which ultimately culminated in FIR (Ex.PW-1/1) and contents of the same have already been deciphered in Para No.2 of this judgment from which it is spelling and as admitted by the complainant namely Mst.Zohra Bibi when she appeared in the witness-box as PW-12 that she is not an eyewitness of the occurrence meaning thereby that the fact about the murder of deceased at the alleged time and place is just a hearsay evidence. She has further stated during her cross-examination that she charged the accused as during investigation



they were found involved in the commission of offence. Apart from this, she did not bother to mention in her report (Ex.PA) the source through which she came to know about the occurrence of her husband's death, however, during her court statement as PW-12 she stated that their landlord came to her house and informed her about the murder of her husband. In view of above, there is no coherence in the contents of the FIR (Ex.PW-1/1) and statement of the complainant as PW-12, which makes both of them as unreliable, albeit, the learned trial court has completely ignored such glaring lacuna in the prosecution case while passing the impugned judgment. Similarly, prosecution has neither produced Tariq Zaman No.697 who carried Murasila to the Police Station for registration of case nor PW Khursheed Khan ASHO who escorted the dead body from the spot to the hospital for post mortem examination.

9. Prosecution has not produced even a single witness who could say that he has seen any of the appellants near and around or at the scene of the occurrence despite the fact that as per site plan (Ex.PW-16/1) the occurrence took place on the roadside which is surrounded by thickly Abadi, so on the available record there is no ocular or direct evidence regarding the present occurrence as well as the presence of appellants on the spot.

10. As far as the confessional statements of the appellants are concerned, the record would show that it was after two months and 17 days of the occurrence when the present appellants were arrested as suspects on 27.02.2017 and on the next day i.e. 28.02.2017 they were produced before the Anti-Terrorism Court, Hazara Division at Abbottabad and who was pleased to grant six days of their police custody. The record further shows that after five days of police custody, one of the appellants namely Taimoor Faridoon allegedly recorded his confession statement on



05.03.2017 before the SP CTD/PW-13 but when on the next day i.e. 06.03.2017 he was produced before the Anti-Terrorism Court where he refused to record a confessional statement or to confess his guilt, therefore, he was sent to the judicial lockup. As far as the other two appellants namely Shahzad Kiyai and Khalid Umer are concerned, as stated hereinabove that when they were firstly produced before Anti-Terrorism Court, Abbottabad on 28.02.2017, six days police custody was granted and as such on the expiration of the aforesaid custody on 06.03.2017 they were again produced and one day police custody was granted. The record further indicates that on 07.03.2017 they were again produced and a further two days police custody was granted to the local police and it was after three successive police custody orders ranging from 28.03.2017 till 09.03.2017 when in the last phase of their police custody they allegedly recorded their confessional statements on 08.03.2017 before

SP CTD Hazara Abbottabad, however, when on the next day when they were produced before the Judicial Magistrate on 09.03.2017 they too refused to record their confessional statements or to confess their guilt.

11. The record further indicates that the Counter Terrorism Department / local police after completing the investigation prepared a complete challan on 05.04.2017 as available on file, however, thereafter the trial of the appellants could not be commenced as in the meanwhile on 27.01.2018 the Federal Government decided to hand over the appellants to the Military Authorities. The record further indicates that after 14 days of their custody with the Military Authority they were again produced by Major Nadeem before Judicial Magistrate, Alpuri District Shangla on 09.02.2018 for recording their confessional statements and who too has allegedly recorded their confessional statements.



In view of the above, on the available record, there are confessions of the appellants recorded under section 21-H of The Anti-Terrorism Act, 1997 by the Superintendent of Police/PW-13 and lately in their custody period there are confessional statements recorded by the Judicial Magistrate, Alpuri District Shangla, however, the aforesaid confessional statements either recorded by SP (CTD)/PW-13 or Judicial Magistrate, Alpuri/PW-14 could not be relied upon for the reasons highlighted hereinafter.

12. It is part of the record that the appellants were arrested on 27.02.2017 and out of them appellant Taimoor Faridoon has recorded his confessional statement before the SP CTD Hazara Abbottabad/PW-13 on the 5th day of his custody, whereas appellant Shahzad Kiyani and Muhammad Umar Khalid have allegedly recorded their confessional statements on the 12th day of their arrest and

that too when three times successive police custody was granted to the CTD Authorities, therefore, such delayed recording of confessional statements casts serious doubt on their truthfulness and voluntariness and thus no legal worth or sanctity or evidentiary value could be attached to such confessional statements as it *prima facie* shows that the same have been extracted from the appellants by the investigation officer just to provide crutches to the prosecution case.

