

[Balochistan]

Before Naeem Akhtar Afghan and Rozi Khan Barrech, JJ

ABDUL WAHID and others---Appellants

Versus

The STATE and others---Respondents

Criminal Appeal No. 230, Criminal Acquittal Appeal No. 237 and Criminal Revision No. 24 of 2019, decided on 30th April, 2020.

(a) Criminal trial---

---Witness---Related witness---Statement of related witness---Reliance---Scope---Evidence of a related witness could not be discarded on the ground of his being related to the victim--- If it was found that the testimony of a related witness got no corroboration from attending circumstances of the case or his conduct shown at the time of occurrence or just thereafter was such which could not be expected by a prudent person, in such circumstance the evidence furnished by a related witness could easily be discarded.

(b) Penal Code (XLV of 1860)---

---Ss. 302(b), 324, 109, 147, 148 & 149---Qatl-i-amd, attempt to commit qatl-i-amd, abetment, rioting, rioting armed with deadly weapon, unlawful assembly---Appreciation of evidence---Benefit of doubt---Ocular and medical evidence---Contradictions--- Scope--- Prosecution case was that the accused party made firing upon the complainant party, which resulted into instantaneous death of deceased on the spot and caused injuries to other members of the complainant party---Ocular account of the incident had been furnished by four witnesses including complainant and injured persons---Complainant in his report and the eye-witnesses in their statements attributed a specific role of firing to accused---Injured witness attributed specific role to absconding accused persons of firing and causing injuries to him---Other injured witness attributed specific role of firing to absconding accused and causing injuries to him on his right leg---Another injured witness attributed role of firing to absconding accused persons and for causing injuries to him---According to prosecution witnesses, the accused persons were fourteen in number who made firing upon them---If indiscriminate firing was being made by fourteen persons with automatic rifles, no one could distinguish their role with exactitude as to whose shot hit whom---Medical evidence showed that all the injured witnesses sustained injuries on their backside but surprisingly, all the injured witnesses had attributed the accused with specific role of firing upon the deceased--- Three eye-witnesses attributed role of firing to absconding accused and causing injuries to them---In such view of the facts when firing was being made by the accused persons how could it be possible that the complainant as well as the injured prosecution witnesses

identified the accused persons and attributed individual role to each of them that too when they were not facing the accused persons---Said aspect of the matter created doubt in a prudent mind with regard to the mode and manner in which the occurrence took place---Injuries on the persons of the above witnesses were also doubtful---Neither complainant stated about the injuries allegedly received by him in his statement before the court as well as in his report nor he stated a single word about injuries of injured witnesses---Injured witness did not state a word about the injuries of complainant and other injured witnesses---Similarly, other injured witness did not state about injuries of the complainant and other prosecution witnesses---Prosecution story as put forth before the Trial Court was hardly believable, in circumstances---Record showed that all the accused were related to each other and were of the same clan---High Court observed that present case was best example of spreading the net wide and implicating maximum male members of the opponent family in order to deter them from pursuing their case---Circumstances established that the conviction passed by the Trial Court against the accused was against all canons of law recognized for the safe dispensation of criminal justice---Appeal against conviction was allowed, in circumstances.

Bashir Ahmed v. The State 2019 SCMR 1417 and Munir Ahmed v. The State 2019 SCMR 2006 rel.

(c) Penal Code (XLV of 1860)---

---Ss. 302(b), 324, 109, 147, 148 & 149---Qatl-i-amd, attempt to commit qatl-i-amd, abetment, rioting, rioting armed with deadly weapon, unlawful assembly---Appreciation of evidence---Benefit of doubt---Delay of about six hours and forty minutes in lodging the FIR---Effect---Prosecution case was that the accused party made firing upon the complainant party, which resulted into instantaneous death of deceased on the spot and injuries to other members of the complainant party---Record transpired that the injured witnesses and deceased were examined by Medical Officer before lodging the FIR---Medical Officer stated that on 06.05.2018 at 12:45 p.m., dead body of the deceased was examined and on the same date the injured witnesses were also examined at 12:40, 12:50, 1:00 and 1:10 p.m. respectively---Occurrence took place on 06.05.2018 at 10:30 a.m. but the matter was reported same day at 5:10 p.m.---Fact remained that the place of occurrence was at a distance of 41 kilometres from Levies Thana---High Court observed that FIR was lodged with delay of six hours and forty minutes, after deliberation and consultation for the reason that the prosecution waited for the medical reports and after obtaining same the prosecution witnesses attributed role to each accused---Said fact created serious doubt in the prosecution story that why the report was not lodged promptly---Appeal against conviction was allowed, in circumstances.

