

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
LARKANA**

**Criminal Appeal No.D-20 of 2020  
Criminal.Conf.Case No.D-19 of 2020**

**Present:**

***Mr. Justice Amjad Ali Sahito  
Mr. Justice Jan Ali Junejo***

Appellant : Illumddin s/o Abdul Lateef Khoso,  
Through Mr. Ghulam Dastagir A. Shahani,  
Advocate

The State : Through Mr. Muhammad Noonari,  
Deputy Prosecutor General, Sindh

Date of hearing : 15.05.2025.

Date of Judgment : 30.05.2025.

**JUDGMENT**

**JAN ALI JUNEJO, J:-** Through this Criminal Appeal, the appellant has challenged the judgment dated 11.03.2020, passed by learned Ist Additional Sessions Judge, Mehar, in S.C No.92/2017, arising out of Crime No.136/2016, registered at P.S, K.N. Shah, for the offence under Sections 302, 506/2 and 504 P.P.C, whereby the appellant was convicted and sentenced as under:-

(i) The accused Illumddin S/o Abdul Lateef by caste Khoso was found guilty for committing the murder of deceased Zaffar Ali Siyal with Repeater Gunshot injury beyond shadow of doubt. It may be added here that the accused has committed murder of young man, aged about 25/30 years and no mitigating circumstances do exist to save him from capital punishment. He was therefore convicted and sentenced to death U/S. 302 (b) PPC (as amended under Qisas and diyat ordinance). He be hanged by neck till he is dead.

(ii) Under section 544 (A) Cr.P.C R/W the Judgment of Honourable Supreme Court of Pakistan reported in **1995/SCMR page 1776**, the accused Illumddin S/o Abdul Latif Khoso was directed to pay compensation of Rs.1,00,000/- (One hundred thousand) to the legal heirs of deceased Zaffar Ali. In default thereof, he will to suffer S.I for six months only.

2. The facts of the case of prosecution are that on 06.08.2016 at 1330 hours, the Complainant Koural S/o Ali Nawaz by caste Siyal got registered FIR at P.S, K.N.Shah, stating therein that his son Zaffar Ali aged about 30 years, used to work at milk "Bhathee" of Ashique Khoso. Accused Illumddin Khoso was also worker at the said "Milk 'Bhathi" and the accused had asked the son of complainant to leave the work and not take the milk. The son of complainant Zaffar Ali replied the accused that since he is poor and owner of 'Mawa Bhathee" namely Ashique Khoso has engaged him as worker. The hot words had been exchanged between accused and the son of complainant and the accused issued threats to the complainant's son if he would carry the work at 'Milk Bhathee" then he will face the consequences. On 31.07.2016, at morning time, the son of complainant Zaffar Ali left his home for work. It is further stated that deceased Zaffar Ali called the complainant through Mobile Phone that Illumddin Khoso has come to fight with him. On receiving such intimation, the complainant and his other sons Liaquat Ali and Ghulam Mustafa proceeded towards Milk Bhathee. At about 0830 hours, when they reached in the street near to "Milk Bhathee" where they saw accused Illumddin S/o Abdul Lateef by caste Khoso, r/o Abdullah Colony K.N.Shah, armed with Repeater was using abusive language with Zaffar Ali. The accused in presence of complainant party made direct fire from his Repeater upon Zaffar Ali with intention to commit his murder which hit him on his abdomen, he fell down on the ground while raising cries. The complainant party also raised cries, in the meantime, accused Illumddin Khoso aimed his Repeater and issued threats that if they would come near to him he (accused) would kill them. On the fire shot and cries, the other people and labourers of "Milk Bhathee" came running there. The accused to see them coming towards him ran away while abusing. After departure of accused, the complainant found that his son Zafar Ali had received fire shot injury on his abdomen, blood was oozing and his intestine

had come out from abdomen. The complainant party at once shifted the injured towards P.S, obtained letter and brought him at Taluka Hospital K.N.Shah for treatment. After first aid, the injured (deceased) was referred to CMCH Larkana and lastly he was referred to Karachi for further treatment and Medico legal opinion. After admitting the injured at Karachi, the complainant came at P.S and got registered the instant FIR. During the course of treatment the injured Zaffar Ali expired at Liaquat National Hospital, Karachi.