13. It is also relevant to mention here that in this case, the prosecution has mainly relied on the confessional statements recorded by SP CTD/PW-13, however, it is noteworthy that under Article 40 of Qanun-e-Shahadat Order, 1984 any confession made before a police officer is not admissible in evidence, however, an exception has now been provided under Section 21-H of The Anti-Terrorism Act, 1997 where-under a confession made before a police officer who is not below the rank of

Jamil (D.B.) *Hon'ble Mr. Justice Kamran Hayat Miankhel.*
Hon'ble Mr. Justice Muhammad Ijaz Khan.

DSP has been made admissible subject to pre-existence of certain conditionalities. The same section of law being relevant is reproduced below:

“21H. Conditional admissibility of confession. Notwithstanding anything contained in the Qanoon-e-Shandat, 1984 (President’s Order No. 10 of 1984) or any other law for the time being in force, where in any court proceedings held under this Act the evidence (which includes circumstantial and other evidence) produced raises the presumption that there is a reasonable probability that the accused has committed the offence, any confession made by the accused during investigation without being compelled, before a police officer not below the rank of a District Superintendent of Police, may be admissible in evidence against him, if the Court so deems fit.”

The language of the aforesaid provision has been couched by the Legislature in such a manner that it by itself speaks that a confession before a police officer who is not below the rank of District Superintendent of Police would be admissible subject to certain conditions and those conditions are that there

must be some other circumstantial or other evidence which are sufficient enough to strongly raise the presumption that there is a reasonable probability that the accused has committed the offence and that for such confession recorded during investigation, an accused has not been compelled, however, if the aforesaid yardstick is applied to the case of present appellants it goes a long way to discard the so-called confessional statements recorded by the Superintendent of Police/PW-13 at Abbottabad for the reasons; firstly, that the same has been extracted from the appellants after obtaining the police custody as one of the appellants namely Taimoor Faridooon has allegedly confessed his guilt after five days of his police custody, whereas the other two appellants namely Shahzad Kiyani and Muhammad Khalid Umer have confessed their guilt after eight days of their police custody which fact, *prima facie*, speaks volume that appellants have been compelled



for the same, therefore, the precondition as required for the admissibility of a confessional statement made before a police officer are apparently missing in the present case, therefore, the same could not be relied upon; secondly, the certificates appended with the aforesaid confessional statements would also show that the SP CTD/PW-13 has specifically stated that "*the statement was recorded on my own dictation*", which obviously means that he has not recorded the confessional statements in his own handwriting, however, he has neither named that person who has scribed these confessional statements nor the I.O. has recorded the statement of that scribe of the confessional statements nor that scribe has been produced by the prosecution to establish that the confessional statements so-recorded are in handwriting of the said scribe, therefore, this illegality too goes a long way to discard the so-called confessional statements recorded by the aforesaid Superintendent of Police.

14. The record also shows that after recording of the aforesaid confessional statements by Superintendent of Police (PW-13), the appellants were again handed over to the investigation officer rather the proper course for him was to have sent them to the judicial lockup, however, this act on the part of aforesaid Superintendent of Police has proved a blessing in disguise for the appellants as on the very next day when they were produced before the Judicial Magistrate, they outrightly refused to record any confessional statement. This fact alone is sufficient to establish the fact that the so-called confessional statements recorded by the SP CTD is the result of coercions and compulsion and are not the outcome of any repentance. Had the appellants been repented then they would have definitely confessed their guilt before the Judicial Magistrate as well but admittedly they did not, therefore, on this

score too, the confessional statements could not be relied upon for recording the convictions of the appellants.

15. It was also noted that in case of one of the appellants namely Taimoor Faridoon, the Superintendent of Police/PW-13 before recording his confessional statement, has not satisfied himself regarding the number of days for which the said appellant has remained in police custody as the answer to the relevant question No.6 as transpired from Ex.PW-3/2 is blank. Similarly, all the appellants were promised by the said SP/PW-13 as transpires from the question No.2 of the questionnaire that the appellants were asked that if they make a confession or refuse to do so they will not be remanded to police custody and will be sent to judicial lockup, however, despite this promise and commitment, the record would indicate that after recording their confessional



statements, they were again handed over to the investigation officer, therefore, *prima facie* the appellants have been induced by the SP/PW-13 for extracting the alleged confessional statements from them.

16. The record is also completely silent that as to whether at the relevant time, the said SP CTD namely Rizwan Habib/PW-13 was in police uniform or was he in the plain clothes though under the law he should have been provided a conducive environment or for the present matter a fearless or terror-less environment to the appellants so as to attach a legal worth to such confessions.

