

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Jail Appeal No. D-02 of 2023

**along with
Criminal Appeal No. D-07 of 2023**

**PRESENT: Mr. Justice Muhammad Saleem Jessar
Mr. Justice Nisar Ahmed Bhanbhro**

Appellants	:	Through Mr. Rafique Ahmed K. Advocate
1. Ghulam Yasin son of Hadi Bux Suhandro		
2. Kashif son of Hadi Bux Suhandro		
3. Mir Hassan son of Hadi Bux Suhandro, in Cr. Jail Appeal No. D-02 of 2023		
Appellant Rahim Bux son of Sadoro @ Sadaruddin in Cr. Appeal No. D-07 of 2023	:	Through Mr. Muhammad Afzal Jagirani, assisted by Ms. Mehran Abdullah & Ms. Kiran Manzoor Mirani, Advocates
The State	:	Through Mr. Ali Anwar Kandhro, Addl. Prosecutor General, Sindh.
Date of hearing	:	20.05.2025
Date of Judgment	:	20.05.2025

JUDGMENT

NISAR AHMED BHANBHRO. J- By this single judgment, we propose to dispose of above-noted two Criminal Appeals as in both cases alleged incident, facts as well as legal points are same.

2. By means of Cr Jail Appeal No.D-02 of 2023, the appellants Ghulam Yaseen, Kashif and Mir Hassan, all sons of Hadi Bux Suhandro have challenged their conviction and sentences awarded to them by way of judgment dated 16.01.2023

(impugned judgment) passed by Special Judge, Anti-Terrorism Court, Shikarpur (Trial Court), vide Special Case No. 57 of 2021 arising out of F.I.R No.49 of 2021 under Sections 302, 324, 353. 337/F(i), 427, 224, 225, 148 & 149 PPC, and Sections 6/7 A.T.A, 1997 registered at P.S B-Section, Thull, District Jacobabad, whereby Learned Trial Court convicted all three accused / appellants as well as accused Rahim Bux i.e. appellant in connected Cr. Appeal No.07 of 2023 and sentenced them as under:

- a. Accused 1.Ghulam Yasin, 2.Kashif, 3.Mir Hassan all three sons of Hadi Bux by caste Suhandro are convicted for an offence of causing murder of PC Pervez Ahmed Banglani punishable under section 302 (b) PPC r/w section 149 PPC and sentence them to suffer imprisonment for life. They are also ordered to pay Rs.3,00,000/- (Three lacs) each accused to the legal heirs of deceased PC Pervez Ahmed Banglani as compensation u/s 544-A Cr.PC. In case of default to pay fine amount, they shall further undergo S.I for six months more.
- b. Accused 1.Ghulam Yasin, 2.Kashif, 3.Mir Hassan all three sons of Hadi Bux by caste Suhandro are also convicted for an offence of causing murder of PC Pervez Ahmed Banglani punishable under section 7(1) (a) of Anti Terrorism Act 1997 and sentence them to suffer imprisonment for life. They are also ordered to pay fine of Rs.2,00,000/- (Two lacs) each accused. In case of default to pay fine amount, they shall further undergo S.I for six months more.
- c. Accused 1.Ghulam Yasin, 2.Kashif, 3.Mir Hassan all three sons of Hadi Bux by caste Suhandro and 4.Rahim Bux s/o Sadoro @ Saddarudin Soomro are convicted for an offence of attacking with lathies and firing upon police party with intention to kill punishable under section 324 PPC r/w section 149 PPC and sentence them to suffer R.I for (10) ten years. They are also ordered to pay (each accused) Rs.50,000/- (Fifty thousands) fine. In case of default to pay fine amount, they shall further undergo S.I for three months more.
- d. Accused 1.Ghulam Yasin, 2.Kashif, 3.Mir Hassan all three sons of Hadi Bux by caste Suhandro and 4.Rahim Bux s/o Sadoro @ Saddarudin Soomro are further convicted for an offence of attacking with lathies and firing at police party with intention to kill them, punishable under section 7 (1) (b) of Anti Terrorism Act 1997 and sentence them to suffer R.I for ten years. They are also ordered to pay (each accused) Rs.50,000/- (Fifty thousands) fine. In case of default to pay fine amount, they shall further undergo S.I for three months more.
- e. Accused 1.Ghulam Yasin, 2.Kashif, 3.Mir Hassan all three sons of Hadi Bux by caste Suhandro and 4.Rahim Bux s/o Sadoro @ Saddarudin Soomro are further convicted for an offence to deter the police party in discharging of their lawful duty, punishable under section 353 PPC r/w section 149 PPC and sentence them to suffer R.I for two years.
- f. Accused Rahim Bux s/o Sadoro @ Saddarudin Soomro is further convicted for an offence of causing damage to police mobile of complainant/police party punishable under section 427 PPC r/w section 149 PPC and sentence them to suffer R.I for two years. He is also ordered to pay Rs.10,000/- (Ten thousands) fine. In case of default to pay fine amount, he shall further undergo S.I for one month more.

- g. Accused 1.Ghulam Yasin, 2.Kashif, 3.Mir Hassan all three sons of Hadi Bux by caste Suhandro and 4.Rahim Bux s/o Sadoro @ Saddarudin Soomro are also convicted for an offence of resistance and obstruction in lawful arrest and rescue the proclaimed offenders Ali Gohar and Mir Mohammad, punishable under section 225 PPC r/w section 149 PPC and sentence them to suffer R.I for seven years. They are also ordered to pay (each accused) Rs.10,000/- (Ten thousands) fine. In case of default to pay fine amount, he shall further undergo S.I for two months more.
- h. Accused 1.Ghulam Yasin, 2.Kashif, 3.Mir Hassan all three sons of Hadi Bux by caste Suhandro and 4.Rahim Bux s/o Sadoro @ Saddarudin Soomro are also convicted for an offence of committing act of terrorism, punishable under section 7(1) (h) of Anti Terrorism Act 1997 and sentence them to suffer R.I for ten years. They are also ordered to pay (each accused) fine of Rs.1,00,000/- (One lacs). In case of default to pay fine amount, they shall further undergo S.I for six months more.
- i. Accused Rahim Bux s/o Sadoro @ Saddaruddin Soomro is also further convicted for an offence of possessing unlicensed TT pistol used in the commission of offence, punishable under section 23 (i)-A Sindh Arms Act 2013 and sentenced him to suffer R.I for 10 (ten) years and to pay fine of Rs.30,000/- (Thirty thousands). In case of default to pay fine amount, he shall further undergo S.I for three months more.
- j. The property of accused 1.Ghulam Yasin, 2.Kashif, 3.Mir Hassan all three sons of Hadi Bux by caste Suhandro and 4.Rahim Bux s/o Sadoro @ Saddaruddin Soomro is also forfeited to the State as required under section 7 (2) of Anti-Terrorism Act, 1997.

