JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Criminal Appeal No.183 of 2024

Syed Abdul Basit Shah

Versus

The State and another

AND

Murder Reference No.14 of 2024

The State

Versus

Syed Abdul Basit Shah

Dates of Hearing:- 25.06.2024 and 07.08.2024

Appellant by: M/s Raja Muhammad Aleem Khan Abbasi, Muhammad Mushtaq Khaki, Zohaib Hassan Gondal and Hazrat Younas, Advocates.

Respondents by: M/s Shah Khawar and Nisar Asghar, Advocates for complainant/ respondent No.2.
M/s Hassan Murad and Khashif Hussain Shah, Prosecutors along with Mazhar Ali, S.I., Police Station Lohi Bher, Islamabad

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ARBAB MUHAMMAD TAHIR, J. The appellant, Syed Abdul Basit Shah has preferred the captioned appeal under Section 410 of the Code of Criminal Procedure, 1898 (hereinafter referred to as "CrPC") against judgment dated 26.04.2024 passed by learned Additional Sessions Judge-V (East), Islamabad in case FIR No.411/22 dated 02.04.2022 registered in respect of offenses under Sections 302, 201, 109 and 34 of Pakistan Penal Code, 1860 ("hereinafter referred to as "PPC") at Police Station, Lohi Bher, Islamabad, whereby he was convicted and sentenced in the following terms:-

a) *Firstly, accused Abdul Basit is convicted under Section 302(b), 34 P.P.C. and sentenced to death by hanging who all (sic) also liable pay an amount of Rs.3,000,000/- (three Million) to the legal heirs of the deceased as compensation in terms of Section 544-A Cr.P.C. in case of failure such compensation shall be recoverable as arrears of land Revenue.*

b) *Accused Abdul Basit is convicted under Section 201/34 P.P.C. and sentenced to seven years with fine of Rs.500,000/- for removing incriminating material and giving false information. He shall undergo for six months SI in case of failure to pay find.*

2. All the sentences were ordered to run concurrently. Benefit of Section 382-B CrPC was also extended in favour of the appellant. It is noteworthy to mention that PW-13 has roped the entire family of the appellant in the present case viz his father Badar Munir, his mother, Asma Zahra, his four brothers, namely Siraj Munir Shah, Zia-ul-Haq, Abdul Salam Shah and Abdul Baqi Shah. In addition to the above, the learned trial Court through the same impugned judgment, acquitted the co-accused persons i.e. Badar Munir Shah, Abdul Salam and Zia-ul-Haq, whereas Siraj Munir Shah, Mst. Asma Zahra and Abdul Baqi Shah were declared as Proclaimed Offenders. The case property to their extent was directed to be kept intact in Malkhana until the arrest of the said Proclaimed Offenders.

3. The learned trial Court has sent the captioned Murder Reference for confirmation or otherwise of the death sentence awarded to the appellant, which has been numbered as Murder Reference No.14 of 2014. Since both the captioned appeal and Murder Reference arise out of one and the same impugned judgment, hence they are being disposed of through this common judgment.

FACTUAL BACKGROUND:-

4. The facts in brief as gleaned out from the contents of FIR (Exh.PC) lodged on the basis of complaint (Exh.PH) submitted by Syed Shabbir Hussain Shah Bukhari (PW-13) are to the effect that his daughter namely, Ayesha Shabbir (deceased) was married to Abdul Baqi Shah and was residing with her in-laws in House

No.701, Street No.32, Block-C, CBR Town along with her two children aged about 8 and 5 years respectively. That the deceased's husband namely, Abdul Baqi Shah was residing abroad somewhere. That behavior of the deceased's in-laws was not convivial with the deceased. That the in-laws of his daughter were treating her inhumanly. That the deceased had not been allowed to meet with her parents since last four years. That on the fateful day i.e. on 23.09.2021 at about 11:00 PM, the brother of his son in-law namely Zia ul Haq had informed him telephonically that the deceased had died of a heart attack. That since he had sure that his daughter was done to death by her in-laws hence, her postmortem be conducted. And that the corpse of the deceased be taken into police custody and handed it over to them for burial. That the entire responsibility of death of his daughter is onto the in-laws of his daughter i.e. (i) her husband, Abdul Baqi Shah, (ii) her father in-law, Badar Munir Shah, (iii) her mother in-law, Asma Zahra and (iv) her brothers in-law namely, Abdul Basit Shah, Siraj Munir Shah, Zia ul Haq Shah and Abdus Salam Shah. The motive as alleged in the FIR was that the accused party was trying to get second marriage of Abdul Baqi Shah, husband of the deceased.