17. In view of the above, it is established on the face of record that the Superintendent of Police/(PW-13) has not fulfilled all the codal formalities either before, during or after recording of confessional statements of the appellants, therefore, such statements could not be relied upon for the purpose of conviction what to speak for the award of

capital punishment. In the case titled "NADEEM HUSSAIN vs. The STATE" reported as 2019 SCMR 1290, the Hon'ble Supreme Court has observed that a confession before the police is inadmissible in evidence in normal cases but in cases of terrorism section 21-H of the Anti-Terrorism Act, 1997 has made such a confession before the police conditionally admissible. The condition placed by the said section upon admissibility of such a confession before the police is that there must be some other evidence, including circumstantial evidence, which must reasonably connect the accused person with the alleged offence before a confession made by the accused person before the police is accepted by a court worthy of any consideration. Such conditional admissibility of a confession before the police is contingent upon availability of some other evidence connecting the accused person with the alleged offence but in the present case, as we

J. - 03

have already discussed above, all the other pieces of evidence relied upon by the prosecution against the appellant had utterly failed to connect the appellant with the alleged offences. Similarly, way back in the year 1998, the Apex Court in the case titled “MEHRAN ALI and others vs FEDERATION OF PAKISTAN and others” reported as PLD 1998 Supreme Court 1445, has declared the erstwhile section 26 of The Anti-Terrorism Act, 1997 now section 21-H of the ibid Act as ultra-vires and in violative of Articles 13(b) and 25 of the Constitution and it had been recommended that the words occurring in section 26 of the Act “police-officer not below the rank of a Deputy Superintendent of Police” be suitably amended with the words “Judicial Magistrate” and it was held that section 26 of the Act in that form was not a valid law as the same is violative of Articles 13(b) and 25 of the Constitution. This court in the case titled “AFTAB AHMAD vs THE

STATE” reported as **2004 MLD 1337**, has also allowed criminal appeal against conviction and sentence recorded by the trial court by observing that since the decision about its admissibility in view of section 21-H of the Act mentioned above has been left on the judicial discretion of the Court, the Court before relying upon it must see and satisfy itself whether the questions enumerated above have been satisfactorily answered. If the answers are in the affirmative, alright it can be relied upon. But if in the negative as in this case, it will neither be credible nor even relevant. Needless to say that being admissible does not necessarily mean being credible.

18. As far as the confessions of appellants before Judicial Magistrate, Alpuri District Shangla/PW-14 are concerned, the same too could not be considered for the purpose of impugned capital punishment as it is an admitted fact that the present appellants were arrested on 27.02.2017 as potentially suspects

of the present occurrence and then they were handed over to the Military Authority exactly after 11 months i.e. on 27.01.2018 and then after 13 days of custody with Military Authority statedly they were produced by one Major Nadeem before the Judicial Magistrate, Alpuri District Shangla (PW-14) and who recorded the confessional statements of the appellants, however, these so-called judicial confessions too, could not be relied upon for this sole reason that these confessional statements were recorded after eleven months of their arrest by the local police and after 13 days of their custody with the military authority.

19. The record also indicates that after handing over of the appellants to the military authority on 27.01.2018 till the date of recording of their confessional statements on 08.02.2018 they were admittedly not under a legal and lawful custody which was duly granted by a competent military authority or

any Magistrate as the case may be and thus a confessional statement recorded during an illegal custody of an accused person could not be considered what to speak of relying the same for the grant of capital punishment. In the case titled "STATE vs. ASFANDYAR WALI and 2 others" reported as 1982 SCMR 321, the Apex Court has observed that the prosecution relied on his confession, and as submitted by the learned Advocate-General, the Special Court relied on the confession, because it was highly impressed by the evidence of the Magistrate, who recorded it. But, the Magistrate, who recorded this confession, was also a probationer, and we cannot understand the coincidence by which confessions in a case of crucial importance were recorded only by Magistrates who were probationers and that in a city as big as Peshawar. Be that as it may, the circumstances in which Nisar Khan's confession was recorded are similar to those in which

J. 03

Asfandyar's confession was recorded. Nisar Khan had been in custody for more than a month when his confession was recorded, and the learned Advocate-General did not explain how he had been kept in custody for so long without a remand order by a Magistrate. And, we would emphasize here that no remand order was produced before us. Additionally, and this is more shocking, Nisar Khan was produced from the dungeons of the grim fortress of Balahisar for recording his confession, yet the Magistrate did not make any enquiry as to whether the accused had been ill-treated or not. Therefore, for the reasons, which we have already given, we are not impressed by the confession, and we hold that it was neither genuine nor voluntary.

20. It was also noted during perusal of confessional statements of appellants recorded before Judicial Magistrate, Alpuri Shangla (which are available on file as Ex.PW-14/1, Ex.PW-14/4, Ex.PW-14/7 and Ex.PW-14/10) that each of the confessional statements

consists of two sheets, however, it has neither been mentioned on any page thereof that these statements have been recorded under section 164 Cr.PC nor any provision of Army Act/Law is cited nor there is signature or stamp of the concerned Judicial Magistrate on their first page nor there is signature or thumb impression of the respective appellant on first page nor name of the concerned appellant is written on the second page thereof, which infirmity in the confessional statements not only lessens their sanctity in the eye of law but also renders first page of the same bearing no signature or stamp of the concerned Judicial Magistrate as well as for want of signature or thumb impression of the concerned appellant as inadmissible. In the case reported as **2019 SCMR 1290**, which has already been cited above, the Hon'ble Supreme Court did not believe the confessional statement by observing that the said confessional statement attributed to the appellant was not signed or thumb-marked by the appellant.