All the sentences of imprisonment awarded to the accused / appellants were ordered to run concurrently. However, all the accused / appellants were extended benefit of section 382-B Cr. P.C.

3. Cr Appeal No.07 of 2023 has been filed by appellant Rahim Bux son of Sadoro @ Sadarudin, challenging his conviction and sentences awarded vide impugned judgment dated 16.01.2023, arising out of F.I.R No.49 of 2021 under Sections 302, 324, 353. 337/F(i), 427, 224, 225, 148 & 149 PPC, and Sections 6/7 A.T.A. registered at P.S B-Section, Thull, District Jacobabad. Through same appeal, he has also challenged his conviction and sentence awarded to him for the offence punishable under section 23 (i)-A Sindh Arms Act 2013 by the same judgment in Special Case No.57-A of 2021, arising out of FIR No.51/2021 under Section 23-A and 25 of SAA, registered at the same police station.

4. Brief facts of prosecution case are; that complainant Inspector Rafique Ahmed Khoro, SHO PS B-Section Thull, District Jacobabad, lodged FIR No.49/2021 at the aforesaid police station on 19.07.2021 at 1600 hours, alleging therein that on the day of incident i.e. 19.07.2021 he was available at the police

station where he received spy information that proclaimed offenders of crime No.150/2004 for offence under Section 302 PPC of PS Thull namely, Ali Gohar and Mir Mohammad, both sons of Mir Hassan Suhndaro, were available at their house at village Jan Mohammad Sarki. On receiving such information, complainant/SHO alongwith his subordinate staff namely, HC Mohammad Khan, PC Pervez Ahmed, PC Ali Hassan, PC Sajjad Ahmed, PC Hubdar Ali, PC Hoat Khan proceeded from PS in government vehicle No.SPE-714 driven by driver PC Amanullah, as well as alongwith other staff namely, HC Balach Khan, PC Naveed Khan, PC Bashir Ahmed, PC Azad, PC Abdul Waheed, PC Rizwan in another government vehicle No.SPD-992 driven by driver PC Mohammad Ilyas, proceeded from PS vide roznamcha entry No.8 at 1200 hours and when at 1400 hours they reached near the house of proclaimed offenders, they saw two persons coming out from the house and running towards eastern side. The complainant party stopped their vehicles and apprehended both accused at the distance of about 10/15 paces who on inquiry disclosed their names as Ali Gohar and Mir Mohammad. They were made to sit in police mobile, meanwhile, several men and women having lathies, brickbats and TT pistols, came there. The complainant party identified them to be 1.Mir Hassan, 2.Ghulam Yasin, 3.Kashif, all three sons of Hadi Bux Sonhdaro, 4.Mohammad Ismail, 5.Mumtaz, 6.Waqar, 7.Khalid, all four sons of Baggan having lathies, 8.Mohammad Ramzan, 9.Rahim Bux, both sons of Sadoro, 10.Islam s/o Mohammad Islam armed with TT pistols, 11.Sikandar, 12.Moharam, 13.Ghulam Yasin all three sons of Wahid Bux, 14.Khan Mohammad s/o Ali Khan, 15.Munir Ahmed, 16.Ghulam Sarwar, 17.Nadeem all three sons of Mohammad Saleh, 18.Rasool Bux s/o Motan, 19.Shahnawaz s/o Rasool, 20.Alamuddin, 21.Qaimudin, all three sons of Daim, 22.Hussain s/o Sandelo, 23.Mohammad Murad s/o Suleman all having brickbats and sticks, all by caste Soomora, 24.Mst Suria w/o Ali Gohar, 25.Mst. Fatima w/o Ali Nawaz, 26.Mst Fahmida w/o Manzoor Ahmed, 27. Mst Naseema w/o Ghulam Yasin, all by caste Sonhdara, 28.Mst Zebul w/o Bagan, 29.Mst Zainab w/o Mohammad Ramzan, 30.Mst Haseena w/o Ali Khan, 31.Mst Zarina w/o Mumtaz, 32.Mst Sanghar w/o Sikandar r/o village Jan Mohammad Sarki, having thorny hedges and brickbats and five unidentified men and two women accused, identifiable if seen again, came there and accused Mir Hassan gave hakal to the police party and said that do not arrest the accused and that they will kill them (complainant party) and attacked upon PC Pervez Ahmed with lathi on his head, accused Ghulam Yasin Suhandro also gave lathi blow to PC Pervez Ahmed on right side of chest,

accused Kashif and Mohammad Ismail gave lathi blow on lower parts of body of PC Pervez Ahmed who became unconscious. Thereafter all other accused, with intention to kill, attacked upon complainant, PC Ali Hassan, PC Sajad Ahmed and PC Hubdar Ali who sustained injuries on various parts of their bodies. The accused armed with TT pistols fired upon complainant party which hit police mobile No.SPD-992, with the result its wind screen was broken. Thereafter, other unidentified accused came there, and apprehended accused Mir Mohammad and Ali Gohar also resisted and attacked with brickbats upon police party. The complainant party also retaliated in their defence and thereafter accused got rescued the apprehended accused and escaped away from the scene. Thereafter, complainant saw that PC Pervez Ahmed had succumbed to his injuries on the spot, while complainant, PC Ali Hassan, PC Sajad Ahmed and PC Hubdar Ali had also sustained injuries on various parts of their bodies. The complainant by citing HC Balach and HC Mohammad Khan as mashirs, prepared mashirnama of inspection of dead body of deceased PC Pervez Ahmed and injuries of injured police personnel and damaged police mobile. He referred the dead body of deceased PC Pervez Ahmed and injured to taluka hospital for postmortem and medical treatment and thereafter he appeared at PS and lodged the FIR against the abovenamed accused persons.

5. Brief facts relating to the case/crime No.51/2021 are; that on 04.08.2021 at 1630 hours, during interrogation of main case / crime No.49/2021, arrested accused Rahim Bux showed his willingness to produce a TT pistol and led police party headed by 3rd I.O/Inspector Muhammad Shareef Mahar to his house wherefrom accused produced one unlicensed TT pistol of 30 bore along with magazine loaded with two live bullets which was used in the commission of offence in the main case/crime No.49/2021.

