*IN THE SUPREME COURT OF PAKISTAN*
*(APPELLATE JURISDICTION)*

***PRESENT:***
*MR. JUSTICE SARDAR TARIQ MASOOD*
*MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI*
*MR. JUSTICE JAMAL KHAN MANDOKHAIL*

***CRIMINAL APPEAL NO. 437 OF 2020***
*(On appeal against the judgment dated 18.12.2017 passed by the Lahore High Court, Lahore in Criminal Appeal No. 698/2015)*

*Khalid Mehmood @ Khaloo*

*... Appellant*

***Versus***

*The State*

*...Respondent(s)*

*For the Appellant:* *Mr. Agha Muhammad Ali Khan, ASC*
*Mr. Muhammad Sharif Janjua, AOR*

*For the State:* *Mirza Abid Majeed, DPG*

*Date of Hearing:* *10.02.2022*

***JUDGMENT***

***SAYYED MAZAHAR ALI AKBAR NAQVI, J.****- Appellant was proceeded against in terms of the case registered vide FIR No. 74 dated 21.02.1995 under Sections 302/34 PPC at Police Station Kot Momin, Sargodha for committing murder of Haji Mehmand father of the complainant. The learned Trial Court vide its judgment dated 02.04.2015 convicted the appellant under Section 302(b) PPC and sentenced him to imprisonment for life. He was also directed to pay compensation amounting to Rs.100,000/- to the legal heirs of the deceased or in default whereof to further undergo six months SI. Benefit of Section 382-B Cr.P.C. was also extended to him. In appeal the learned High Court maintained the conviction and sentences recorded by the learned Trial Court.*

*2. The prosecution story as given in the impugned judgment reads as under:-*

> *"2. Succinctly stated the facts of the prosecution case as it gleans from the FIR are to the effect that on 21.02.1995 at about 12.30 noon Haji Mehmand*

*(deceased) was taken to Chenab Bazar Kot Momin by his son Muhammad Anwar complainant for obtaining the medicine as he was ill; that Muhammad Ansar accused (since PO) and Khalid Mehmood alias Khaloo (appellant) arrived there while armed with revolvers; that Ansar (PO) made a fire shot with his revolver which hit on the left flank of Haji Mehmand, whereas fire shot made by Khalid Mehmood alias Khaloo (appellant) landed on the right side of abdomen of Haji Mehmand; that apart from Muhammad Anwar complainant the occurrence was also witnessed by Mukhtar Ahmad (W-5) and Zulfiqar PW; that they all raised hue and cry whereupon both the accused succeeded to flee away from the spot; that Haji Mehmand was shifted to Civil Hospital, Kot Momin from where he was shifted to Civil Hospital, Sargodha; that both the accused committed the murder of deceased on the abetment of Liaqat, Rafaqat and Bati (acquitted during the earlier trial)."*

*3. After completion of the investigation, report under Section 173 Cr.P.C. was submitted before the Trial Court. The prosecution in order to prove its case produced 8 witnesses. The testimonies of two PWs, who were examined in the earlier trial of co-accused of the appellant, had also been relied upon during trial. In his statement recorded under Section 342 Cr.P.C the appellant pleaded his innocence and refuted all the allegations leveled against him. However, he did not opt to appear under Section 340(2) Cr.P.C. to lead defence evidence.*

*4. Learned counsel for the appellant contended that the appellant has been convicted on the solitary statement of Mukhtar Ahmad (PW-5), which is not confidence inspiring. Contends that the learned Trial Court while convicting the appellant had relied upon the testimonies of PW-2 and PW-3 of the previous trial of the co-accused, which included the postmortem report and the statement of the doctor recorded in the previous trial but the same was never exhibited in the current trial, therefore, it could not have been made basis by the learned Trial Court to convict the appellant. Lastly contends that mere the absconsion of the appellant cannot be made basis to convict him and the prosecution has to prove its case independently, which has not been done, therefore, the appellant deserves to be acquitted of the charge.*

*5. On the other hand, learned Law Officer has defended the impugned judgment. He contended that the appellant has committed murder of an innocent person and his long absconsion clearly reflects that he has committed the crime, therefore, he does not deserve any leniency by this Court.*

*6. We have heard learned counsel for the parties at some length and have perused the evidence available on the record with their able assistance.*

*Perusal of the record reveals that the appellant along with four other co-accused was booked in the instant case for committing murder of father of the complainant. Co-accused namely Ansar absconded and is still at large. The appellant along with three co-accused namely Liaqat, Rafaqat and Bati was being tried when he ran away on 21.12.1998 by breaking the chain whereas the three co-accused were ultimately tried and acquitted of the charge by a separate judgment. After his arrest on 18.08.2013, the trial to appellant's extent again started. The occurrence which took place on 21.02.1995 was witnessed by Muhammad Anwar complainant, Zulfiqar Ali and Mukhtar Ahmed (PW-5). However, only Mukhtar Ahmed (PW-5) appeared in the witness box in the current round as the remaining two witnesses died during the absconsion period of the appellant. Although the statements of both the witnesses namely Muhammad Anwar and Zulfiqar Ali were admissible in evidence under Article 46 of the Qanun-e-Shahadat Order, 1984 but this aspect has not been taken into consideration and relied upon by the learned courts below, which omission cannot be resolved at this stage as the matter arises out of the FIR No. 74 dated 21.02.1995, therefore, any order passed by this Court would not be in the interest of safe administration of criminal justice. So, this is the case of solitary statement. There is no cavil with the proposition that conviction can be made on the basis of solitary statement of an eye-witness but there are certain aspects of the matter, which need to be looked at. It is admitted position that the learned Trial Court while convicting the appellant had relied upon the medical evidence comprising the postmortem report and the statement of the doctor in the earlier trial of the three co-accused of the appellant but the same*

*was never exhibited during the current trial of the appellant. This Court in the case of Nur Elahi Vs. Ikram ul Haq and State (PLD 1966 SC 708) has categorically held that "witnesses should be examined only once and their statements read out as evidence in the other case is not supportable in law". It was further held that "every criminal proceeding is to be decided on the material on record of that proceeding and neither the record of another case nor any finding recorded therein should affect the decision and if the court takes into consideration evidence recorded in another case or a finding recorded therein the judgment is vitiated." The judgment in Nur Elahi supra case was further reiterated by this Court in Muhammad Sarwar Vs. Khushi Muhammad (2008 SCMR 350) wherein it has been held that "the evidence recorded in one case may not hold good for the other case." In view of the law laid down by this Court, it can safely be said that the learned Trial Court could not have relied upon the medical evidence that was brought on record in the earlier trial of the three co-accused of the appellant. So far as the recovery of revolver recovered from the possession of the appellant is concerned, the same has no impact on the instant case as no empty was recovered from the place of occurrence. 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. 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. However, as discussed above, in the present case the prosecution has failed to prove its case beyond any reasonable shadow of doubt. So far as the argument of the learned Law Officer about the absconsion of the appellant is concerned, it is settled law that absconsion cannot be viewed as a proof for the crime and only on this basis an accused cannot be convicted and it is the prosecution who has to prove its case independently without any reasonable shadow of doubt.*

*7. For what has been discussed above, this appeal is allowed and the impugned judgment is set aside. Appellant is acquitted of the charge. He shall be released from jail forthwith unless detained in any other case.*

*JUDGE*

*JUDGE*

*JUDGE*

*Islamabad, the*
*10th of February, 2022*
*Approved For Reporting*
***K**hurram*