(d) Criminal Procedure Code (V of 1898)---

---S. 154---Delay in lodging the FIR---Effect---Delay in lodging the report cannot be simply brushed aside, as it assumed great significance---Delay could be attributed to consultations, taking instructions and calculatedly preparing the report keeping in view the names of the assailants opened for involving such persons who ultimately the prosecution might wish to

nominate.

Allahyar v. The State 1990 SCMR 1134; Mahmood Ahmad and 3 others v. The State and another 1995 SCMR 127; Imran Hussain v. Amir Arshad and 2 others 1997 SCMR 438; Muhammad Rafique v. The State 2014 SCMR 1698 and Altaf Hussain v. The State 2019 SCMR 274 rel.

(e) Penal Code (XLV of 1860)---

---Ss. 302(b), 324, 109, 147, 148 & 149---Qatl-i-amd, attempt to commit qatl-i-amd, abetment, rioting, rioting armed with deadly weapon, unlawful assembly---Appreciation of evidence---Benefit of doubt---Contradictions in the statement of witnesses---Effect--- Prosecution case was that the accused party made firing upon the complainant party, which resulted into instantaneous death of deceased on the spot and injuries to other members of the complainant party---Investigating Officer/Tehsildar had stated that the statements of the injured persons were recorded under S.161, Cr.P.C. before 08.05.2018, however, said witness did not clarify the exact date of recording the statements of injured witnesses---On the other hand, two injured witnesses stated during cross-examination that neither Investigating Officer/Tehsildar met them nor their statements were recorded by him---Other witness stated during cross-examination that he remained in civil hospital for one day but he did not meet Tehsildar/ Investigating Officer Levies or any other Levies Officials at Civil Hospital---Said facts rendered the case of the prosecution doubtful---Appeal against conviction was allowed, in circumstances.

(f) Criminal Procedure Code (V of 1898)---

---S. 161---Delay in recording the statement of witnesses by police---Scope---Delay of even one or two days without explanation, in recording the statements of witnesses, was fatal for the prosecution and not worthy of reliance.

Muhammad Asif v. The State 2017 SCMR 486; Muhammad Sadiq v. The State PLD 1960 SC 223; Tariq Gul v. Ziarat Gul 1976 SCMR 236; Muhammad Iqbal v. The State 1984 SCMR 930; Haroon alias Harooni v. The State and another 1995 SCMR 1627 and Muhammad Khan v. Maula Bakhshah 1998 SCMR 570 rel.

(g) Criminal trial---

---Witness---Statement of injured witness---Scope---Injuries on the person of a witness might establish his presence at the relevant time at a particular place of occurrence but the injury itself was not the proof that whatever the witness was telling was the truth.

Shahidullah v. Eid Marjan and 2 others 2014 PCr.LJ 1684 and Amin Ali and another v. The State 2011 SCMR 323 rel.

(h) Penal Code (XLV of 1860)---

----Ss. 302(b), 324, 109, 147, 148 & 149---Qanun-e-Shahadat (10 of 1984), Art. 129(g)---Qatl-i-amd, attempt to commit qatl-i-amd, abetment, rioting, rioting armed with deadly weapon, unlawful assembly---Appreciation of evidence---Benefit of doubt---Withholding material evidence---Scope---Prosecution case was that the accused party made firing upon the complainant party, which resulted into instantaneous death of deceased on the spot and injuries to other members of the complainant party---In the present case, the injured and deceased were shifted to hospital by two persons but none of the said persons were produced by the prosecution nor their statements were recorded under S.161, Cr.P.C.---If a piece of evidence was available with a party and the said party failed to produce the same before the court then presumption under Art. 129(g) of Qanun-e-Shahadat, 1984 could be drawn that had the said evidence been produced before the court it would have been unfavourable to the said party---Such presumption could fairly be drawn in the present case that had said two been produced before the court, they would not have supported the prosecution case---Non-examination of such material witnesses had materially affected the prosecution case---Appeal against conviction was allowed, in circumstances.