6. After registration of FIR, Inspector Rafique Ahmed Khoro himself visited the place of vardat from where he collected 06 empties of G-III riffle, 05 empties of KK and prepared such mashirnama of place of vardat in presence of same mashirs namely, HC Muhammad Khan and HC Balach Khan. He also recorded 161 Cr. P.C. statements of PWs/police officials and took photographs of damaged police mobile and prepared mashirnama of recovery of police uniform of deceased PC Parvez Ahmed in presence of same mashirs. Due to his transfer, the police papers were handed over to Inspector Ayaz Ahmed Pathan for further investigation who issued letter to Medical Officer, Taulka Hospital Thull for collecting medical

certificate of injured as well as postmortem report of deceased PC Parvez Ahmed. He also issued letter to Mukhtiarkar Thull for directing the concerned Tapedar to visit the place of wardat and prepare sketch. During investigation second IO/Inspector Ayaz Ahmed arrested six accused persons namely, 1.Ghulam Yasin, 2.Kasif, 3.Mir Hassan, 4.Khalid, 5.Rahim Bux and 6.Hussain and prepared mashirnama of arrest in presence of two mashirs, PC Mukhtiar and PC Piyaro. He received postmortem report of deceased PC Parvaiz Ahmed as well as certificates of injured Inspector Rafiq Ahmed Khoro, HC Hubdar Ali, PC Sajjad Ali, PC Ali Hassan. Thereafter, he was transferred and police papers were handed over to Inspector Muhammad Shareef Mehar for further investigation. During interrogation by third I.O/Inspector Muhammad Shareef, arrested accused Rahim Bux showed his willingness to produce TT pistol used in the commission of offence in the main case and led police party headed by IO/Inspector Muhammad Shareef to his house and produced one unlicensed TT pistol, whereas remaining arrested accused also produced lathies used in the offence. I.O. prepared such mashirnama of arrest of accused Rahim Bux in the offshoot case and recovery of pistol and lathies in presence of two mashirs namely, PC Mukhtiar and PC Arsallah and thereafter returned at PS where he lodged FIR against accused Rahim Bux under Section 23(i)-A Sindh Arms Act. He prepared mashirnama of place of wardat in that crime in presence of same set of mashirs, then he dispatched the case property in both the cases to FSL Larkana. IO received reports from Forensic Science laboratory Larkana. Thereafter, as per orders of DIGP Larkana, police papers were handed over to DSP Sultan Kot namely Masood Rasool for further investigation. Forth I.O/DSP Masood Rasool visited the place of wardat on the pointation of Inspector Rafique Ahmed viz. complainant in the main case, took photographs of place of wardat, and thereafter recorded further statements of complainant and PWs in which they disclosed the names of five un-identified accused as 1.Khadim Hussain, 2.Muhammad Tahir, 3.Muhammad Aamir, 4.Abdul Majeed and 5.Abdul Hakeem. Then, he prepared list of legal heirs of martyred PC Parvez Ahmed, wrote letter to Mukhtiarkar for providing detail of property of accused persons, wrote letter to Election Commissioner, Jacobabad for providing details of CNICs of absconding accused, wrote letter to NADRA authority Shikarpur for blocking CNICs of absconding accused and after completing formalities forwarded the police papers to SSP Shikarpur who thereafter forwarded the same to SSP Jacobabad for submission of final report u/s

173 Cr. P.C. before the trial Court. Thereafter, Inspector Saeed Ahmed Jumani submitted final report / challan before the trial Court on 02.09.2021.

7. NBWs were issued against absconding accused 1.Muhammad Ismail, 2.Muneer Ahmed, 3.Ghulam Sarwar, 4.Nadeem, 5.Rasool Bux, 6.Shah Nawaz, 7.Qaimdin, 8.Mst Suriya, 9.Mst Fatima, 10.Mst Fahmida, 11.Naseema, 12.Mir Muhammad, 13.Ali Gohar, 14.Mst Zainab, 15.Khadim Hussain, 16.Muhammad Aamir, 17.Muhammad Tahir, 18.Abdul Majid, 19.Abdul Hakeem but same could not be executed and were returned as unserved by the process server, ASI Khuda Bux with the endorsement that accused have shifted away to some unknown place and there was no probability of their arrest in near future. Such statement of process server/ASI was recorded on oath at Ex.01. He produced unexecuted NBWs, statements of two local persons and his endorsement as Ex.01/A to Ex.01/C.

8. The proceedings u/s 87 Cr. P.C. was also initiated against the absconding accused. Besides, publication was also made in national newspapers against the absconding accused as required u/s 19 subsection (10) of Anti-Terrorism Act, 1997 .

9. In order to avoid delay in the proceedings, the case of ten absconding accused was kept on dormant file till their arrest or voluntary appearance vide order dated 08.10.2021, Ex 07.

10. Learned APG, appearing for the State, moved an application u/s 21-M of ATA vide Ex.08 for joint trial of accused Rahim Bux in the abovesaid two cases being connected with each other. The application was allowed vide order dated 08.10.2021 and kept on record as Ex 08. Amalgamated charge for joint trial was framed against 29 accused vide Ex.10, to which they pleaded not guilty and claimed to be tried. Such pleas of accused were recorded at Ex.10/A to 10/AC.

11. In order to prove its case, the prosecution examined in all 15 witnesses. **PW-1** 2nd I.O/Inspector Ayaz Ahmed Pathan was examined at Ex.12, who produced copy of order of SSP Jacobabad for assigning the investigation to him as Ex.12/A, copy of letter issued to Medical Officer, Taluka Hospital Thull for issuance of postmortem report of deceased PC Pervez Ahmed and final medical certificate of injured PWs/police officials as Ex.12/B, copy of letter issued to concerned Mukhtiakar for preparation of sketch of place of vardat though Tapedar as