21. In view of the above discussion, the aforesaid confessional statements recorded after considerable delay could neither be termed as true nor voluntary nor the same could be termed as recorded without any compulsion or pressure or coercion or influence or inducement nor the same have been recorded after observance of all the codal formalities as find mentioned in the High Court Orders and Rules or judicially approved norms as set by the Higher Judiciary from time to time, therefore, the same could not be relied upon. In the case titled "The STATE through P.G. Sindh and others vs. AHMED OMAR SHEIKH and others" reported as 2021 SCMR 873, the Apex Court has held that keeping them in such long detention clearly made both the retracted judicial confession doubtful and non-voluntarily. It was further held by the Apex court in that case that admittedly their statements were recorded with a delay of more than 17/18 days of their

J. 03/

illegal confinement. Such long detention that too illegal, is sufficient to discard the confessional statements as the principle that longer police custody of an accused lesser the evidentiary value of his confession, will apply in this case. This delay has not been explained by the prosecution. All the learned counsel appearing on behalf of the prosecution were unable to explain as to why such confessions were not recorded on the day first of their arrest. From the perusal of the confessional statement of both the accused we are satisfied that the fear of police was not removed from the mind of the accused and the confession made by them is not free from extraneous influence such as threat, promise or inducement. The confessional statements were not made voluntarily and suffer from various defects and infirmity as noted by us and confessional statements have been retracted which are also enough to make them involuntarily and diminish its intrinsic value.

(Jamil) (D.B.) Hon'ble Mr.Justice Kamran Hayat Miankhel.
Hon'ble Mr.Justice Muhammad Ijaz Khan.

Similarly, in another case titled “**INTEKHAB AHMAD ABBASI and others vs. THE STATE and others**” reported as **2018 SCMR 495**, the Honourable Supreme Court allowed all the three appeal and acquitted all the appellants by observing that considering the case in the above background, it would be fair to draw an inference that the accused were coerced and pressurized to make confession after remaining in the custody of the J.I.T. for many weeks blind foldedly at unknown places. Similarly, this court by following the aforesaid dictum of the Apex Court has already held in the case titled “**ADIL KHAN vs. The STATE and another**” reported as **2020 PCr.LJ 729** that confession recorded with a delay of 4 days after arrest with no plausible explanation and such undue delay cannot be made basis for recording conviction of accused on capital charge. Longer the custody of accused weaker the evidentiary value of confession.

*Jamil D.B. Hon'ble Mr.Justice Kamran Hayat Miankhel.
Hon'ble Mr.Justice Muhammad Ijaz Khan.*

22. Even otherwise, the appellants did not stick to the so-called confessional statements rather they retracted from the same at the stage of investigation, during the trial as well as at the time of recording their statements under section 342 Cr.PC before the trial court, therefore, on this ground alone, these retracted confessions could not be made basis for the impugned capital punishment. In the case titled "MUHAMMAD BILAL and another vs. The STATE and others" reported as 2021 SCMR 1039 the Apex Court has acquitted the appellant by observing that another important aspect of the case is that the appellant had retracted the confession and claimed that he had not made any incriminating statement. Thus, in such a situation, the only evidence to be relied upon is the said retracted confession and no other reliable and trustworthy evidence is available with the prosecution. This further compels the prosecution to establish and prove the confessional statement which we think the

(Jamil) (D.B.) Hon'ble Mr.Justice Kamran Hayat Miankhel.
Hon'ble Mr.Justice Muhammad Ijaz Khan.

prosecution has badly failed to prove beyond any reasonable doubt. It would be highly unsafe to maintain conviction on such a sketchy retracted confession.

23. Another flaw as discussed hereinabove that in this case the scribe of the confessions was not produced despite the fact that the Superintendent of Police (PW-13) has recorded certificates (Ex.PW-13/3 and Ex.PW-13/7) that the confessional statements were recorded on his dictation which obviously means that these statements are not in his own handwriting and that who is the scribe of these confessional statements has neither been named nor produced by the prosecution before the court as its witness.