5. Pursuant to the registration of said FIR (Exh.PC), the matter was investigated by Fakhar Abbas, SI/PW-3 and after fulfillment of codal formalities, incomplete challan/report under Section 173 Cr.P.C. was prepared on 21.03.2023 and forwarded on 11.04.2023 before the learned trial Court. In order to bring home the guilt of the appellant, the prosecution produced as many as thirteen (13) witnesses including Syed Shabbir Hussain Shah Bukhari (PW-13), who is the complainant of the case. Kiran Farooq, Lady Constable/3338 entered the witness box as CW. Whereas three witnesses namely, Syed Adnan, Rashida and Farhat Jabeen were given up by the prosecution being unnecessary.

6. After closure of the prosecution evidence, the learned trial Court examined the appellant under Section 342 Cr.P.C. wherein, he denied the accusation and in response to question No.17 "why

this case registered against you and why the prosecution witnesses deposed against you", replied as under:-

> *"The complainant alongwith his spouse, exhibit traits of greediness, moodiness, and a propensity for interfering in the affairs of others. Their behavior has led to the coerced divorces of their two daughters-in-law from their son and their deceased daughter had severed ties with them, as evidenced by the order detailed in the petition under Section 491 of the Criminal Procedure Code, filed by the complainant. It appears that in retaliation for their daughter's disassociation from them, they have unjustly initiated baseless, false, frivolous and fictitious case against me and my entire family just to satisfy their false egoistic temptations. The prosecution witnesses in connivance with the complainant had deposed against me. The complainant had filed false application u/s 491 Cr.P.C. as mentioned supra, which was dismissed by the court. This shows a state of mind on the part of complainant, who despite having clear knowledge of the cause of death i.e. heart attack converted the true story in to a criminal case against me and the others."*

7. The appellant was summoned by the learned trial Court to face the trial. Copies of the relevant documents as envisaged under Section 265-C CrPC were delivered to the appellant on 09.06.2023. The appellant was formally charge sheeted on 22.07.2023 to which he pleaded not guilty and claimed trial. However, the appellant did not opt to appear as his own witness in disproof of the accusation as envisaged under Section 340(2) CrPC. To the said effect, his statement was recorded on 19.03.2024, wherein he refuted the entire allegations leveled by the prosecution against him and professed his innocence. The appellant however, placed reliance on some documentary piece of evidence (i.e. (i) petition under Section 491 by the complainant on 29.01.2019 along with order dated 02.02.019 (Exh.D/A) and (ii) copy of Australian Visa of the deceased (Mark-A). After conclusion of the trial, the learned trial Court, after having found the appellant guilty of the offences mentioned in the FIR, convicted and sentenced him in the manner as detailed herein above. Hence, the captioned appeal.

ARGUMENTS OF LEARNED COUNSEL FOR THE APPELLANT.

8. Learned counsel for the appellant, after going through the contents of the FIR, contended that the main cause of death of the deceased set forth by the prosecution was "hanging" but the learned trial Court erroneously ventured beyond the scope of the case and declared the cause of death to be "Asphyxia due to strangulation". That this is reason enough to set the impugned judgment at naught. That the judgments relied upon by the learned trial Court in the impugned judgment were completely alien to the facts and circumstances of the present case. That the entire superstructure of the prosecution case was built on the report dated 08.02.2022 (Exh.PN) submitted by the Punjab Forensic Science Agency (hereafter referred to as "PFSA"), which has no value in the eye of law for the following reasons:-

a) Dr. Nasreen (PW-7) never sent Hyoid bone and soft tissue, which was allegedly received by PFSA and report of injury and hanging is based on the soft tissue which was not dispatched at any material stage.

b) That PW-7 was silent as to the fact regarding number of parcels, seal of parcels, date and time of parcels and to whom, the same were handed over.

c) That the alleged road certificate was not available on the judicial file of the learned trial Court, but was brought on record at the time of final arguments.

d) That PW-5 admitted that five parcels were handed over to him on 04.10.2021 and the same remained in custody for almost six months.

e) PW-6 deposed that he transmitted six parcels to PFSA on 04.10.2021 and was sure about their contents.

f) That even the reports of the PFSA are silent as to the exact number of the parcels.

g) That since the chain for safe transmission and safe custody of the samples is broken, hence, the PFSA's report (Exh.PN) has lost its efficacy.