Ex.12/C, attested copy of departure entry of roznamcha as Ex 12/D, mashirnama of arrest of six accused namely, Ghulam Yasin, Kashif, Mir Hassan, Khalid, Rahim Bux and Hussain as Ex.12/E and copy of arrival entry as Ex.12/F. **PW-2** PC Piyaro Khan, who was mashir of arrest of six accused was examined at Ex.13. **PW-3** HC Balach Khan was examined at Ex.14, who is alleged eye witness of the incident as well as mashir. He produced mashirnama of inspection of dead body of deceased PC Parvez Ahmed as Ex.14/ A, danistnama as Ex.14/B, mashirnama of inspection of injuries on the person of injured PWs/police officials as Ex.14/C, mashirnama of inspection of damaged police mobile as Ex.14/D, mashirnama of producing uniform of the deceased as Ex.14/E and inspection of place of vardat as Ex.14/F. **PW-4** Injured PC Sajjad Ahmed Pahore was examined at Ex.17, who produced his 161 Cr. P.C. statement as Ex 17/A. **PW-5** Injured PC Hubdar Ali Bhatti was examined at Ex.18, who produced his 161 Cr. P.C. statement as Ex.18/ A. Statement of process server, ASI Jan Muhammad, was recorded at Ex.19, who produced relevant documents as Ex.19/ A to 19/C. **PW-6** PC mashir, Mukhtiar Ali Jaffery was examined at Ex.20 who produced mashirnama of arrest of accused Rahim Bux and recovery of TT pistol in the offshoot case as Ex.20/A and mashirnama of place of vardat as Ex.20/B. **PW-7** SIP Hidayat Ali Shah, author of FIR of the offshoot case / crime No 51/2021 u/s 23(i) A was examined at Ex.21, who produced copy of FIR as Ex.21/A. Statement of process server, ASI Khuda Bux was recorded at Ex.22, who produced relevant documents as Ex.22/ A to 22/C. **PW-8** Injured PC Ali Hassan Pahore was examined at Ex 24, who produced his 161 Cr. P.C. statement as Ex 24/A. **PW-9** Medical Officer Dr. Nasrullah, who conducted postmortem upon dead body of deceased PC Parvez Ahmed and also examined injured complainant / SHO as well as other PWs / police officials, was examined at Ex.25, who produced lash chakas form of dead body of deceased PC Pervez Ahmed as Ex.25/A, postmortem report as Ex.25/B, referral letter for treatment of injured police personnel as Ex.25/C, final medial certificate of injured complainant / SHO Rafiq Ahmed as Ex.25/D, referral letter for treatment of injured PC Ali Hassan, PC Hubdar Ali and PC Sajjad Ahmed and PC Ali Hassan as Ex.25/E, final medical certificates of the aforesaid three injured PCs as Ex.25/F to Ex.25/H. **PW-10** PC Sikander Ali, who deposited the case property at Forensic Science Laboratory Larkana with receipt, was examined at Ex.26. He produced Road Certificate as Ex.26/A. **PW-11** PC Azad Ali, who took dead body of deceased PC Parvez Ahmed to Taluka hospital Thull for postmortem and then handed over the same to legal heirs of the deceased, was examined at Ex.28. He produced such

receipt as Ex.28/A. **PW-12** Inspector Muhammad Sharif Mahar i.e. third I.O as well as complainant of the offshoot case / crime No.51/2021, was examined at Ex.30. who produced copy of order of SSP Jacobabad for assigning the investigation to him as Ex.30/A, copies of departure and arrival entries as Ex.30/B to 30/D and FSL report regarding recovered empties and TT pistol as Ex.30/E. **PW-13** Tapedar Ali Asgher was examined at Ex.33, who produced sketch of place of vardat as Ex.33/A. **PW-14** Inspector Rafique Ahmed Khoro, complainant of the main case / crime No.49/2021 was examined at Ex.35, who produced photocopy of departure entry as Ex.35/A, copy of FIR as Ex.35/B and photographs of damaged police mobile as Ex.35/C. **PW-15** DSP Masood Rasool Mahar, forth Investigating Officer was examined at Ex.36, who produced photocopy of order of DIGP Larkana for assigning the investigation of the case to him at Ex.36/A, attested copy of departure entry as Ex 36/B, photographs of place of vardat in the main case / crime No.49/2021 as Ex 36/C, carbon copy of roznamcha entries as Ex 36/D, further statement of complainant / SHO Rafiq Ahmed Kheiro as Ex.36/E, list of legal heirs of deceased PC Pervez Ahmed as Ex.36/F, carbon copy of letter issued to concerned Mukhtiarkar for providing detail of moveable / immoveable properties of the absconding accused as Ex.36/G, carbon copy of letter issued to Election Commissioner Jacobabad for providing numbers of CNIC of absconding accused as Ex.36/H, carbon copy of letter issued to NADRA authority Shikarpur for blocking CNIC of absconding accused at Ex.36/I and photocopy of letter of SSP Shikarpur issued to SSP Jacobabad regarding submission of final report / challan as Ex.36/J.

12. Thereafter, learned APG, appearing for the State, closed side of prosecution vide his statement Ex.37.

13. Thereafter, Statements u/s 342 Cr. P.C. of 29 accused, who were facing trial, were recorded vide Ex.38 to 66 respectively in which they denied the allegations made in the prosecution case, claimed innocence and further stated that they have been implicated falsely by the police in this case at the instance of Meer Aijaz Jakhrani who contested general election for the seat of MNA and they did not cast vote in his favour as they were supporting his opponent candidate Muhammad Mian Soomro. Accused Khadim Hussain further stated that he is government employee working as Meter Reader, Operation Sub- Division SEPCO, Kandhko and on 19.07.2021 he was present on his duty from 9:00 am to 4:00 pm. He produced such attendance certificate issued by Sub-Divisional Officer, Operation

Sub Division SEPCO, Kandhkot-I and also produced photocopy of attendance register. All the accused prayed for justice. However, none of them examined himself on oath u/s 342 (ii) Cr. P. C. nor produced any witness in their defense.

14. After formulating points for determination, recording evidence of the prosecution witnesses and hearing counsel for the parties, trial Court vide impugned judgments convicted the accused / appellants, as stated above. The appellants have challenged their conviction by preferring above said criminal appeals.

15. We have heard arguments advanced by learned counsel for the appellants as well as learned Additional P.G. appearing for the State and perused the material made available before me on the record.

16. Learned counsel for the appellants submitted that the accused / appellants have been implicated falsely in this case by the police at the instance of local zamindar due to political rivalry. It was further submitted that a number of accused have been nominated in the case. It was further submitted that even six ladies were nominated as accused in this false and concocted case out of whom one accused lady namely, Mst Zaibul Khatoon is aged and ailing lady and she even cannot move properly as she had met with an accident. It was further submitted that no specific role has been assigned to each accused. According to learned counsel, the accused are poor cultivators by profession and they have been roped in this case due to political rivalry. It was further submitted that there are so many contradictions in the evidence of PWs who are police officials, thus interested, therefore case of prosecution is highly doubtful and has been managed against the accused / appellants. Learned counsel further argued that no independent person has been cited as witness or mashir in the case. According to him, the police have implicated present accused / appellants in order to show their performance. It was further submitted that the empty bullets allegedly secured from the spot were dispatched to forensic science laboratory, Larkana after considerable delay, therefore the report issued by the laboratory has no value in the eyes of law. He, therefore, submitted that in the circumstances, the accused / appellants are liable to be acquitted by extending them benefit of doubt. He relied upon case law reported in **1969 SCMR 454 (HASSAN Versus THE STATE)**, **2005 PLD Quetta 157 (UMEED KHAN Versus THE STATE)** and **2011 SCMR 527 (NAZIR AHMAD Versus MUHAMMAD IQBAL)**.