Lal Khan v. The State 2006 SCMR 1846 rel.

(i) Penal Code (XLV of 1860)---

----Ss. 302(b), 324, 109, 147, 148 & 149---Qatl-i-amd, attempt to commit qatl-i-amd, abetment, rioting, rioting armed with deadly weapon, unlawful assembly---Appreciation of evidence---Benefit of doubt---Recovery of crime empties---Reliance---Scope---Prosecution case was that the accused party made firing upon the complainant party, which resulted into instant death of deceased on the spot and caused injuries to other members of the complainant party---Record showed that crime empties were recovered from the place of occurrence but same were not sent to Forensic Science Laboratory, which made the same doubtful and same could not be relied upon for purpose of conviction---Said evidence was a corroborative one and in a case where direct evidence failed, corroborative piece of evidence was of no avail---Appeal against conviction was allowed, in circumstances.

Ghulam Akbar and another v. The State 2008 SCMR 1064 rel.

(j) Criminal trial---

---Witness---Improvement by witness---Effect---If a witness, made, dishonest improvement in his statement to strengthen the prosecution case, such portion of his statement was to be discarded.

Amir Zaman v. Mahboob and others 1985 SCMR 685 rel.

Najmuddin Mengal and Attaullah Langov for Appellant (in Criminal Appeal No.230 of 2019).

Qazi Najeeb-ur-Rehman for the Complainant (in Criminal Appeal No.230 of 2019).

Qazi Najeeb-ur-Rehman for Appellant/Complainant (in Criminal Acquittal Appeal No.237 of 2019).

Ashiq Ali Jatoi for Respondents (in Criminal Acquittal Appeal No.237 of 2019).

Qazi Najeeb-ur-Rehman for Petitioner (in Criminal Revision Petition No.24 of 2019).

Najmuddin Mengal and Attaullah Langove for Respondents (in Criminal Revision Petition No.24 of 2019).

Abdul Latif Kabar, A.P.G. for the State (in Criminal Revision Petition No.24 of 2019).

Date of hearing: 20th April, 2020.

JUDGMENT

ROZI KHAN BARRECH, J.---The appellant namely Abdul Wahid son of Baloch Khan by means of Criminal Appeal No. 230 of 2019 has questioned the legality and factuality of the judgment dated 27.6.2019 ("impugned judgment") rendered by learned Sessions Judge/ Model Criminal Trial Court Kalat in Murder Case No. 09 of 2019 bearing FIR No. 04 of 2018 of Levies Thana Surab, whereby he was convicted and sentenced in the following manner:

"27So accused Abdul Wahid is convicted under section 302(b), P.P.C. for offence of committing murder of deceased Abdul Haleem and is awarded punishment of imprisonment for life as Ta'zir, he is also directed to pay Rs.200, 000/-(Rupees two lacs only) as compensation under section 544-A, Cr.P.C. to the legal heirs of deceased Abdul Haleem, in default of payment of said amount to further suffer simple imprisonment of six (06) months; with further order that the amount of compensation shall be recoverable as arrears of land revenue under section 544-A(2), Cr.P.C. or in default thereof the convict Abdul Wahid shall undergo S.I. for six months. Accused is also convicted under section 149, P.P.C. for one (01) year, with fine of Rs.1000/- (Rupees one thousand only), in default of payment, further undergo simple imprisonment for ten (10) days. The benefit under section 382-B, Cr.P.C. is extended in favour of accused Abdul Wahid. "

The appellant/complainant Muhammad Hayat son of Muhammad Umer in Criminal Acquittal Appeal No.237 of 2019 has questioned the legality and factuality of impugned judgment whereby the respondents Nos. 1 and 2 have been acquitted of the charge while Criminal Revision Petition No. 24 of 2019 has been filed by the complainant/petitioner being dissatisfied with the quantum of punishment i.e. life imprisonment recorded against the appellant with prayer for conversion of the same into capital sentence grousing absence of mitigating circumstances.