3. After the usual investigation, a challan was submitted to the competent court showing the appellant/accused in custody. The learned trial Court framed the formal charge against the present appellant/accused at Exh.03, to which he did not plead guilty and claimed trial vide his plea recorded at Exh.04.

4. In support of his case, the prosecution examined the following nine P.Ws:

PW-1 Complainant Koral was examined at (Exh.7), he produced FIR at (Exh.7-A), further statement at (Exh.7-B), application made by complainant regarding exhumation of dead body of deceased Zaffar Ali at (Exh.7-C), memo of identification of grave at (Exh.7-D), memo of Exhumation at (Exh.7-F), memo of the re-burial of deceased Zaffar Ali at (Exh.7-G), certified copies of application U/Ss.22-A and 22-B Cr.P.C and order passed there on at (Exh.7-H and 7-I) respectively, certified copy of inquiry report at (Exh.7-J), copy of suspension order of Inspector Akbar Ali Channa and ASI Altaf Ali Chandio at (Ex.7/K).

P.W-2 eye witness Ghulam Mustafa was examined at (Exh.8).

P.W-3 Dr. Abdul Hameed Shaikh was examined at (Exh.9), he produced Provisional Medico legal certificate at (Exh.9-A) and police letter at (Exh.9-B).

P.W-4 Tapedar Muhammad Yousif Abro was examined at (Exh.10), he produced sketch of Vardhat at (Exh.10-A).

P.W-5 mashir Rustam Ali was examined at (Exh.11), he produced memo of injury of injured Zaffar Ali at (Exh.11-A), memo of place of incident at (Exh.11-B), memo of arrest of accused at (Exh.11-C) and memo of last worn clothes of deceased at (Exh.11-D).

P.W-6 I.O/ASI Altaf Hussain examined at (Exh.12).

P.W-7 first I.O/Retired ASI Muhammad Umar examined at (Exh.13).

PW.8, the 1<sup>st</sup> Judicial Magistrate K.N.Shah namely Mir Hassan Kalhoru examined at (Exh.14), he produced application of investigation officer at (Exh.14-A), death certificate of deceased Zaffar Ali S/o Koural Khan at (Exh.14-B), letter No: 1276 regarding verifying the death of deceased Zaffar Ali at (Exh.14-C), verification report of death of deceased at (Exh.14-D), letter regarding constitution of Medical Board at (Exh.14-E), receipt regarding sending letter through TCS at (Exh.14-F).

P.W-09, mashir Irshad Ali examined at (Exh.15).

PW-10 Dr. Mushtaque Ahmed Noonari, examined at (Exh.16), he produced letter received to him from the office of Medical Superintendent LUMHS at (Exh.16-A), office order of Constitution of Special Medical board by Director General Sindh Hyderabad at (Exh.16-B), post mortem examination report in respect of exhumation of dead body of deceased Zaffar Ali at (Exh.16-C), receipt regarding metallic pellets recovered from the body of deceased at (Exh.16-D) and report regarding recovered pellets at (Exh.16-E).

Thereafter, the side of the prosecution was closed by learned ADPP vide statement at (Exh.17).

5. Statement of accused under section 342 Cr.P.C was recorded at Ex.18. The accused in his statement denied the allegations of prosecution and claimed to be innocent. He further deposed that it is false case, he is innocent and falsely implicated in this case due to enmity. He further deposed that actually the murder of deceased had been committed by the grandson of the complainant. The complainant in order to save his grandson has managed this false case against him. However, neither he examined himself on oath nor produced any witness in his defense.