17. Conversely, learned APG, appearing for the State, opposed the grant of appeals and submitted that prosecution has fully established its case against the accused / appellants beyond reasonable doubt by producing consistent, convincing and reliable evidence. According to him, accused are nominated in the FIR, police party went to arrest two notorious criminal Ali Gohar and Mir Mohammad who were available at their house at village Jan Mohammad Sarki where police arrested them, whereupon 23 men and 09 women accused along with five un-identified accused armed with TT Pistols, lathies, bricks attacked upon the police party. Accused Meer Hassan, Ghulam Yasin, Kashif and Muhammad Ismail caused lathy blow injuries to deceased PC Parvez Ahmed, thereafter all the accused having lathies, brickbats caused lathi blow injuries to other police officials including complainant SHO Rafique Ahmed, PC Ali Hassan, PC Sajjad and PC Hubdar and deterred them from discharging their lawful duties. He further contended that the complainant and PWs/police officials had identified the accused / appellants in the court during trial and implicated them in the commission of alleged offences, therefore their evidence is trustworthy as no major contradictions were brought in their evidence. According to him, that accused have not produced any tangible material in order to show that they have been implicated falsely in this case. Besides, the medical evidence also corroborated the ocular testimony, and there is also circumstantial evidence to the effect that police had secured empties from the place of wardat and such report is also in positive. He further submitted that the accused have committed heinous offence which created panic, terror and sense of insecurity in the minds of people of locality. According to him, sufficient ocular as well as circumstantial evidence is available on the record to establish that the accused are involved in the commission of the alleged offences, therefore, the impugned judgment of conviction does not suffer from material defect warranting any interference by this Court. Hence, the appeals are liable to be dismissed.

18. From perusal of the evidence of prosecution witnesses, it seems that there are material contradictions and admissions in their evidence which create serious doubts and, thus, damaged the prosecution case.

19. Complainant / SHO, Rafique Ahmed Khoro in his deposition disclosed names of the accused Mir Hassan, Ali Hassan, Hubdar, Kashif and Muhammad Ismail; however, he has not named accused Ghulam Yasin, Mumtaz, Khalid, Islam

and Rahim Bux whose names were mentioned by alleged eye-witness namely, PC Sajjad in his deposition. During his examination-in-chief he did not identify any of the accused persons by name.

20. Injured P.W. PC Sajjad Ahmed in his examination in chief made a contrary and inconsistent statement viz.a.viz. the deposition of complainant Rafique Ahmed. The names of accused persons disclosed by him does not find mention in the deposition of the complainant. In his cross-examination he admitted that he cannot identify any of the accused present in the court by their names but he can identify them by face. He also admitted that he had added names of some accused persons in his statement recorded by the DSP, as informed by other police officials. He further admitted that no identification parade of suspected accused was held before any Magistrate. Besides, there are inconsistencies viz-a-viz. his evidence and the evidence of complainant and other prosecution witnesses. As stated above, complainant has not named accused Ghulam Yasin, Mumtaz, Khalid, Islam and Rahim Bux whose names were mentioned by P.W. Sajjad in his deposition. Likewise, P.W. Sajjad has not taken the names of accused Ali Hassan, Hubdar and Mohammad Ismail, who were named by the complainant in his evidence.

21. The evidence of injured witness Hubdar Ali is also contradictory and inconsistent to the evidence of complainant Rafique Ahmed and PW Sajjad Ahmed. Besides, he also admitted in his cross-examination that his signature **was obtained** on his statement by DSP. According to PW Sajjad Ahmed admitted, they proceeded towards place of incident on 02 police mobiles, whereas PW Hubdar Ali deposed that they went in 03 police mobiles. Besides, he admitted in his cross-examination that he cannot identify specifically the accused present in the court whose names were added by him in his statement recorded by DSP Masood Rasool Mahar. He also admitted that DSP Thull had obtained his signatures on **blank paper** saying, 'he will write my statement later on'. He further stated that his statement was written by DSP Sultan Kot namely, Masood Rasool Mahar, where his signature was **obtained**.

22. The evidence of alleged injured witness namely, Ali Hassan is also contradictory to the evidence of other PWs in respect of number of accused persons, so also in respect of role of the accused persons in the commission of alleged offences. He admitted in his cross-examination that he does not know the names of all the accused present in the court, although he had mentioned their

names in his 161 Cr. P.C. Statement. He also admitted that he had added names of present accused in his statement with consultation of other police officials allegedly available at the place of incident.

23. P.W. Balach Khan also claims to have accompanied the police party to the place of incident and witnessed alleged incident. According to him, in the first instance accused Mir Hassan Suhandro came at the spot and after raising *hakal*, he inflicted lathi blow on the head of deceased PC Pervaiz. This witness has also named some accused, whose names do not find mention in the evidence of complainant and other alleged eye-witnesses. According to him, accused Waqar, Khalid, Ramzan, Rahim Bux and others also came at the spot. The names of accsed Waqar and Ramzan have not been mentioned in the evidence of other alleged eye-witnesses. In his examination in chief he deposed that in his second statement recorded by DSP Sultan Kot he **added** the names of accused Aamir, Khadim, Tahir, Majid and Abdul Hakeem. The names of these accused also do not find mention in the evidence of the complainant as well as other alleged eye-witnesses.

24. PW Muhammad Shareef was one of Investigating Officers of the case. He admitted in his cross-examination that he had identified the accused who produced the pistol but he could not identify the accused who produced Lathies.

25. P.W. DSP Masaoood Rasool Mahar deposed in his examination-in-chief that he recorded further statement of the complainant in which the complainant disclosed names of 05 unidentified accused.

26. In view of above admissions and contradictions in evidence of the prosecution witnesses while, on the one hand, the credibility and veracity of the prosecution witnesses is adversely affected, at the same time, on the other hand, certain lacunas and discrepancies have also surfaced from the prosecution case which created doubts and, thus, are injurious to the prosecution version.

27. It has come in the evidence that there were several police officials accompanied with complainant and all of them were armed with sophisticated firearm weapons. Despite that none of them used their weapon in order to save the deceased and other police officials who allegedly sustained injuries at the hands of the accused. This seems to be impossible and unbelievable that the police officials duly armed with firearm weapons were allegedly attacked by the accused, most of whom were armed with only lathies and brickbats, who committed

murder of one police official and also caused injuries to other police officials including the S.H.O. of the police station. Despite the fact that all the police officials were duly armed with firearm weapons, they did not use their weapons nor even fired a single shot at any of the accused in order to save the deceased and other injured police officials. None of the accused has been alleged to have sustained any injury, nor was there even any scratch on their bodies.

28. It has also come in the evidence that the incident continued for 20 to 30 minutes. During that period allegedly the accused caused lathis and kick & fist blows to deceased PC Pervaiz. It seems to be very strange, rather unique, that about 15 police officials duly armed with firearm weapons were witnessing that one of their colleagues was being assassinated and other police officials were being caused injuries with lathis by the accused persons, but they did not played any active role in saving them and were watching the incident like spectators. This is contrary to the natural conduct and attitude, thus, create doubts in the prosecution story itself.