2. Facts of the case are that the complainant Muhammad Hayat son of Muhammad Umer lodged FIR No. 04 of 2011 with Levies Thana Surab, District Kalat on 06.05.2018 wherein it

was alleged that on the fateful day of the incident he along with Hafeez-ur-Rehman and Abdul Rehman, sons of Muhammad Yousuf, Muhammad Aslam son of Hassan Khan and Abdul Haleem son of Abdul Aziz were present in their field of crops. At about 10:30 am the accused persons namely Abdul Qadir, Abdullah and Abdul Wahid sons of Baloch Khan, Sikandar and Abdul Qadoos sons of Samandar Khan, Siraj Ahmed son of Muhammad Pana, Nadir Khan son of Muhammad Rahim, Abdul Hameed son of Habibullah and Ghulam Haider son of Abdul Karim came to the spot on motorcycles and tractors and started firing upon them, which resulted into instantaneous death of Abdul Haleem on the spot and injuries to other members of the complainant party. It was further alleged that the alleged crime was committed at the instance and instigation of Abdul Karim son of Azeem Khan, Javed son of Mehboob Ali and Muhammad Pana. Hence the crime report.

3. After completion of the investigation the challan was prepared and submitted before the trial court. The trial court after observing the codal formalities as provided under the Code of Criminal Procedure, 1898 framed charge against the appellant to which he did not plead guilty and claimed trial. At the trial the prosecution produced ten witnesses in all. Thereafter appellant was examined under section 342, Cr.P.C, however the appellant neither recorded his statement on oath as envisaged under section 340(2), Cr.P.C. nor produced any evidence in his defense. On conclusion, the trial court after hearing the arguments from both sides convicted and sentenced the appellant as mentioned in para-1 of this judgment, whereas the co-accused Abdul Karim and Javed Iqbal were acquitted of the charge. Since all the captioned cases are arising out of one and same judgment, therefore, same are being disposed of through this common judgment.

4. Arguments advanced from both the sides have been heard. We have also minutely gone through the record available on file with the able assistance of learned counsel for the parties.

5. It may be seen that since PW-1 Muhammad Hayat, PW-2 Muhammad Aslam, PW-3 Ubaidur Rehman and PW-4 Hafeezur Rehman are closely related to the deceased and cousins to each other, therefore their testimonies will have to be appreciated with utmost care and caution for safe dispensation of justice. No doubt, evidence of a related witness cannot be discarded on the ground of his being related to the victim but if it is found that the testimony of a related witness gets no corroboration from attending circumstances of the case or the conduct shown by him at the time of occurrence or just thereafter is such which cannot be expected by a prudent person, then in such circumstance the evidence furnished by a related witness can easily be discarded.

Let us now take into consideration the testimony of above witnesses in the case at the touchstone of the above principles.

6. The complainant in his report Ex.P/1-A. and the above witnesses in their statements attributed a specific role of firing to appellant Abdul Wahid. PW-2 Muhammad Aslam attributed specific role of firing and causing injuries to him to absconding accused Abdul Qadir and Siraj. PW-3 Ubaidur Rehman attributed specific role of firing to absconding accused Abdullah and causing injuries to him on his right leg. PW-4 Hafeezur Rehman

attributed role of firing to absconding accused Sikandar and Abdul Qadoos and for causing injuries to him. As per statements of above witnesses the occurrence took place near the agriculture fields of the complainant where allegedly the accused persons came on motorcycles and tractors and suddenly opened fire on the complainant party. According to prosecution witnesses the accused persons were fourteen in number, who made firing upon them. As stated earlier the complainant in his report and the injured witnesses in their statements attributed role of firing to four of the accused persons which resulted into causing firearm injuries to them and the deceased, however this court believes that if indiscriminate firing is being made by fourteen persons with automatic rifles, no one can distinguish their role with exactitude as to whose shot hit whom. It is worthwhile to mention here that according to the medical certificate of the deceased Ex.P/6-A produced by PW-6 Dr. Javed Niaz Medical Officer DHQ Khuzdar, the deceased Abdul Haleem received injuries on right gluteal region. As per medical certificate of PW-1/ complainant Ex.P/6-B he received a cross bullet injury on lateral surface of left lumbar region. PW-2 Muhammad Aslam's medical certificate Ex.P/6-C reveals that he received a bullet injury on posterior surface of lower part of his right leg. Medical certificate of Ubaidur Rehman PW-3 Ex.P/6-D reveals that he received one bullet injury on posterior surface part of his right thigh and a fracture of the right leg on lower part of femour-bone. According to medical certificate of Hafeezur Rehman Ex.P/6-E, he received injuries on lateral surface of right shoulder joint and a cross bullet injury on posterior surface of chest wall. According to the medical certificates mentioned above, all the injured witnesses sustained injuries on their backside but surprisingly, all the PWs have attributed specific role of firing upon the deceased Abdul Haleem to appellant Abdul Wahid. PW-2 Muhammad Aslam, PW-3 Ubaidur Rehman and PW-4 Hafeezur Rehman attributed role of firing to absconding accused and causing injuries to them. In such view of the facts when firing was being made by the accused persons, how can it be possible that the complainant as well as the injured prosecution witnesses identified the accused persons and attributed individual role to each of them that too when they were not facing the accused persons. This aspect of the matter creates doubt in the prudent mind with regard to the mode and manner in which the occurrence took place.