9. Furthermore, it was argued that in the present case, there is no sufficient incriminating material available on record

which would connect the appellant with the commission of the alleged offences. That the record is also silent as to the presence of any direct or circumstantial evidence, which could be used for the appellant's conviction. That there were no signs of hanging in the postmortem report i.e. ligature mark, bone fracture, neck fracture, spinal cord injury, brain damage and/or any marks of injury on the body of the deceased. That in the statement of PW-13/complainant, the role attributed to the acquitted accused was that of murder whereas to the appellant, it was that of quarrelling with the deceased. That the statements of the PWs are replete with material discrepancies and improvements, which create reasonable doubt in a prudent mind, the benefit whereof must be extended in favour of the appellant. That the learned Court below while convicting the appellant did not apply its judicial mind; that the law governing the subject was also ignored by the learned Court below; that the conviction order as well as the imposition of the fine are based on utter disregard of the law laid down by the superior Courts; that the statements of the prosecution witnesses are not consistent in nature thus the appellant's conviction cannot be based on such contradictory statements. That impugned judgment does not withstand the test of a valid verdict as enumerated under Section 367 CrPC, concluded the learned counsel for appellant. Learned counsel prayed for the present appeal to be allowed and for the impugned judgment dated 26.04.2024 to be set aside. He placed reliance on the judgments reported as 1971 SCMR 657, 1995 SCMR 1345, PLD 2007 SC 564, 2009 SCMR 230, 2017 SCMR 524, 2018 SCMR 149, PLD 2019 SC 64 and 2022 SCMR 1555.

ARGUMENTS ON BEHALF OF THE PROSECUTION:

10. Conversely, learned counsel for complainant as well as learned Prosecutor appearing for the State have contended that the prosecution has discharged its burden by way of producing confidence inspiring evidence. That motive behind the occurrence has been established. That there was no element of false

implication of the appellant. That there is no discrepancy in the statements of the PWs. That all the PWs were subjected to lengthy cross-examination, but nothing favourable to the appellant was procured. That no defense witness was produced by the appellant in order to substantiate his version. That the appellant has failed to point out any ill-will or ulterior motive on the part of the prosecution. That the impugned judgment is based on correct appreciation of law on the subject hence, the same is not open to interference by this Court. That the impugned judgment does not suffer from any procedural irregularity and thus deserves implementation, concluded learned counsel.

11. We have heard the arguments of the learned counsel for the parties and have perused the record with their valuable assistance.

12. The case of the prosecution, so to speak, does not hinge on any evidence regarding ocular account having been furnished by any of the prosecution witnesses. When confronted with the fact as to the existence of any direct evidence, learned counsel for the complainant as well as learned Prosecutor have candidly admitted that albeit there exists no direct evidence, yet the prosecution succeeded in getting its case proved against the appellant. There is no denial to the fact that it is an unseen occurrence in which it is alleged that the deceased is allegedly said to have been killed by the appellant along with his parents and four brothers. It is also one of the admitted facts that this is a case of no evidence. Since the capital punishment is awarded to the appellant by virtue of indirect evidence, hence, this Court deems it appropriate to re-appraise the same in its true perspective.