29. There also seems to be violation of the provision of Section 103 Cr. P.C. as no private person of the locality was associated as mashir of the arrest of the accused as well as alleged recovery of firearm weapon at the pointation of accused Rahim Bux and lathis by other accused persons.

30. From perusal of the evidence it appears that on 28.07.2021 PW-1 / second Investigating Officer namely, P.W. Inspector Ayaz Ahmed Pathan, SHO PS A-Section Thull arrested the accused, Ghulam Yasin, Kashif, Mir Hassan, Khalid, Rahim Bux and Hussain from Darya Khan Chowk Thull in presence of two mashirs viz. PW-2 PC Piyaro Khan and PW-6 PC Mukhtiar Ali and prepared such mashir nama (memo of arrest).

31. Mashir of the arrest of the accused, namely PW PC Piyaro Khan in his cross-examination admitted that there were hotels, shops and other installation near Siyal Bridge where SHO Ayaz Ahmed received spy information about presence of the accused. He also admitted that there were so many shops, petrol pump etc. near place of arrest of accused. Although he added that IO asked so many people while going from place of information to place of arrest of the accused to join with them but they declined, but in the same breath he also admitted that IO did not take any action against such persons.

32. Likewise, on 04.8.2021 after receiving police papers by PW-12 3rd I.O/Inspector Mohammad Sharif Mahar, he interrogated arrested accused Rahim Bux who became ready to produce TT pistol used in the commission of alleged offences, while remaining accused namely, Ghulam Yasin, Kashif, Mir Hassan and Khalid also shown their willingness to produce lathies used in the commission of alleged offences. Thereafter, accused Rahim Bux led the police party, headed by 3rd I.O/Inspector Mohammad, Sharif Mahar, to his house and produced one unlicensed TT pistol lying in the mud pot of grain and disclosed that he had used the same while firing upon police party which hit police mobile, whereas remaining accused also produced the lathies from the land, therefore I.O/Inspector Mohammad Sharif Mahar prepared such mashirnama of arrest of accused Rahim Bux in offshoot case as well as recovery of crime weapons in presence of PW-6 PC Mukhtiar Ali and PC Arsalah Khan and after sealing the secured property, returned back to PS B-Section Thull.

33. It is an admitted position that the police party proceeded to the place of recovery from the Police Station. Although the mashir namely, PC Muhktiar Ali has deposed that nobody was willing to become mashir of the recovery but the fact remains that police party had proceeded to the place of recovery from the Police Station which was situated at a considerable distance from the place of recovery, then what prevented the IO to take private persons from the place of departure for the purpose of associating them as mashirs of recovery instead of nominating **police officials** to act as mashirs. Another significant point is that mashir PC Mukhtiar Ali has admitted in his evidence that it was a populated area in between the police station and the place of recovery but they asked only some by-passers and no effort was made to get such private persons from the shops etc. situated in the way. Besides, it has also not been explained as to why the IO did not take any action against those persons who declined to become mashir although under the law police have been bestowed such powers.

34. In this view of the matter, it is clear that mandatory requirement, as envisaged under Section 103 Cr. P.C., was not fulfilled. The purpose of associating independent mashirs of the locality is to ensure the transparency of the recovery process. Needless to emphasize that in view of provisions of section 103 Cr. P.C. the officials making searches, recoveries and arrests, are reasonably required to associate private persons, more particularly in those cases in which presence of private persons is admitted, so as to lend credence to such actions, and to restore

public confidence. This aspect of the matter must not be lost sight of indiscriminately and without exception. Only cursory efforts are not enough merely in order to fulfill casual formality, rather serious and genuine attempts should be made to associate private mashirs of the locality.

35. Superior Courts have not appreciated such conduct on the part of investigating agency. In this connection, reference may be made to the case reported as *State Vs. Bashir and others* (PLD 1997 S.C. 408) Honourable Supreme Court held as under:

“As regards above second submission of Mr.M.M. Aqil, it may be observed that it has been repeatedly held that the requirements of section 103 Cr.P.C. namely, that two Members of the public of the locality should be Mashirs of the recovery, is mandatory unless it is shown by the prosecution that in the circumstances of a particular case it was not possible to have two Mashirs from the public.”

36. In the case of *Sarmad Ali Vs. The State* reported in **2019 MLD 670**, relied upon by learned counsel for the appellant, it was observed *that the place of incident was thickly populated area but no independent person from the said area was called to act as mashir of recovery and, therefore, it was held that the prosecution case suffered from lack of independent evidence regarding recovery of the pistol.*

37. Yet in another case reported as *Yameen Kumhar Vs. The State* (PLD 1990 Karachi 275) this Court after discussing various case-laws on this point held as under:

*“A perusal of the afore stated authorities and a catena of judgments of various High Courts which we have not quoted here clearly lay down that Section 103 Cr. P.C. is to be applied to recovery, search and arrest made during investigation of a crime. It has been termed as mandatory but not absolute and its non-compliance in certain circumstances will not render search and recovery illegal. However, where during investigation of a crime recovery is made from any inhabited locality compliance with section 103 must be made. It cannot be ignored or brushed aside on the whims and caprices of the Investigating Officer except on well-founded grounds and in exceptional cases. If recovery has been made in contravention of section 103, it is the duty of the prosecution to explain it and give valid and reasonable explanation for such digression. **Recovery is an important piece of evidence which is to be proved by disinterested, independent and respectable witnesses. Such witnesses should be of the locality if the circumstances of the case permit.** Section 103 embodies rule of prudence and justice. It is intended to eliminate and guard against 'chicanery' and 'concoction', to minimize manipulation and false implication. It is for these reasons that there is a consensus in the Superior Courts that compliance with section 103 should not be bypassed nor that its applicability be restricted to proceedings under Chapter VII only. The principles of section 103 have been applied and practiced during*

investigation in crimes for so long and with such regularity and force that any attempt to restrict it to proceedings under Chapter VII only will unsettle the settled law.

The provisions of Chapter VII make it clear that they relate to the search of any place but it cannot be restricted only to house or a closed place, it can be an open place, open area, a. playground, field or garden from where recovery can be made for which search is conducted. Although in strict sense the provisions of section 103 are restricted to searches under Chapter VII of Cr. P.C. it has become a practice to apply it to all recoveries made by the Police Officers while investigating any crime. **The rules of justice enunciated by section 103 are so embedded in our criminal, jurisprudence and so universally accepted that in all criminal cases two mashirs are always cited for recovery and reliance is placed on these witnesses in the ordinary course provided they are independent, respectable and inhabitants of the locality.** The residence of the mashirs becomes relevant depending on the facts of the case. The emphasis should be on respectability.”