This court in the case titled "ALI REHMAN and another vs The STATE through Additional Advocate General and 3 others" reported as 2021 YLR-Notes 118 acquitted the appellant by observing that the Judicial Magistrate has also not

clarified in his statement that in what manner he had asked the questions mentioned in memorandum of inquiry through his Reader and how he read over the confession to appellant/convict, therefore, it cannot be ascertained from the available record that the appellant understood the nature and significance of the questions put to him by Judicial Magistrate before recording his confession. Though the Judicial Magistrate has stated that he had handed over the appellant to Naib Court, however, the I.O. has admitted in his cross-examination that the appellant was handed over to him at 13:00 hours. In the case titled "**MUHAMMAD ISMAIL vs. The STATE**" reported as **2017 SCMR 713**, the Apex Court has summed up all the prerequisite legal formalities as well as conditionalities for a confession on the basis of which the same could be relied upon for the purpose of conviction and the same are reproduced below:

J.-87

"The most important factors and required standards of confession may be cited below:-

"It should be ensured,

- (i) that the accused is in full senses and understands the consequences of making a confession;
- (ii) that, the confession was not a result of any duress, coercion or any promise by the prosecution, to be made an approver;
- (iii) that, during transit of the accused by the police from and to the Trial Court from the prison, on each "Paishi" no threat or pressure was applied by the escorting police guard or incharge thereof;
- (iv) what were the actual facts, which induced the accused to confess after facing trial, during which he pleaded innocence all the way;
- (v) the court recording the confession has to ensure that the mental capacity of the accused is not diminished due to any illness and if some indication of abnormality is suspected by the Court, it is better to refer the accused to the Standing Medical Board to ascertain the true cause thereof;
- (vi) While recording the confession, the same safeguards and precautions be adopted, by directing the Public Prosecutor, the

complainant's counsel, the Naib Court and all other officials to leave the Court. If need be, the counsel who represents him, may be given an opportunity to be present inside the Court during the whole process, if the accused person, on asking by the Trial Judge, so demands;

- (vii) the handcuffs of the accused be removed and he be provided a chair on the dais. He may be given some time to think over the making of the confession and in that regard particular questions be put to him, as to why he was making the confession when he has already pleaded innocence and claimed trial at the time, the formal charge was framed;
- (viii) the Trial Judge shall explain to the accused that, in case of making confession, he has to face a capital sentence in a murder case or any offence punishable with death;
- (ix) the entire record of all the questions and answers recorded, be properly maintained and thereafter, a proper certificate be appended thereto, showing the satisfaction of the Trial Judge that the accused person was not mentally sick and he was making the confession voluntarily, based on true facts and that, there was no other compelling reason behind that.

J. 03/

The Apex Court in the aforesaid case has further held that as the above procedure was not adopted, therefore, it was incorrectly construed by the Courts below as confession of the accused. Under the law, it may be treated as an admission of the appellant, however, on the basis of admission alone, accused person cannot be awarded a capital punishment because admission, as has been defined by Article 30 of the Qanun-e-Shahadat Order, 1984, is only a relevant fact and not a proof by itself, as has been envisaged in Article 43 of the Order, 1984, where a proved, voluntary and true confession alone is held to be a proof against the maker therefore, both the Courts below have fallen in error by treating this halfway admission to be a confession of guilt on the part of the appellant.”



24. As far as the other incriminating evidence/material which was found weighed with the learned Anti-Terrorism Court for the grant of capital punishment was the recovery

of pistol from appellant Taimoor Faridoon and the same being the ownership of co-appellant Shahzad Kiyani and the positive Forensic Science Laboratory (FSL) Report qua matching the recovered empties with the pistol, however, such positive Report of Forensic Science Laboratory too is of no benefit for the prosecution as the record would show that allegedly four empties of pistol without mentioning of their bore, were shown recovered from the spot vide recovery memo Ex.PW-8/1 and similarly in the site plan Ex.PW-16/1, the empties were shown recovered from point "A", however, there too, the bore of the same was not mentioned and when the marginal witness of the said recovery memo Ex.PW-8/1 namely Khan Gul appeared in the witness-box as PW-8 who too in the cross-examination has destroyed this important piece of prosecution evidence by stating that "*I do not know what the police officials did with the empties after securing*

(Jamil) (D.B.) Hon'ble Mr.Justice Kamran Hayat Miankhel.
Hon'ble Mr.Justice Muhammad Ijaz Khan.

them. Anyhow I do not know it was placed in paper or cloth (leer) after securing from the spot." and more astonishingly he has also stated that "In my presence I.O. did not initial the empties." The aforesaid categorical statement of one of the important marginal witness of the recovery would manifestly show that the empties were not sealed on the spot and thus they were left unsecure and unsafe, therefore, this fact alone is sufficient to cast a serious doubt on the safe custody and safe transmission of the empties to the FSL, and thus the positive Report of FSL is of no legal worth for the prosecution. In the case titled "RAHIM BAKHSH vs. The STATE" reported as 2010 PCr.LJ 642 [Quetta], it was observed that as far as non-sealing of recovered articles is concerned, there is no cavil with the legal proposition that non-sealing of alleged recovered weapons on the spot vitiates conviction. Moreover, it is clear that alleged recovered articles at any stage of

time were never sealed, so in my considered view, this circumstance itself is sufficient enough to vitiate trial.