13. The precise allegations recorded by PW-13 in the FIR (Exh.PC) are to the effect that the deceased was residing with her in-laws while her husband namely, Syed Abdul Baqi Shah (since Proclaimed Offender) was residing abroad. That due to cruel behavior and maltreatment of her in-laws, he was of the firmed

view that his daughter had been killed by her in-laws. A careful perusal of the said FIR (Exh.PC) as well as the statement of PW-13 makes it abundantly clear that no specific role whatsoever has been assigned either to the present appellant or to the Proclaimed Offenders. PW-13 during his examination-in-chief deposed that "the responsibility of death of my daughter is upon her husband Abdul Baqi Shah, her father in-law Badar Munir Shah (since acquitted), her mother in-law Asma Zahra (since Proclaimed Offender), and their sons, Abdul Basit Shah (the present appellant), Siraj Munir Shah (since Proclaimed Offender), Zia ul Haq Shah (since acquitted), and Abdus Salam Shah (since acquitted)". Furthermore, he deposed that on 23.09.2021 at about 11:00 P.M., Zia ul Haq Shah brother of his son in-law telephonically informed him that his daughter had a heart attack and as a consequence of which, she expired. Initially in his complaint (Exh.PH), PW-13 did not make mention the cause of the deceased's death, but subsequently through a supplementary statement, which was recorded on 15.11.2022 (i.e. after more than 12 months of the occurrence), he claimed the cause of death to be by reason of putting pillow etc. on the deceased's neck and by pressing her neck.

14. Since the machinery of criminal law was set into motion by the complainant/PW-13, this Court deems it appropriate, to minutely peruse his testimony in order to reach to a logical conclusion. As has been discussed above, PW-13 attributed maltreatment and cruelty to the in-laws of his deceased daughter. In the cross-examination, the said PW deposed that in the year 2012, the deceased got married with Syed Abdul Baqi Shah (since Proclaimed Offender) and since then she lived with her husband in the Kingdom of Saudi Arabia until 2017. He further admitted that the deceased did not file any complaint in Saudi Arabia while in the company of her husband. He further unequivocally admitted during his cross-examination that his deceased daughter had not filed any complaint before any court or forum regarding any alleged maltreatment by her in-laws or for recovery of

maintenance, khulla or dissolution of marriage. It may not be out of context to mention here that PW-13 alleged that the accused party wanted second marriage of Syed Abdul Baqi Shah, hence, wanted to get rid of the deceased and thus, they killed her. Had this been the motive and reason, the husband of the deceased would have been well within his rights to have divorced the deceased and/or had the deceased been meted out maltreatment, she would also have been within her rights to have dissolved the marriage through Khulla. Since neither the husband divorced the deceased to get of rid of her, nor had the deceased complained against the maltreatment (if any) before any forum thus, an inference contrary to PW-13's stance could be drawn that the relationship between the spouses was cordial and jovial. Hence, false implication of the appellant as well as the Proclaimed Offenders cannot be ruled out. PW-13 also admitted during cross-examination that he had filed a petition under Section 491 CrPC twice, the subject matter of the first application was resolved through intervention of the Presiding Officer and lawyers, whereas the second application was dismissed after the deceased had appeared before the Court and made a statement to the effect that she was quite comfortable with her in-laws. He admitted that he did not challenge the dismissal order of his petition under Section 491 CrPC before the High Court.

15. Moreover, as regards his stance taken in his supplementary statement regarding putting pillow on the deceased's face and pressing her neck, he admitted that the I.O. did not take into possession any pillow or mattress etc from the place of alleged occurrence. It was obligatory upon him to have furnished the name of the informer who had informed him about putting of the pillow on the deceased's face, which he did not do. He negated the suggestion put forth to him with respect to his stance regarding cause of death. He categorically admitted that the said stance taken by him is even otherwise not supported by any medical evidence. He also admitted the fact that his son in-law, Syed Abdul Baqi Shah, was abroad during the days of alleged

occurrence. At this juncture, this Court observes with grave concern that the said Syed Abdul Baqi Shah (since Proclaimed Offender) was not present at the place of occurrence, as per prosecution's version he was abroad, and the Investigating Officer did not examine this aspect of the matter, however, the learned trial Court found him to have been involved in the commission of alleged occurrence and declared him Proclaimed Offender. PW-13 did not deny the fact that during the days of alleged occurrence, Covid-19 pandemic was prevalent and was on its peak.

MEDICAL EVIDENCE.