38. In view of aforesaid factual and legal position, the prosecution has not succeeded to prove in letter and spirit the arrest of the accused/appellants as well alleged recovery of crime weapons from the accused. In such circumstances, the recovery has lost its evidentiary value, which also adversely affect the involvement of accused / appellant, Rahim Bux, in the commission of alleged offence under the Sindh Arms Act.

39. It is also note-worthy that the trial court has acquitted 25 accused persons, while on the basis of same set of evidence, has convicted the appellants. When the trial court disbelieved the prosecution story in respect of 25 accused persons, then as to how it believed the same evidence against 04 appellants. This is contrary to the *rule of consistency*. In this context it may be observed that PW HC Balach Khan, who also claims to have witnessed the alleged incident, in his evidence deposed that accused Mohammad Ismail (acquitted accused) caused lathi blow, so also kick and fist blows to deceased PC Pervez Ahmed. He also deposed that accused Mumtaz Soomro (acquitted accused) caused kick, fist and lathi blows to PC Pervez Ahmed who was martyred.

40. PW PC Sajjad Ahmed deposed that at the place of incident several persons gathered **including acquitted accused persons namely, Mumtaz, Khalid and Islam.** He has specifically admitted that all the accused attacked upon the police party and then got rescued two proclaimed offenders. Likewise, complainant also deposed that all the accused attacked upon the police party. Needless to

emphasize that the word '*all*' used by the aforesaid witnesses, certainly includes the **acquitted accused** too.

41. From above, it is clear that even the acquitted accused, particularly the accused named by PW HC Balach Khan and PW PC Sajjad Ahmed in their respective evidence, have been assigned specific role in the commission of offences.

42. In this view of the matter, when the appellants have been convicted whereas other accused, who were also attributed specific role in the commission of alleged offence, have been acquitted on the basis of same set of evidence, then certainly *rule of consistency* comes into play and, therefore, the appellants should have also been meted out with same treatment like acquitted accused.

43. On the point of '*rule of consistency*', it would be advantageous to refer to a judgment of Honourable Supreme Court passed in the case of *Muhammad Asif v. The State* reported in 2017 SCMR 486 wherein it was held as under:

"It is a trite of law and justice that once prosecution evidence is disbelieved with respect to a co-accused then, they cannot be relied upon with regard to the other co-accused unless they are corroborated by corroboratory evidence coming from independent source and shall be unimpeachable in nature but that is not available in the present case."

44. In another case reported as *Umar Farooque v. State* (2006 SCMR 1605) Honourable Supreme Court held as under:

"On exactly the same evidence and in view of the joint charge, it is not comprehensible, as to how, Talat Mehmood could be acquitted and on the same assertions of the witnesses, Umer Farooque could be convicted."

46. Yet, in another case reported as *Muhammad Akram v. The State* (2012 SCMR 440) the Apex Court, while holding that same set of evidence, which was disbelieved qua the involvement of co-accused, could not be relied upon to convict the accused on a capital charge, had acquitted the accused. In view of this legal position, appellant should also have been extended same benefit as given to the aforesaid three acquitted accused.

47. Lastly, we advert to the allegation regarding commission of offence under Section 7(1) (h) of Anti-Terrorism Act, 1997 by the accused.

48. It may be observed that as per definition of '*terrorism*' introduced through amended section 6 of the Anti-Terrorism Act, 1997, *mens rea* and *actus reus* are

the mandatory ingredients for declaring an action / offence as *terrorism*. Unless and until the intent and motivation is established behind the action / alleged offence, the same cannot be termed as *terrorism* irrespective of the fact as to whether any fear and insecurity was actually created or not.

49. In this connection, reference may be made to a judgment of Honouorable Supreme Court delivered in the case of *Ghulam Hussain and others Vs. The State and others* reported in **PLD 2020 Supreme Court 61**. In the said case, Honorable Supreme Court after discussing and taking into consideration a number of judgments of Superior Courts on this point, held as under:

“The new definition of 'terrorism' introduced through the amended section 6 of the Anti-Terrorism Act, 1997 as it stands today appears to be closer to the universally understood concept of terrorism besides being easier to understand and apply. The earlier emphasis on the speculative effect of the act has now given way to a clearly defined mens rea and actus reus. The amended clause (b) of subsection (1) of section 6 now specifies the 'design' and clause (c) of subsection (1) of section 6 earmarks the 'purpose' which should be the motivation for the act and the actus reus has been clearly mentioned in subsection (2) of section 6 and now it is only when the actus reus specified in subsection (2) of section 6 is accompanied by the requisite mens rea provided for in clause (b) or clause (c) of subsection (1) of section 6 that an action can be termed as 'terrorism'. Thus, it is no longer the fear or insecurity actually created or intended to be created or likely to be created which would determine whether the action qualifies to be termed as terrorism or not but it is now the intent and motivation behind the action which would be determinative of the issue irrespective of the fact whether any fear and insecurity was actually created or not. After this amendment in section 6 an action can now be termed as terrorism if the use or threat of that action is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect, etc. or if such action is designed to create a sense of fear or insecurity in the society or the use or threat is made for the purpose of advancing a religious, sectarian or ethnic cause, etc. Now creating fear or insecurity in the society is not by itself terrorism unless the motive itself is to create fear or insecurity in the society and not when fear or insecurity is just a byproduct, a fallout or an unintended consequence of a private crime. In the last definition the focus was on the action and its result whereas in the present definition the emphasis appears to be on the motivation and objective and not on the result. Through this amendment the legislature seems to have finally appreciated that mere shock, horror, dread or disgust created or likely to be created in the society does not transform a private crime into terrorism but terrorism as an 'ism' is a totally different concept which denotes commission of a crime with the design or purpose of destabilizing the government, disturbing the society or hurting a section of the society with a view to achieve objectives which are essentially political, ideological or religious. This approach also appears to be in harmony with the emerging international perspective and perception about terrorism. The

international perception is also becoming clearer on the point that a violent activity against civilians that has no political, ideological or religious aims is just an act of criminal delinquency, a felony, or simply an act of insanity unrelated to terrorism. This metamorphosis in the anti-terrorism law in our country has brought about a sea change in the whole concept as we have understood it in the past and it is, therefore, of paramount importance for all concerned to understand this conceptual modification and transformation in its true perspective."