25. It may also be noted that after the recovery of four empties of pistol from the spot on 10.12.2016 they were sent to Forensic Science Laboratory on 14.12.2016 and the FSL Report was prepared on 03.01.2017 and the same was received back by the I.O. on 10.01.2017. All these crucial dates are duly reflecting from the FSL Report Ex.PW-16/15, however, as per prosecution case, the pistol was allegedly recovered on pointation of the appellant Taimoor Faridoon on 02.03.2017 then the aforesaid pistol alongwith the recovered empties were jointly sent to the Forensic Science Laboratory on 06.03.2017 but the record is completely silent that as to in whose custody these empties remained from 10.01.2017 (when they were received from the FSL) till 06.03.2017 (when they were again sent to the FSL alongwith the recovered

J. 03/

pistol). The prosecution has neither produced nor exhibited Register No.19 pertaining to the safe custody of the case property in the Malkhana nor any of the prosecution witnesses has stated a single word that during this long period of 54 days i.e. from 10.01.2017 to 06.03.2017 in whose custody these empties remained, therefore, such positive Report of the Forensic Science Laboratory too is of no significance. In the case titled "MUHAMMAD BILAL and another vs. The STATE and others" reported as 2021 SCMR 1039, the Apex Court has observed that the pistol was allegedly recovered from the immediate possession of the appellant vide card of arrest Ex.PW2/1 at the time of his arrest by S.I. Iftikhar Shah (PW.2) on 2nd August, 2016 but there is nothing on the record to show that in whose custody it remained from the time of its alleged recovery on 2nd August, 2016 till 4th August, 2016... Besides the above, the empty

Jamil *(D.B.) Hon'ble Mr.Justice Kamran Hayat Miankhel.*
Hon'ble Mr.Justice Muhammad Ijaz Khan.

and the pistol were sent together vide Ex.PW-7/6 to Forensic Science Laboratory, Khyber Pakhtunkhwa (FSL) on 8th August, 2016. The report of the Fire Arms Expert is Ex.PK/1. In these circumstances, positive report becomes highly doubtful and can in no way be considered as a piece of corroborative evidence worth reliance. Similarly, in the case titled "**MUHAMMAD SALEEM v. SHABBIR AHMED and others**" reported as **2016 SCMR 1605**, the Apex Court has observed that none had seen respondent No.1 firing at the deceased and, thus, mere recovery of a weapon of offence matching with a crime-empty was not sufficient to provide corroboration to the other pieces of circumstantial evidence. It had never been proved before the trial court that the weapon of offence had been kept in the Mal Khana safely after its recovery and its dispatch to the Forensic Science Laboratory was also not proved by any witness. For all these reasons

J.-b

the High Court had concluded that the prosecution had failed to prove its case against respondents Nos.1 and 4 beyond reasonable doubt and had, thus, acquitted the said respondents of the charge. Likewise, in another case titled "**NOOR MUHAMMAD vs. THE STATE and another**" reported as **2010 SCMR 97**, the Apex Court has held that the recovery of crime empty or rifle with matching report of F.S.L. is at the most a corroborated piece of evidence and the same by itself is not sufficient to convict the accused in the absence of the substantive evidence.

26. It is also quiet astonishing that even the prosecution has not been able to prove the sending of these empties and pistol to the FSL as in support of sending the empties/pistol to the FSL they have produced Sohrab Khan ASI CTD as PW-9, however, he has admitted in his cross-examination that he got dispatched the case property in parcel No.5, 6 and 7

through his "Assistant", however, he has neither named the said "Assistant" nor he has been produced as a witness. Similarly, regarding the road certificates, which were exhibited as Ex.PW-5/1 and Ex.PW-5/2, he has admitted that they were scribed by his "predecessor-in-office", however, the said "predecessor-in-office" of PW-9 has neither been named nor produced by the prosecution as its witness, therefore, the very sending of empties and pistol to the FSL has not been established by the prosecution.

27. As far as the case of prosecution against appellant Shahzad Kiyani is concerned to the effect that the said pistol was his licenced pistol and was duly registered in his name, this fact too has not been established by the prosecution as the record would show that the copy of the license of the said pistol was taken into possession vide recovery memo Ex.PW-2/4 and as per the aforesaid recovery memo this license copy of the pistol was produced by



the “close relative” of the appellant Shahzad Kiyani, however, the said “close relative” has neither been named nor his statement has been recorded by the I.O. nor he has been produced in the court in support of the same, therefore, the very production of the license copy of the pistol on behalf of appellant Shahzad Kiyani is not proved as per required standard of proof.

28. The record also shows that the prosecution has neither been able to produce the original copy of the license of the pistol of appellant Shahzad Kiyani nor it has bothered to verify its authenticity and genuineness / correctness from the licensing authority to the effect that as to whether the same is a valid licence and that the same is truly a registered pistol in the name of appellant Shahzad Kiyani or not, therefore, this flaw in the prosecution case too goes a long way to doubt their allegation that the pistol so recovered is registered in the name of appellant Shahzad Kiyani.