16. Undoubtedly, medical evidence leads much support to the prosecution case and the testimony of the Medico Legal Officer is of paramount importance in cases like the one in hand unless the same is suffered from any material contradictions. In the present case, Dr. Nasreen, Medico Legal Officer, who conducted postmortem examination of the deceased, appeared as PW-7 and deposed that upon external examination of the deceased, she observed that the nails of both hands were blue and nails of both toes were blue in color. However, with respect to the cause of death, the said PW instead of giving her own opinion/ remarks, placed a heavy reliance on the report of PFSA (Exh.PN) by deposing that:-

> *"As per report of PFSA Lahore dated 08.11.2021 toxicology report there was no drug, no poison was found in the blood, liver, spleen, kidney and stomach and its contents.*
>
> *As per report of Hispathological prepared by PFSA Lahore dated 11.2.2022, heart sections reveals all branches of coronaries are patent. The sections from myocardium are unremarkable. The lung sections reveal vascular congestion and focally presence of hemorrhages and edematous fluid inside alveoli. Histological examination of the hyoid bone and sound box sections reveals intact hyoid bone and sound box. The soft tissue adjacent to hyoid bone contains blood hemorrhages, suggesting ante-mortem injury at the level of neck likely, hanging in nature."*

17. The PFSA's said report dated 11.02.2022 is itself dubious inasmuch as PW-5 in his examination-in-chief deposed that on

02.04.2022, he through road certificate No.527/21 had handed over five parcels to PW-6, who onward transmitted the same to PFSA, whereas PW-6 admitted that on 04.10.2021, he delivered six parcels in FPSA and was not sure as to what was contained in those parcels. He further admitted that the said parcels were handed over to him by CMO. It is quite strange to observe that the alleged parcels were delivered in FPSA prior to almost six months of its handing over to PW-6 for their onwards transmission to the said Agency.

18. PW-7 in her examination-in-chief deposed that upon external examination of the deceased, she found 1cm transverse skin deep mark seen in front of mid of neck which was brown in color. During her cross-examination, the said PW admitted that "there was no sign or mark of ligature, binder, laceration, abrasion on the body of the deceased except one mark measuring 1cm in front of mind of neck of the deceased". She further admitted that "there was no sign mark of belt, rope or cord on the neck. For sake of clarity, the relevant excerpts from her depositions are reproduced as under:-

> *"…There was no sign mark of belt on the neck. It is correct that there was no sign of rope or cord on the neck of the deceased volunteered that 01 CM skin deep injury mentioned by me in the Postmortem may be of cord or anything else of which I am not sure. It is correct that this possibility has not been mentioned by me in my postmortem report. It is also correct that no finding has been given by the PFSA regarding the object causing injury of 01 CM skin deep. It is correct that there was no fracture of any kind of any organ of the deceased including the hyoid bone and cervical bone. It is correct that in cases of death by hanging fracture of hyoid bone is necessary. It is correct that the injury of skin deep means relating to surface or appearance on the body".*

19. It was further admitted by her during cross-examination that *"it is* correct *that I have not mentioned time and age of the injury of 01 CM skin deep in my report. I have not mentioned the details of swelling towards age, size and measurement."* A similar admission was made by PW-4, Waris Ali ASI in terms that *"it is correct that according to column No.14 of my inquest report, I have*

declared cardiac arrest as cause of death. It is correct that I have no mentioned or identified the size, nature, color and age of the alleged spot on the neck of the deceased."

20. PW-7 further admitted the fact that in the hospital facility of postmortem Computed Tomography (CT) is available, but in the instant case, the postmortem CT was not conducted. She further admitted that in her report as well as in PFSA's report, it had not been categorized that there was likelihood of complete hanging or incomplete hanging and that in her report; she did not mention the reasons for blackish lungs of the deceased. That it is correct that bluish nails of a dead body is a sign of low oxygen or blockage of oxygen in the human body. She further deposed in her cross-examination that the condition of enlargement of heart shows disorder or disease, that on the day when she conducted the autopsy, the Covid-19 pandemic was at its peak and that she did not conduct or advise Covid test of the deceased.