6. The learned trial Court after hearing the counsel for the parties and on the assessment of the evidence, convicted and sentenced the appellant/accused vide impugned judgment dated 11.03.2020, as discussed above.

7. Learned counsel for the appellant has argued that the appellant/accused is innocent and falsely involved in this case by the complainant party due to enmity; that there is delay of six days in lodging the FIR which has not been explained properly; that the evidence adduced by the prosecution is insufficient to warrant the conviction to the appellant

and cannot be sustained; that the judgment is result of miscarriage of justice; that actually the murder of deceased Zaffar Ali (son of complainant) was committed by the grandson of complainant and complainant in order to save his grandson he managed this false case against the accused; that no any independent person has been cited as witness in the instant case and the witnesses are interested and inimical with the accused; that there are material contradictions between the evidence of complainant and eye witnesses.

8. He further contended that the ocular evidence is in confliction with the Medical evidence and no crime weapon had been effected from the accused and during course of investigation neither the statement of injured who died later on nor his dying declaration was recorded by the investigation officer or by the Magistrate. He lastly prayed for the acquittal of accused.

9. On the other hand, learned Deputy Prosecutor General, Sindh for the State argued that the name of the appellant transpires in the F.I.R with specific role for causing injury to the deceased; that the complainant and prosecution witnesses have fully implicated the accused and have supported the version of the complainant; that there is no contradiction among the evidence of prosecution witnesses. He further contended that the Medical evidence is fully corroborated with the ocular evidence and the post mortem and F.S.L report are also in support of prosecution. He further submitted that the accused has committed murder of one innocent Young man namely Zaffar Ali S/o Koral, aged about 25/30 years by fire-arm, therefore, the accused is liable for capital punishment.

10. We have heard the arguments advanced by the learned counsel for the appellant as well as D.P.G Sindh and have scrutinized the entire material with the able assistance made before us.

11. The presumption of innocence remains throughout the case until such time, the prosecution on the evidence satisfied the Court beyond a reasonable doubt that the accused is guilty. It is one of the principles, which seeks to ensure that no innocent person is convicted. Upon evaluation of the material placed on record, it transpires that the prosecution's case primarily

hinges upon the ocular testimony presented through the statements/evidence of the complainant, Koural (PW-01), and his sons, namely Liaquat Ali and Ghulam Mustafa, both of whom have been cited as eye-witnesses. It is evident from the deposition of the complainant that the deceased, Zaffar Ali, aged approximately 30 years, was employed as a labourer at the milk shop of one Ashique Khoso, situated at K.N. Shah.

12. It further appears that the appellant, Illumddin Khoso, was also employed at the said milk shop and had previously admonished his son, Zaffar Ali, to refrain from attending work at the shop. Upon Zaffar Ali's refusal, a verbal altercation ensued between the appellant and his son. On 31.07.2016, in the early hours of the morning, Zaffar Ali proceeded to the milk shop. Subsequently, he telephonically informed the complainant/father that the appellant, Illumddin Khoso, had arrived at the shop and was engaged in a quarrel with him.

13. Acting upon this information, the complainant, accompanied by his sons Liaquat Ali and Ghulam Mustafa, promptly proceeded to the location. At approximately 0830 hours, as they approached the street adjacent to the milk shop of Nooruddin Khoso, they observed the appellant, Illumddin, armed with a repeater firearm, engaged in a heated and abusive exchange with his son Zaffar Ali. In the presence of the complainant and the witnesses, the appellant fired a direct shot from the repeater, striking Zaffar Ali in the abdominal region, causing him to collapse to the ground in pain and distress.

14. Upon hearing the gunshot, nearby residents and labourers from the milk shop emerged from the premises, at which point the appellant fled the scene. The appellant also reportedly issued threats to the complainant and witnesses, warning them that they would meet the same fate should they approach. The complainant further deposed that while they were in the process of shifting his injured son for medical treatment, the police also arrived at the scene. Thereafter, the injured person, Zaffar Ali (now deceased), was transported to the police station, where, after obtaining a referral letter, he was taken to the Taluka Hospital, K.N. Shah. Upon

medical examination, the attending doctor referred the injured to Larkana for further treatment.