49. Now examining instant case in the light of above-quoted judgment of the Apex Court, it seems that according to prosecution case; on receiving spy information that proclaimed offenders Ali Gohar and Mir Mohammad were available at their house, situated at village Jan Mohammad Sarki, complainant / SHO Mohammad Rafique along with his subordinate staff reached at the pointed place and apprehended both wanted accused and made them to sit in police mobile, meanwhile, several men and women having lathies, brickbats and TT pistols, came there and accused Mir Hassan gave *hakal* to the police party that do not arrest the accused and that they will kill them, saying so he inflicted lathi blow on the head of PC Pervez Ahmed. Thereafter, other accused persons also inflicted lathi blows to PC Pervez Ahmed and also attacked upon complainant party, resultantly some police officials also sustained injuries and wind screen of police mobile was broken. Ultimately, the accused got rescued aforesaid two proclaimed offenders.

50. From above, it is clear that the accused / appellants had no **prior information or knowledge** that police party was coming at the place of incident for apprehending proclaimed offenders namely, Ali Gohar and Mir Mohammad. Supposing, that the accused had prior information and / or knowledge of such raid, then what prevented them to move away aforesaid two proclaimed offenders to some unknown place. Besides, in such an eventuality, the accused would have equipped themselves with firearm weapons but in instant, it is an admitted position that most of the accused were having only lathis or brickbats. In this view of the matter, it cannot be said that the accused had prior knowledge or information of the raid and that they had **intentionally preplanned** to spread panic and terror in the vicinity which is an essential ingredient for constituting an offence under Section 7 of the Anti-Terrorism Act, 1997. Hence, alleged attack made by the accused / appellants was totally a sudden action on their part and not a **preplanned** and *designed* action.

51. At the same time, there is also no allegation against the accused that they

had committed alleged offences in order to *destabilize the government, disturb the society or hurt a section of the society with a view to achieve political, ideological or religious objectives*, as laid down in the supra judgment of Honourable Supreme Court.

52. In view of above, it can safely be held that the prosecution has miserably failed to prove the charge under Section 7(1) (h) of Anti-Terrorism Act, 1997 against the accused / appellants.

53. The accumulative effect of above lacunas and defects in the investigation / prosecution case is; that prosecution has not succeeded in proving its case against the accused / appellant beyond shadow of reasonable doubt which is the essential requirement of the law.

54. It is well settled principle of law that the prosecution is bound under the law to prove its case against the accused beyond any shadow of reasonable doubt. It has also been held by the Superior Courts that conviction must be based and founded on unimpeachable evidence and certainty of guilt, and any doubt arising in the prosecution case must be resolved in favour of the accused. In instant case prosecution does not seem to have proved the allegations against the accused/appellant by producing unimpeachable evidence, thus doubts have been created in the prosecution version. In the case reported as *Wazir Mohammad Vs. The State* (1992 SCMR 1134) it was held by Honourable Supreme Court as under:

*“In the criminal trial whereas it is the duty of the prosecution to prove its case against the accused to the hilt, but **no such duty is cast upon the accused, he has only to create doubt in the case of the prosecution.**”*

55. In another case reported as *Shamoon alias Shamma Vs. The State* (1995 SCMR 1377) it was held by Honourable Supreme Court as under:

*“The prosecution must prove its case against the accused beyond reasonable doubts **irrespective of any plea raised by the accused in his defenc.** Failure of prosecution to prove the case against the accused, entitles the accused to an **acquittal.**”*

56. Needless to emphasize the well settled principle of law that if any slightest doubt arises from the prosecution evidence, the accused is entitled to be extended benefit of doubt as a matter of right and not as a grace or concession. In the present case, there are various admissions in the evidence of the prosecution witnesses which created doubts and put dents in the prosecution case. Even an accused

cannot be deprived of the concession of the benefit of doubt merely because there is only one circumstance which creates doubt in the prosecution story. In the case of *Ahmed Ali and another Vs. The State* reported in **2023 SCMR 781**, a Full Bench of Honourable Supreme Court has held as under:

“12. Even otherwise, it is well settled that for the purposes of extending the benefit of doubt to an accused, it is not necessary that there be multiple infirmities in the prosecution case or several circumstances creating doubt. A single or slightest doubt, if found reasonable, in the prosecution case would be sufficient to entitle the accused to its benefit, not as a matter of grace and concession but as a matter of right. Reliance in this regard may be placed on the cases reported as *Tajamal Hussain v. The State* (2022 SCMR 1567), *Sajjad Hussain v. The State* (2022 SCMR 1540), *Abdul Ghafoor v. The State* (2022 SCMR 1527 SC), *Kashif Ali v. The State* (2022 SCMR 1515), *Muhammad Ashraf v. The State* (2022 SCMR 1328), *Khalid Mehmood v. The State* (2022 SCMR 1148), *Muhammad Sami Ullah v. The State* (2022 SCMR 998), *Bashir Muhammad Khan v. The State* (2022 SCMR 986), *The State v. Ahmed Omer Sheikh* (2021 SCMR 873), *Najaf Ali Shah v. The State* (2021 SCMR 736), *Muhammad Imran v. The State* (2020 SCMR 857), *Abdul Jabbar v. The State* (2019 SCMR 129), *Mst. Asia Bibi v. The State* (PLD 2019 SC 64), *Hashim Qasim v. The State* (2017 SCMR 986), *Muhammad Mansha v. The State* (2018 SCMR 772), *Muhammad Zaman v. The State* (2014 SCMR 749 SC), *Khalid Mehmood v. The State* (2011 SCMR 664), *Muhammad Akram v. The State* (2009 SCMR 230), *Faheem Ahmed Farooqui v. The State* (2008 SCMR 1572), *Ghulam Qadir v. The State* (2008 SCMR 1221) and *Tariq Pervaiz v. The State* (1995 SCMR 1345).”

57. In the case of recent case of **RAMESH KUMAR** (supra), it was held:

“15. *Needless 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 the accused, then the 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 guilty 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).*”

58. For the foregoing reasons, by a short order dated 20.05.2025, instant criminal appeals were allowed and the conviction and sentences awarded to the appellants in both appeals vide impugned judgment dated 16.01.2023 passed by Special Judge, Anti-Terrorism Court, Shikarpur, in Special Case No. 57 of 2021 (re: The State Vs. Mumtaz and others) arising out of F.I.R No.49 of 2021 under Sections 302, 324, 353. 337/F(i), 427, 224, 225, 148 & 149 PPC and Sections 6/7 A.T.A.

registered at P.S B-Section, Thull, District Jacobabad, as well as Special Case No.57-A of 2021 (re: The State Vs. Rahim Bux), emanating from F.I.R No.51 of 2021 under Sections 23(1)(a) and 25 of Sindh Arms Act, 2013, registered at P.S B-Section, Thull, District Jacobabad were set aside. Consequently, all four appellants were acquitted from the charges. As the appellants were in custody; therefore, they were ordered to be release forthwith if their custody was no longer required in any other case by the jail authorities.

Office to place a signed copy of this judgment in the connected appeal.

JUDGE

JUDGE

Larkana

Dated. 20-05-2025