21. As mentioned above, the report of PW-7 is itself doubtful and is based primarily on the findings contained in Histopathology report (Exh.PN) of PFSA, which has no value in the eye of law for the following reasons.

i. *Soft tissues and Hyoid bone, on which the report of injury and hanging is based, allegedly received by PFSA, were never sent by PW-7 for their analysis.*
ii. *For safe transmission of the said articles, mentioning the number of parcels, seal of parcels, to whom the same were delivered and date and time, are mandatory, which has not been done so by PW-7. No explanation for this omission has been given by PW-7.*
iii. *Naveed, Head Constable appeared as PW-5 and deposed that he had been handed over five sealed parcels of this case on 04.10.2021 which he kept in the Malkhana until 02.04.2022 (i.e. for almost six months). Thereafter, on the said date, he handed those parcels to Bilal Ahmed SI, who onward transmitted the parcels in the concerned laboratories PFSA, Lahore.*

22. Likewise, Fakhar Abbas, SI, who conducted the investigation appeared as PW-03 and during the cross-examination, he admitted that during the course of his investigation, no evidence regarding murder of the deceased came

on record except the medical report and the laboratory reports. Suffice it to say that the said reports are not worth considering for the reasons mentioned above. He further admitted that there was no tool having been used for hanging. He showed his ignorance as to the death certificate duly issued by Al-Khidmat Raazi Hospital CBR Town, in which the cause of death was shown as "Cardiac Pulmonary Arrest" He, however, admitted that the said death certificate is available on the police record. He further admitted that in Rapat No.32 dated 24.09.2021 (Exh.P2), it had categorically been mentioned that no sign of violence was found on the body of the deceased person.

23. It goes without saying that in initially, through Rapat No.56 recorded in the daily *Roznamcha* on 24.09.2021, the proceedings under Section 174 CrPC were initiated upon the complaint of PW-13. However, the FIR in this case was registered on 02.04.2022 (i.e. almost more than six months of the alleged occurrence). Section 174 CrPC makes it obligatory upon the police officer to show strict compliance with the requirements of the said provision of law and after fulfillment of all the requisite formalities mentioned therein shall forthwith forward his report to the District Magistrate or the Sub-Divisional Magistrate. The said proceedings were not brought to their logical conclusion and the same remained pending for almost six months i.e. till the registration of FIR. A glance at the statements of the PWs reveals that compliance with the requirements of Section 174 CrPC were not complied with in letter and spirit. One example of such deviation from the mandate of said Section may well be assessed from the statement of PW-6, Bilal Ahmed, SI, who in his cross-examination has unambiguously admitted that *"it is correct that the proceedings under Section 174 Cr.PC. were initiated in this case upon the complaint of the complainant. I did not inform the magistrate or get any permission from him to initiate the proceedings U/s 174 Cr.P.C."* He also admitted that *"I have not gone through the contents of section 174 of Cr.P.C. I am not sure if I complied with the requirements and the procedure laid down in the rules regarding*

proceedings U/s 174 of Cr.P.C. I did not associate two independent witnesses of my proceedings at the place of alleged occurrence to comply with the mandatory requirement contained in section 174 of Cr.P.C."

24. Since the prosecution evidence is doubtful in nature, therefore, there is no need to further discuss the same which is exculpatory in nature. It is a matter of great concern for this Court to observe that the statements of all the PWs are replete with major discrepancies, contradictions and inconsistencies as discussed hereinabove, creating sufficient doubt in the prosecution's case but despite the same, the learned Court below proceeded to convict the appellant on the basis of the dubious and doubtful version of the prosecution. Though the learned Court below has endeavored to write a lengthy judgment consisting of 36 pages, but needless to observe the same does not withstand the test of a standardized legal verdict since the same is based on misreading and non-reading of the evidence on the record.

25. As mentioned above, in the present case, the prosecution failed to discharge its burden of proving the case against the appellant beyond any shadow of the doubt. It is also well established that if there is a single circumstance which creates doubt regarding the prosecution case, the same is sufficient to give benefit of the doubt to the accused, whereas, the instant case is replete with numerous instances creating serious doubt about the prosecution story. Reliance in this regard may be placed on the law laid down in the case titled as "Muhammad Akram v. The State" (2009 SCMR 230), wherein it was held as follows:-

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

26. Reliance in this regard may be placed on the law laid down in the case titled as "Muhammad Akram v. The State" (2009 SCMR 230), wherein it was held as follows:-

> *"The nutshell of the whole discussion is that the prosecution case is not free from doubt. It is an axiomatic principle of law that in case of doubt, the benefit thereof must accrue in favour of the accused as matter of right and not of grace"*