15. Consequently, the complainant moved his son to Chandka Medical College Hospital (CMCH), Larkana, and subsequently to Karachi for advanced medical care. The injured remained under treatment at Liaquat National Hospital, Karachi, for approximately two months and a few days, but ultimately succumbed to his injuries. It is pertinent to note that no post-mortem examination was conducted on the deceased Zaffar Ali at the time of his death.

16. Subsequently, the complainant filed an application before the learned Magistrate, praying for the exhumation of the deceased's body. The said application was duly allowed. Pursuant to the directions issued by the learned Magistrate, a duly constituted medical board comprising qualified medical practitioners conducted the post-mortem examination of the exhumed remains. Furthermore, following the admission of his injured son to a hospital in Karachi, the complainant proceeded to formally register a First Information Report (FIR), bearing Exhibit No.7/A, at Police Station K.N. Shah.

17. It is an admitted fact that the incident occurred on 31.07.2016, whereas the FIR was registered belatedly on 06.08.2016. The injured individual, Zaffar Ali, succumbed to his injuries on 10.10.2016, and his interment took place later-on. Notably, the complainant failed to inform the police authorities of the death of Zaffar Ali. The post-mortem examination was eventually carried out on 24.11.2016, after an unexplained delay of about one month and fourteen days after his death at hospital. The FIR was lodged after an unexplained delay of about six days from the date of the incident, suggesting a possibility of deliberation and consultation. Moreover, no satisfactory explanation was offered either by the complainant or by the eyewitnesses, who are the real father and brothers of the deceased, regarding the inordinate delay in conducting the post-mortem. It is pertinent to note that the distance between the place of occurrence and the police station is merely one kilometre. It is well-settled law that an unexplained and unreasonable delay in the lodging of the FIR is a

suspicious circumstance, which adversely affects its credibility and casts serious doubt upon the veracity of the entire prosecution case. In this context, the reliance is placed upon case of ***Zafar vs. The State (2018 SCMR-326)***, wherein the Hon'ble Supreme Court of Pakistan has held that;

**“5. It has been observed by us that the occurrence in this case as per prosecution took place on 03.09.1999 at 03.00 a.m (later half of night) and the matter was reported to the police on the same day at 08.30 a.m. i.e after five hours and thirty minutes of the occurrence. The distance between the place of occurrence and police station is 09 miles. The postmortem on the dead body of deceased was conducted on the same day at 2.00 p.m i.e after 11 hours of the occurrence. No explanation whatsoever has been given by the complainant Shahadat Ali (PW-05) and Umer Daraz (PW-06) in the FIR or while appearing before the learned trial Court qua the delay in lodging the FIR or for that matter the belated postmortem of the deceased”.**

In another case law reported in case of ***Nazir Ahmed vs. The State (2018 SCMR-787)***, wherein the Hon'ble Supreme Court of Pakistan has held that;

**“3.--Instead of providing support to the ocular account the medical evidence produced by the prosecution had gone a long way in creating dents in the case of prosecution. Postmortem examination of the dead body had been concluded after about 13 hours of the death of the deceased giving rise to an inference that time had been consumed by complainant party and the local police in cooking up a story for the prosecution and in procuring and planting eye witness. The time of death of the deceased stated by the eye witness was materially different from the discernible from the medical evidence”.**

18. Similar view was also taken in the cases reported as “Ulfat Hussain v. The State” (2018 SCMR 313), “Muhammad Yaseen v. Muhammad Afzal and another” (2018 SCMR 1549) and “Muhammad Rafique alias Feeqa v. The State” (2019 SCMR 1068).