7. The injuries on the persons of the above witnesses are also doubtful. Neither PW-1/complainant stated about the injuries allegedly received by him in his statement before the court as well as in his report Ex.P/1-A nor he stated a single word about injuries of PW-2, PW3 and PW-4. PW-2 Muhammad Aslam also did not state a word about the injuries of complainant, PW-3 and PW-4. Similarly PW-3 too did not state about injuries of the complainant and other prosecution witnesses. In view of above circumstances the prosecution story as put forth before the trial court is hardly believable.

8. Yet another interesting feature of the case is that the appellant Abdul Wahid, absconding accused Abdul Qadir and Abdullah are brothers to each other. Further, the absconding accused Sikandar and Abdul Qadoos are also brothers. The appellant and other absconding accused are cousins to each other. All the accused are related to each other and are of the same clan. In such view of the facts, the instant case is best example of spreading the net wide arid implicating maximum male members of the opponent family in order to deter them from pursuing their case. Reliance is place in the case titled as Bashir Ahmed v. The State (2019 SCMR 1417) and Munir Ahmed v. The State (2019 SCMR 2006).

9. Record further transpires that the injured witnesses and deceased Abdul Haleem were examined by PW-6 Dr. Javed Niaz Medical Officer DHQ Khuzdar before lodging the FIR. According to PW-6 on 06.05.2018 at 12:45 pm dead body of the deceased was examined and on the same date the injured PWs were also examined at 12:40, 12:50, 1:00 and 1:10 pm respectively. Whereas the occurrence took place on 06.05.2018 at 10:30 am but the matter was reported through Ex.P/1-A on 06.05.2018 at 5:10 pm. The place of occurrence is at a distance of 41 kilometers from Levies Thana Surab. Thus, there is a delay of six hours and forty minutes. Though the FIR was lodged on the same date at 5:10 pm however the same appears to be for the reason that the prosecution has waited for medical opinion of doctors which resulted in delay in registration of FIR. Since this delay in registration of the FIR has provided ample opportunity to complainant to deliberate and consult in the matter, therefore not only the mode and manner of the occurrence has to be thoroughly examined but ocular testimonies also require very careful probe.

10. It may be seen that the FIR was lodged with delay of six hours and forty minutes, after deliberation and consultation for the reason that the prosecution waited for the medical reports and after obtaining of same the prosecution witnesses attributed individual role to each accused. PW-1 stated during cross-examination that he got the FIR registered after deliberation and consultation. This portion of the complainant's statement itself makes it abundantly clear that the FIR was lodged after consultation and deliberation.

11. On the face of it, there is inordinate delay of more than six and a half hours in lodging the report by the complainant. It creates serious doubt in the prosecution story that why the report was not lodged promptly. Needless to say that the delay in lodging the report cannot be simply brushed aside, as it assumes great significance, and it could be attributed to consultations, taking instructions and calculatedly preparing the report keeping in view the names of the assailants opened for involving such persons who ultimately the prosecution might wish to nominate. In this respect, reliance is placed on case law reported in 'Allahyar v. The State' (1990 SCMR 1134), 'Mahmood Ahmad and 3 others v. The State and another' (1995 SCMR 127), 'Imran Hussain v. Amir Arshad and 2 others' (1997 SCMR 438) 'Muhammad Rafique v. The State' (2014 SCMR 1698) and 'Altaf Hussain v. The State' (2019 SCMR 274).