27. Law to this effect was also laid down in the case of Tariq Pervez v. The State 1995 SCMR 1345, wherein it was held has follows:-

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

28. It has been held time and again by the superior Courts that a slightest doubt occurs in the prosecution case is sufficient to grant acquittal to an accused person. For giving the benefit of doubt, it is not necessary that there should be many circumstances creating doubts. Single circumstance creating reasonable doubt in the prudent mind about the guilt of the accused makes him/her entitled to its benefit, not a matter of grace in concession, but as a matter of right. Law to this effect has also be laid down in the judgments reported as 2009 SCMR 230, 2011 SCMR 664, 2011 SCMR 646, 1984 PLD SC 433, 2012 MLD 1358, 2007 SCMR 1825, 2008 PCr.LJ 376, 1994 PLD Peshawar 114, 2012 PLD Peshawar 01, 1999 PCr.LJ 1087, 1997 SCMR 449, 2011 SCMR 820 and 2006 PCr.LJ SC 1002.

29. Moreover, it is well settled by the Hon'ble Supreme Court that in case of doubt, its benefit must go to the accused not as a matter of grace, but of right. Reliance is placed upon cases titled as "Tariq Pervez v. The State" (1995 SCMR 1345), "Ayub Masih v. The State" (PLD 2002 SC 1048), "Muhammad Akram v. The State"

(2009 SCMR 230), "Khalid Mehmood and others v. The State" (2011 SCMR 664), "Arshad Khan v. The State" (2017 SCMR 564), "Muhammad Mansha v. The State" (2018 SCMR 772), "Asia Bibi v. The State and others" (PLD 2019 SC 64), "Muhammad Ashraf alias Acchu v. The State" (2019 SCMR 652), "Najaf Ali Shah v. The State" (2021 SCMR 736). It is hardly necessary to reiterate that the prosecution is obliged to prove its case against the accused beyond any reasonable doubt and if it fails to do so, the accused is entitled to the benefit of doubt. The rule of benefit of doubt, which is described as the golden rule, is essentially a rule of prudence which cannot be ignored while dispensing justice in accordance with law.

30. In view of the above facts and circumstances of the case, we are of the firm view that the prosecution has failed to establish its case against the appellant beyond any shadow of reasonable doubt. It is by now well established principle of the law that it is the prosecution, which has to prove its case against the accused by standing on its own legs and it cannot take any benefit from the weaknesses of the case of the defence.

31. For what has been discussed above, the instant appeal is ALLOWED, the impugned judgment dated 26.04.2024 passed by learned Court below is SET-ASIDE in its entirety. Resultantly, the appellant is acquitted of all the charges leveled against him in case FIR No.411/22 *(supra)*. Since he is in jail. He be released forthwith if not required to be detained in connection with some other case. In sequel to the aforementioned discussion, Murder Reference No.14 of 2024 sent by the learned trial Court is answered in the NEGATIVE.

32. Before parting with this judgment, it is essential to observe that since the evidence collected and furnished by the prosecution in the present case with respect to the appellant, the acquitted co-accused persons as well as the Proclaimed Offenders happens to be indivisible, and since the impugned judgment to the extent of the Proclaimed Offenders also consists of exactly the same set of evidence, particularly in the absence of any

supplementary and/or additional corroboration, therefore, the said impugned judgment has lost its efficacy to the extent of the Proclaimed Offenders as well since their case is exactly on the same footings as the one of the present appellant, to say the least. Moreover, it is well settled law relating to re-appraisal of evidence that once a co-accused having similarly been charged with similar role and/or attributed exactly the same role in a particular crime, is acquitted on the same set of evidence where the prosecution witnesses have adopted no regard for uttering truth while deposing on oath, generally reliance shall not be placed upon the testimonies of such PWs in relation to the other co-accused persons unless their statements/evidence strongly find corroboration by independent, cogent and confidence inspiring evidence.

(MIANGUL HASSAN AURANGZEB)
JUDGE

(ARBAB MUHAMMAD TAHIR)
JUDGE

JUDGE

JUDGE

Announced in an open Court on _____.

APPROVED FOR REPORTING.

*Luqman Khan