19. The complainant produced his further statement, marked as Exhibit 07/B, and stated that the said statement was recorded on 14.10.2016. In his further statement, the complainant disclosed that he had



initially lodged FIR No.136/2016 for offences punishable under Sections 324, 506(2), and 504 of the Pakistan Penal Code at Police Station K.N. Shah, but did not inform the authorities regarding the subsequent death of his son, Zafar Ali, nor did he initiate the requisite legal proceedings in that regard. He further stated that he submitted an application to the Station House Officer, Police Station K.N. Shah, requesting the exhumation of the grave of his deceased son. In support of this, the complainant produced documents including: the application for exhumation of the dead body, the memo of identification of the grave, the memo of exhumation, the memo of identification of the dead body, and the memo of burial following exhumation, which were exhibited as Exhibits 7/C to 7/G respectively. He further alleged that although the weapon of offence was recovered from the accused, the Investigating Officer and the Station House Officer, Ali Akbar Channa, failed to record the recovery in the official case file and did not conduct a fair and impartial investigation. The complainant also submitted that he had filed an application under Sections 22-A and 22-B of the Code of Criminal Procedure, which was produced on record as Exhibit 7/H.

20. In his cross examination, the complainant admits that ***“He saw very well that accused fired at my son at close range, after injury my son Zafar Ali was conscious. We shifted my son on the vehicle of milk shop to PS, where my son was also conscious. The police that time did not record our statement but they immediately referred us for treatment. At the time of incident police was not available at the place of incident. The doctor at Taluka Hospital referred my son for further treatment to Larkana. We stayed at Larkana hospital for three days. During that period my son Zafar Ali used to talk but he could not walk. It is correct that I did not move any application to any competent authority for recording statement of my son Zafar Ali. Voluntarily says that I was busy in treatment of my son hence I could not go anywhere. It is correct that on death of my son I buried it without informing the police. It is correct to suggest that son of my son Rustam contracted marriage with a girl of Khosa community prior to the incident.”***

21. During the recording of evidence, the complainant admitted that while they were in the process of transporting the injured Zafar Ali in a vehicle, the police arrived at the scene and subsequently took Zafar Ali to the police station. Thereafter, he was shifted to Larkana for medical treatment. However, during cross-examination, the complainant conceded that the police were not present at the scene of occurrence at the relevant time. This contradiction amounts to a material improvement in his testimony, seemingly made with mala fide intent and for ulterior motives.

22. In both the FIR and his recorded testimony, the complainant stated that his son, Zafar Ali, informed him about the incident via mobile phone. Nevertheless, he failed to provide the deceased's mobile number or produce the relevant mobile device before the police to substantiate this assertion. While the complainant alleged that the appellant had been issuing threats to the deceased, no specific motive was articulated to support the claim that such threats were indeed made. Moreover, although the complainant stated that both the deceased and the appellant were employed at the milk shop of one Ashiq Khoso, the prosecution failed to examine said Ashiq Khoso to corroborate the complainant's version. It was further asserted that the incident occurred near the shop of Noorduiddin Khoso; however, the police did not record the statement of said witness to verify the narrative presented by the prosecution. Additionally, while the complainant testified that the appellant discharged a firearm (repeater) at the deceased from close range, the provisional medical certificate does not indicate any signs of blackening or charring, which casts doubt on the alleged proximity of the shooting.

23. As per Modi's Medical Jurisprudence and Toxicology (21st Edition) at page 354, if any fire is made from the distance of 01 to 02 feet, then the blackening occurs. In this context, the reliance is placed upon the case of ***Muhammad Zaman v. The State (2014 SCMR 749)***, wherein the Hon'ble Supreme Court of Pakistan has held that:-

*"Firearm entry wound "Blackening" – Scope-Blackening was found, if a firearm like a shotgun was discharged from a distance of not more than 3 feet.*

24. In medical terminology, if a firearm is discharged very close to the body or in actual contact subcutaneous tissues over an area of two or three inches around the wound of the entrance are lacerated and the surrounding skin is usually scorched and blackened by smoke and tattooed with un-burnt grains of gunpowder or smokeless propellant powder. The adjacent hairs are singed and the clothes covering the part of the body are burnt by the flame. At a distance of one to three feet, small shots make a single aperture with irregular and lacerated edges corresponding in size to the bore of the muzzle of the gun, as the shot enter as one mass, but are scattered after entering the wound and cause great damage to the internal tissues. The skin surrounding the wounds is blackened, scorched and tattooed, with un-burnt grains of power. In the present case nothing has been brought on the record that the skin surrounding the wound was blackened, scorched and tattooed.