12. Moreover the timing of lodging the FIR at 5:30 pm is also doubtful because on one hand the complainant/ PW-1 stated during cross-examination that he went to Surab City before the petition writer for drafting his report and thereafter he went to the Levies Thana for registration of the FIR. On the other hand PW-3 stated during cross-examination that he and Muhammad Hayat (complainant) were referred to Quetta Hospital from Khuzdar DHQ. He further stated during cross-examination that Tehsildar did not meet them at Khuzdar Hospital. Under such circumstances how can it be possible that allegedly PW-1/complainant after receiving injuries was shifted to civil hospital Khuzdar for treatment and thereafter he came back to Surab City where the application was written through the petition writer, whereafter he went to levies station for registration of the FIR that too in injured condition. PW-3 fully contradicted the stance of PW-1 when he stated that he himself and the complainant were both shifted from Khuzdar to Quetta hospital. This aspect of the matter casts serious doubt in the prosecution case.

13 According to PW-9 Mehmood Ahmed Kurd Tehsildar, who conducted investigation of the case, statements of the injured persons were recorded under section 161, Cr.P.C. before 8.5.2018. However he did not clarify the exact date of recording the statements of injured witnesses. He only stated that before 8.5.2018 he recorded the statements of the injured witnesses. On the other hand PW-3 Ubaidur Rehman and PW-4 Hafeezur Rehman stated during cross-examination that neither Tehsildar met them nor their statements were recorded by him. PW-2 stated during cross-examination that he remained in civil hospital Khuzdar for one day. He further stated that he did not meet Tehsildar Levies or any other levies officials at Khuzdar civil hospital.

The above facts render the case of the prosecution extremely doubtful. The delay of even one or two days without explanation in recording the statements of witnesses has been found fatal for the prosecution and not worthy of reliance by the august Supreme Court in the case of Muhammad Asif v. The State reported as 2017 SCMR 486 as under:

"There is a long line of authorities/precedents of this court and the High Courts that even one or two days unexplained delay in recording the statement of eye-witnesses would be fatal and testimony of such witnesses cannot be safely relied upon."

14. In this regard reliance can also be placed on "Muhammad Sadiq v. The State (PLD 1960 SC 223), Tariq Gul v. Ziarat Gul (1976 SCMR 236), Muhammad Iqbal v. The State (1984 SCMR 930) and Haroon alias Harooni v. The State and another (1995 SCMR 1627).

15. Similarly it has been settled by the august Supreme Court of Pakistan in Muhammad Khan v. Maula Bakhshah (1998 SCMR 570) that:

"It is settled law that credibility of a witness is looked with serious suspicion if his statement under section 161, Cr.P.C. is recorded with delay without offering any plausible explanation."

It is also an admitted fact that according to medical certificate Ex.P/6-B to Ex.P/6-E of PW-1, PW-2, PW-3 and PW-4 the said witnesses received firearm injuries. The statements of above injured witnesses with exactitude and in line with the statement of complainant shakes their veracity. It is settled law that the stamps of injuries on the person of a witness may establish his presence at the relevant time at a particular place of occurrence but the injury itself is not the proof that whatever the witness is telling is the truth. In the case titled Shahidullah v. Eid Marjan and 2 others (2014 PCr.LJ 1684) it has been held that:

"Mere stamp of injuries on the person of a witness would not be a proof of the file that, wheatever he deposes would be the truthful account of the events. His veracity is to be tested from the circumstances of the case and his own statement whether it fits in the circumstances of the case or otherwise."

Reliance can also be placed upon case titled "Amin Ali and another v. The State (2011 SCMR 323) that:--

12. Certainly, the presence of the injured witnesses cannot be doubted at the place of incident, but the question is as to whether they are truthful witnesses or otherwise,

because merely the injuries On the persons of P.Ws. would not stamp them truthful witnesses.