(Jamil) (D.B.) Hon'ble Mr.Justice Kamran Hayat Miankhel.
Hon'ble Mr.Justice Muhammad Ijaz Khan.

29. The record also shows and as stated hereinabove that at the time of recovery of four empties, their bore have not been mentioned in the recovery memo nor the same has been mentioned in the site plan and this unprecedented non-mentioning of the bore of empties strongly shows that the investigation officer has left the field open for himself to fill the same after the recovery of weapon of offence and thus this malafide on the part of I.O. too speaks volume that the I.O. has gone to every extent to cook up a strong case against the appellants.

30. In view of the above discussion when the prosecution has not been able to prove that the empties were sealed on the spot and that the pistol was registered in the name of appellant Shahzad Kiyani then recovery of the pistol from appellant Taimoor Faridoon and the same being the ownership of the appellant Shahzad Kiyani and then positive report of FSL would be of no help for the prosecution

J. 03

and thus the same alone could neither be sufficient nor the same could be relied upon for the purpose of conviction.

31. It is also relevant to mention here that it is the case of prosecution right from day one that the appellants belong to a Proscribed Organization namely *Sipah-e-Sahabah Pakistan*, and that they have committed the murder of deceased Yousaf Hussain as a result of sectarian motivation, however, prosecution has not been able to bring on record an iota of evidence to prove that either the appellants have solicited or invited support for a Proscribed Organization or they have provided any money to it or that the appellants have printed or published any material to invite any religious, sectarian or ethnic hate or that they are the office-bearers of the said banned Organization or that they are registered members of the said Organization or that they have a history of any suchlike activities in the past. During the course of arguments, learned

J. 03

counsel for the respondent/complainant stated that in the past the name of one of the appellants has been included in Schedule IV of The Anti-Terrorism Act, 1997, however, those materials on the basis of which the name of one of the appellants was enlisted in Schedule IV of the said Act have not been brought on the case file, therefore, the allegation of the prosecution qua appellants being members of a Proscribed Organization remained allegations throughout and no positive, convincing and confidence inspiring evidence has been brought on record to establish the said allegations, therefore, on this score too, they have wrongly been convicted under various provisions of The Anti-Terrorism Act, 1997.

J. a³

32. So far as the allegations of conspiracy being hatched by the appellants for the murder of a person who practiced Shia Sect is concerned, the said allegations too have not been established on record as in support of the same, the prosecution has not produced a

single witness, albeit, as per prosecution case, Nokia mobile phone having IMEI No.35891107373572 was allegedly used by appellant Taimoor Faridoon at the time of occurrence by using SIM number of his father 0316-5130789, and allegedly the same was recovered from one Muhammad Pervez who found the same being left by someone in his Taxi but astonishingly during trial the said Muhammad Pervez was not produced by the prosecution. In this backdrop of the matter, i2 flow chart (Ex.PW-16/19) becomes doubtful as the aforesaid SIM number was not in the name of appellant Taimoor Faridoon rather it was registered in the name of his father (as stated by PW-2 in his court statement) and thus the chain and nexus amongst the appellants qua hatching of a conspiracy is not established by the prosecution. Likewise, the prosecution has failed to bring on record anything in black and white with respect to conversations amongst the appellants for chalking out a murderous plan as well as for

J.M. - 56 -

its execution just prior to the instant occurrence. Even otherwise, i2 flow chart (Ex.PW-16/19) on which the learned trial court has heavily relied, neither deciphers the IMEI numbers of the mobile phones in which the SIMs numbers shown therein were allegedly used nor the exact location of the deceased and appellant Taimoor Faridoon rather the words "Sipah Sahaba" in bracket are written with the names of appellants which aspect of the case casts serious doubt on its genuineness as the I.O. was required to have obtained the said data without mentioning those words of "Sipah Sahaba" and thus it appears that the data providing entity has apparently been influenced by these words of the I.O. In the case reported as **2021 SCMR 873**, which has already been cited above, the Apex Court has also observed that to constitute a criminal conspiracy under section 120-A, P.P.C. two essential elements are required to be proved: (i) intent to do or cause to be done an illegal act, or an act which is not

illegal but by illegal means; (ii) existence of a conspiratorial agreement. Realizing the clandestine nature of the offence, the legislature has employed a special rule of evidence, as provided under Article 23 of the Qanun-e-Shahadat, 1984. The said rule is an exception to the general rules of proof. This rule provides that there should be 'reasonable ground' that a person was a party to the conspiracy before his acts, statements or writings can be used against his co-conspirators. Mere association of a person with a conspirator or even a serious suspicion of one's involvement with the other is not sufficient to constitute 'reasonable ground' for the former to be in conspiracy with the latter. The Apex Court in another para of the said judgment has further observed that the only evidence to link Salman Saqib with the crime is the confession of the co-accused Fahad Naseem. This single piece of evidence could not be more than circumstantial evidence, and would not alone, suffice to prove that Salman

Saqib is guilty of committing criminal conspiracy to abduct Daniel Pearl for ransom.