25. Prosecution Witness No. 4, Muhammad Yousuf, a Tapedar/Patwari, deposed that the distance between point A and point B was approximately six feet, indicating that the deceased was at the distance of six feet away from the accused at the time of the alleged shooting. If the firearm was discharged from such a short distance, one would reasonably expect the presence of blackening or charring on the body; however, no such signs were observed. As per the provisional medical certificate, the injury was described as a 5 cm x 3 cm entry wound with protrusion of the intestine from the left side of the abdomen. This suggests a pellet penetration depth of no more than three centimetres. Despite this, when the deceased's body was exhumed, Prosecution Witness No. 8, Dr. Mushtaq Ahmed, testified that 22 metallic pellets were recovered and handed over to the Office of the Police Surgeon, Hyderabad, under proper receipt, exhibited as Ex.16/D. This raises serious concerns, as no pellets were recovered or documented by the initial medical officer, nor during treatment at CMC Hospital, Larkana, or even at Liaquat National Hospital, Karachi. The presence of these pellets was only discovered more than three months later upon exhumation. The provisional medical certificate is notably silent on the presence of any pellets within the body.

26. To corroborate the complainant's version, the prosecution examined Ghulam Mustafa, the complainant's son. His testimony largely reiterated the same narrative previously advanced by the complainant. However, during cross-examination, he admitted: *"The accused Illumddin was standing on the path of my brother, who was coming from village Thalho. Upon our arrival at the scene, we met Zafar Ali before he sustained injuries. The incident took place on a paved road. This road also leads to village Pyaro Station. The accused fired at my brother at close range. My brother lost consciousness soon after being shot, but regained it later at Larkana Hospital."*

27. It is particularly noteworthy that both the complainant and his son claimed the deceased had telephonically informed his father/complainant, that the appellant, Illumddin Khoso, had come to confront him. Acting on this information, they allegedly left their residence and reached the place of occurrence, where the accused purportedly waited until their arrival before firing at Zafar Ali. This sequence of events is implausible and defies logic. Furthermore, PW Ghulam Mustafa admitted in his testimony that they met Zafar Ali before he sustained the fatal injury, whereas the complainant stated that the accused fired at his son when they were approximately 20 feet away. This contradiction strongly suggests that neither the complainant nor his son were present at the scene when the incident actually occurred. The ocular version of events put forward by the prosecution fails to find support in the medical evidence.

28. The Investigating Officer of the case also produced memo of place of incident at Ex.11/B wherein he disclosed that no blood spots or any other pits were found at the place of incident. The prosecution also examined I.O of the case ASI Altaf Hussain recorded 161 Cr.P.C statements of witnesses and Liaquat Ali and Ghulam Mustafa on 11.08.2016 wherein the FIR was registered on 06.08.2016 with delay of about five days, no plausible explanation has been furnished by the complainant and I.O for recording the statements of the eyewitnesses for such a long delay.