16. Coming to the next question with regard to witnesses which were withheld and not produced by the prosecution. Record reveals that the injured and deceased were shifted to hospital by Muhammad Akbar and Waqar Ahmed but none of the said persons were produced by the prosecution nor their statements were recorded under section 161, Cr.P.C. It is settled principle of law that if a piece of evidence is available with a party and the said party fails to produce the same before the court then presumption under Article 129(g) of Qanun-e-Shahadat Order, 1984 can be drawn that had the said evidence been produced before the court it would have been unfavorable to the said party. Such presumption can fairly be drawn in the present case that had Muhammad Akbar and Waqar Ahmed been produced before the court they would not have supported the prosecution case. Non-examination of such material witnesses have materially affected the prosecution case. Keeping in sight the same analogy reliance is placed on "Lal Khan v. The State" (2006 SCMR 1846).

17. So far as the recovery of crime empties from the place of occurrence is concerned, the alleged crime empties were also not sent to FSL, which makes the same as doubtful and same cannot be relied upon for purpose of conviction. Moreso, this Piece of evidence is a corroborative one and in a case where direct evidence fails, corroborative piece of evidence is of no avail as in the instant case direct evidence of PWs have already been disbelieved. In a case titled Ghulam Akbar and another v. The State (2008 SCMR 1064) it was observed by the Hon'ble Supreme Court that law required that empty recovered from the spot should be sent to the laboratory without any delay, failing which such recovery evidence is not free from doubt and could not be used against the accused.

18. Considering all these facts, we have no hesitation in coming to the conclusion that the prosecution has not been able to prove on record that the incident was reported at the time at which, it was claimed to have been recorded. Thus, in view of above said circumstances the question of their being truthful witnesses becomes highly doubtful. The prosecution witnesses i.e. Muhammad Hayat (PW-1) the complainant, Muhammad Aslam (PW-2) injured witness, Ubaidur Rehman (PW-3) eye-witness and, Hafeezur Rehman (PW-4) injured-eye-witness have been proved to be not truthful could not have been relied upon. It is the legal principle that a witness who testifies falsely about one matter is not credible to testify about any matter. In the present case said principle of falsus in uno falsus in omnibus (false in one thing, false in everything) applies.

19. As far as Criminal Acquittal Appeal bearing No. 237 of 2019 filed by the complainant against acquittal of co-accused Abdul Karim and Javed Iqbal is concerned, suffice to mention that presence of the accused/respondents was not mentioned in the report of complainant Ex.P/1-A. The complainant made improvements in the version when he appeared before the court as PW-1 and stated that the accused/respondents were present at the place of occurrence. This willful and dishonest improvement was made by all the witnesses in order to strengthen the prosecution's case. It is well established by now that when a witness made improvement in his statement and the moment it is observed that the said improvement was

made dishonestly to strengthen the prosecution case, such portion of his statement is to be discarded. Having observed improvements in the statements of both the above witnesses we hold that it is not safe to rely upon their testimonies and to maintain conviction and sentenced recorded against the appellant under capital charge. Such dishonest and deliberate improvement and omission made them unreliable and they are not trustworthy witnesses. The Hon'ble Supreme Court in the case titled as Amir Taman v. Mahboob and others (1985 SCMR 685) held that the testimony of witnesses containing material improvements is not believable and trustworthy.

Moreso, after acquittal from criminal charge the accused enjoys double presumption of innocence i.e. first, before trial and case and second after his acquittal. Thus, the courts while dealing with an acquittal appeal are bound to examine whether the court(s) below has ignored any evidence on record or had discarded the evidence for the reasons not recognized by the law.

20. From the facts and circumstances narrated above, we are persuaded to hold that conviction passed by the learned trial court against the appellant Abdul Wahid son of Baloch Khan in the circumstances is against all canons of law recognized for the safe dispensation of criminal justice. As per dictate's of law benefit of every doubt is to be extended in favour of the accused. Resultantly the Criminal Appeal No. 230 of 2019 is accepted while setting aside the conviction and sentence recorded by the trial court in terms of judgment dated 27.06.2019 passed by learned Session Judge/Model Criminal Trial Court, Kalat in Murder Case No. 09 of 2019 the appellant Abdul Wahid is acquitted of the charge under sections 302, 324, 109, 147, 148, 149, P.P.C. in FIR No. 04/2018 Levies Station Shaheed Sikandar Abad Surab. The appellant is ordered to be released forthwith if not required in any other case.

The Criminal Acquittal Appeal No. 237 of 2019 as well as Criminal Revision Petition No. 24 of 2019 are dismissed being devoid of merits.

JK/65/Bal.

Order accordingly.