Convicting a person solely on the basis of the confession of a coconspirator on the strength of Article 23 of the Qanun-e-Shahadat, 1984 would surely run counter to the settled principles of safe administration of criminal justice enshrined in Article 37 (supra). Thus, when the judicial confession of Salman Saqib has been legally discarded, then there remains no reliable evidence, other than mere suspicion of him being part of the conspiracy.

This being so, the condition precedent of there being 'reasonable grounds to believe' Salman Saqib was part of a conspiratorial agreement, as envisaged under Article 23 of the Qanun-e-Shahadat, 1984 was starkly lacking. Accordingly, the statements, writings or actions of Fahad Naseem could not implicate Salman Saqib to be part of the criminal conspiracy, within the contemplation of Article 23 of the Qanun-e-Shahadat, 1984. In these circumstances, one can safely conclude

that the prosecution did not produce sufficient trustworthy evidence to prove the charge of criminal conspiracy against Salman Saqib.

In view of the above discussion and expositions of law, the case of prosecution is full of doubts all around and it has miserably failed to prove the allegations as levelled against the appellants, therefore, benefit of the same has to be extended to them not as a matter of grace but as a matter of right.

33. It is relevant to mention here that by now it is a trite law that for giving benefit to an accused, it is not essential that there should be many circumstances creating doubts, even a single doubt is sufficient to extend its benefit to an accused person as it is the cardinal principle of criminal administration of justice that let hundred guilty persons be acquitted but one innocent person should not be convicted. The Honourable Supreme Court of Pakistan in the

J. 03

case titled “AMIR MUHAMMAD KHAN vs The STATE” reported as 2023 SCMR 566, has held that 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 accused. Same norm was settled by the Apex Court in the case titled “SAGHIR AHMAD vs The STATE and others” reported as 2023 SCMR 241.

Similarly, in the case titled “BASHIR MUHAMMAD KHAN vs The STATE” reported as 2022 SCMR 986, the august Supreme Court has held that single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefits, not as a matter of grace and concession but as a matter of right. The conviction must be based on unimpeachable; trustworthy and reliable

evidence. Any doubt arising in prosecution's case is to be resolved in favour of the accused and burden of proof is always on prosecution to prove its case beyond reasonable shadow of doubt. Similarly, in the case titled "**KHALID MEHMOOD alias KHALOO vs The STATE**" reported as **2022 SCMR 1148**, the Apex Court has reiterated the same rational by observing that in these circumstances, a dent in the prosecution's case has been created, benefit of which must be given to the appellant. It is a settled law that single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefits, not as a matter of grace and concession but as a matter of right. The conviction must be based on unimpeachable, trustworthy and reliable evidence. In another case titled "**KASHIF ALI alias KALU vs. The STATE and another**" reported as **2022 SCMR 1515**, the Apex Court has held that it is settled law that a single circumstance creating



reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefits, not as a matter of grace and concession but as a matter of right. The conviction must be based on unimpeachable, trustworthy and reliable evidence. Any doubt arising in prosecution case is to be resolved in favour of the accused. Reliance in this behalf can be made upon the following cases:-

- i) Tariq Pervez v. The State (1995 SCMR 1345),
- ii) Ghulam Qadir and 2 others v. The State (2008 SCMR 1221),
- iii) Muhammad Akram v. The State (2009 SCMR 230),
- iv) Muhammad Zaman v. The State (2014 SCMR 749) and
- v) Muhammad Mansha v The State" (2018 SCMR 772).

34. For what has been discussed above, we are of the firm view that the prosecution has miserably failed to prove its case against the appellants beyond shadow of reasonable doubt. Resultantly, all the three aforesaid appeal are allowed, the convictions and sentences of the appellants recorded by the

*Jamil D.B.) Hon'ble Mr.Justice Kamran Hayat Miankhel.
Hon'ble Mr.Justice Muhammad Ijaz Khan.*

learned Anti-Terrorism Court, Hazara Division, Abbottabad through the impugned judgment dated 26.05.2022 are set aside and by extending them the benefit of doubt they are acquitted of all the charges levelled against them. They shall be released from the jail forthwith if not required to be detained in any other case, whereas their Murder Reference No.4-A/2022 sent by the learned trial court for confirmation of their death sentence is answered in negative.

These are the detailed reasons of our short orders of even date whereby we allowed the aforesaid three Criminal Appeals and acquitted the appellants of the charges levelled against them and answered their Murder References in negative.

ANNOUNCED
22.11.2023.

(Jamil)



A handwritten signature in black ink, appearing to read 'Kamran Hayat Miankhel'. Below the signature, the word 'JUDGE' is printed in a bold, sans-serif font. A second, smaller handwritten signature appears below the first, with the number '13' written next to it. Below this second signature, the word 'JUDGE' is also printed in a bold, sans-serif font.