29. Admittedly, no crime weapon was recovered from the accused person/appellant. No incriminating evidence was collected by the I.O to connect him with the commission of alleged offence. The rule 25.2(3) of

Police Rules 1934 provides that it is duty of the Investigating Officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offenders. He shall not commit himself pre mature any view of the facts for and against the person. The record shows that second I.O of the case ASI Altaf Hussain Chandio had been inquiring from the complainant Koural regarding condition of the injured and the witnesses had disclosed in their evidence the deceased was conscious and he was talking every person but the I.O of the case did not bother to record his statement to believe that the appellant has committed the offence. Rule 25.14(1) of Police Rules 1934 provides that Investigating Officer are expecting to take his teams to seek expert technical assistance and advise whenever such appears desirable to the course of investigation for purpose of evidence or demonstration course. The I.O ASI Altaf Hussain failed to take such technical assistance from the doctor for recording statement of the injured who died receiving the injuries after more than three months. After the death of deceased, the complainant and his witnesses buried the dead body of the deceased without informing the police as they were not sure that whether the appellant has committed offence or not and subsequently by improving his statement in his evidence they have given story that they were not aware about the procedure.

30. Turning to the motive as set up by the complainant in his FIR that the accused was issuing threats to deceased Zafar Ali. The deceased and appellant were working at the milk shop of Ashiq Khoso but the prosecution has failed to examine the Ashiq Khoso to believe the version of complainant party. It is said to be that incident took place near the shop of Noorduiddin Khoso; police failed to record his statement to confirm the version recorded in the evidence by the prosecution. In order to substantiate this version of the complainant, he has not brought on record any substance to justify his version/motive.

31. Further, the incident is said to have taken place during broad hours of the day near the milk shop of Nooruddin Khoso which was witnessed by number of the inhabitants of the vicinity as admitted by the witnesses, yet no any independent person from the said area was cited as witness/mashir to prove the version of complainant party and all the

witnesses cited in this case are Father and brothers of the deceased and resided in one and same house. These all material contradictions noticed in the evidence of prosecution witnesses impaired the transparency of their statements and rendered it highly doubtful. In this context, the reliance is placed upon case of ***Mst. Shazia Parveen vs. The State (2014 SCMR-1197)***, wherein the Hon'ble Supreme Court of Pakistan has held that;

**“4. Such related witnesses had failed to receive any independent corroboration in-as-much as there was no independent evidence produced regarding the alleged motive, alleged recovery of rope was legally inconsequential and the medical evidence had gone long away in contradicting the eye witnesses in many ways. The duration of the injuries and death recorded by the doctor in the postmortem examination report had rendered the time of death allegedly by the eye witness quite doubtful, the stomach contains belied the eye witnesses regarding the time of occurrence”.**

32. The over-all discussion involved a conclusion that the presence of eye-witnesses at the place of occurrence on relevant time has been found to be doubtful. Thus, we are of the considered view that the prosecution has failed to bring home the guilt against the present appellant beyond any reasonable doubt and it is well settled principle of law that for creating shadow of doubt, it is not necessary that there should be many circumstances. If a single circumstance creates reasonable doubt in the prudent mind, then its benefit is to be extended in favour of the accused not as a matter of grace or concession, but as the matter of right. The reliance is placed on the case of ***Muhammad Masha v. The State (2018 SCMR-772)***, wherein the Hon'ble Supreme Court of Pakistan has held that:

**4.--- Needles to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of accused, then accused would be entitled to the benefit of such doubt, not as a matter of grace and concession but as a matter of right. It is based on the maxim,” it is better that ten guilt persons be acquitted rather than one innocent person be convicted”. Reliance in this behalf can be made upon the cases of Tariq Pervez v. The State(1995 SCMR-1345), Ghulam Qadir and 2 others v. The State(2008 SCMR-1221), Muhammad**

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

33. In this case, the learned trial Court has not evaluated the evidence in its true perspective and thus arrived at an erroneous conclusion by holding the appellant guilty of the offence. Resultantly, the instant appeal is **allowed**. The conviction and sentence awarded to the appellant Illumddin Khoso is set-aside and he is **acquitted** of the charge by extending them benefit of doubt. The appellant shall be released forthwith, if he is no more required in any other custody case.

34. As a result of the above findings, the reference bearing No.D-19 of 2020 submitted by the learned trial Court for confirmation of death sentence to the appellant Illumddin Khoso is answered in the **“NEGATIVE”**.

**JUDGE**

**JUDGE**