IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Criminal Appeal No. S-39 of 2020

Appellant:	Allah Dino Lakhan *through* M/s Mehfooz Ahmed Awan, Mr. Farhan Ali Shaikh and Mr. Shaikh Ateeq-ur-Rehman Advocates.
The State:	*Through* Mr. Zulfiqar Ali Jatoi,Additional Prosecutor General, Mr. Muhammad Raza Katohar, Deputy Prosecutor General, assisted by M/s Muhammad Ali Napar and Mr. Danish Ali Bhatti, Advocates for Witness (Ghulam Nabi).
Date of Hearing:	05.06.2025, 19.06.2025, 23.06.2025 & 26-06-2025.
Date of announcement:	11.07.2025.

JUDGMENT

Ali Haider 'Ada',J;- Through this judgment, the appellant has assailed the judgment dated 10.03.2020, passed by the learned Ist Additional Sessions Judge, Sukkur/Model Criminal Trial Court (hereinafter referred to as the "learned trial Court") in Sessions Case No. 165 of 2019, titled The State vs. Mitho alias Muhammad Mithal and others, arising out of Crime No. 20 of 2002, registered at Police Station Bagerji, for offences punishable under Sections 302, 337-H(ii), 148, and 149 PPC. Through the impugned judgment, the appellant was convicted and sentenced to life imprisonment as Ta'zir; and was further directed to pay a fine of Rs. 200,000/- (Rupees Two Hundred Thousand only) as compensation to the legal heirs of the deceased, as provided under Section 544-A Cr.P.C. In case of default in payment, the appellant shall undergo simple imprisonment for a further period of three months. However, the benefit of Section 382-B Cr.P.C. was extended to the appellant.

2. Briefly stated, the facts of the prosecution case are that on 09.06.2002, the complainant Ali Sher, along with his nephew Ghulam Mustafa (deceased), was sitting on a cot at the hotel of Qazi Bahadur after attending the marriage ceremony of a Haji Ghulam Hussain. Two other relatives, namely Ghulam Nabi and Muhammad Murad, were also already present at the hotel. At about 01:00 p.m., the accused persons, namely Allah Dino (appellant), Manzoor, and Mitho alias Muhammad Mithal each armed with a Kalashnikov along with Chanesar (armed with a rifle), Fareed (armed with a shotgun) and two unknown persons (armed with TT pistols), arrived at the hotel. On the instigation of accused Allah Dino, accused Chanesar fired upon the deceased, followed by accused

Allah Dino also firing at him, while the remaining accused resorted to aerial firing. As a result of the firearm injuries, the deceased Ghulam Mustafa fell from the cot and died at the spot. Upon inspection, the deceased was found to have sustained multiple firearm injuries: one on the right side of the neck which exited from the left side near the ear, another below the left nipple which exited near the right elbow, a gunshot wound on the chest over the right nipple and another on the left buttock. The dead body was thereafter shifted to the hospital, and subsequently, the complainant lodged the FIR at the concerned police station.

3. After registration of the FIR, investigation was carried out; and two accused persons namely Manzoor and Mitho alias Muhammad Mithal were arrested on 02.07.2002. During interrogation, on their pointation, recoveries of Kalashnikovs were effected on 12.07.2002 and 15.07.2002 in that order. The present appellant was shown as an absconder along with the remaining co-accused. Accused Manzoor and Mitho alias Muhammad Mithal were sent up for trial before the learned trial Court. Upon conclusion of the trial, both were convicted and sentenced to five years' imprisonment by the learned trial Court. However, at the time of pronouncement of the judgment, accused Manzoor was absent and had absconded. Accused Mitho alias Muhammad Mithal challenged his conviction before this Court and vide judgment dated 25.05.2016, his sentence was reduced to the extent of the period already undergone. As the appeal was not decided on merits but disposed of on the ground that he had already undergone a substantial portion of the sentence and had shown willingness to for undergone.

4. The appellant was shown as having been arrested on 11.07.2019, in connection with another crime and a memo of imaginary arrest was prepared accordingly. Subsequently, the appellant was sent up for trial and on 24.08.2019, the learned trial Court framed an amended charge against him. The appellant pleaded not guilty and claimed trial.

5. In support of its case, the prosecution examined the following witnesses:

PW-1: Samiullah, a police official who handed over the dead body of the deceased to his legal heirs. *PW-2:* Ghulam Nabi, an eyewitness to the incident. *PW-3:* Muhammad Panjal, a mashir of various memos.*PW-4***:** Abdul Hameed**,** ASI, the author of the FIR.*PW-5:* Abdul Qadir, ASI, who

prepared the memo of imaginary arrest.*PW-6*: Rafiq Ahmed, a police official who acted as mashir of the memo of imaginary arrest.*PW-7*: Dr. Zain-ul-Abidin**,** the Medical Officer who conducted the post-mortem examination of the deceased.*PW-8*: Abdul Hameed (same as PW-4)**,** who was again examined after being summoned under Section 540 Cr.P.C. upon an application moved by the learned State Counsel, on the ground that the original Investigating Officer had shifted to Kashmir and his whereabouts were not known, as per the report of the process server.

6. During the course of proceedings, prosecution witness Ghulam Nabi submitted an application dated 19.02.2020, informing the learned trial Court about the death of the complainant, Ali Sher, as well as prosecution witness Muhammad Murad. Thereafter, the learned State Counsel closed the prosecution evidence by filing a statement dated 19.02.2020.

7. Subsequently, the learned trial Court recorded the statement of the accused under Section 342, Cr.P.C, wherein the appellant denied the allegations leveled against him, professed his innocence and prayed for acquittal. The appellant did not opt to examine himself on oath under Section 340(2), Cr.P.C., nor did he produce any evidence in his defense.

8. Thereafter, the learned trial Court heard the arguments advanced by the learned counsel for the appellant, the counsel for the complainant/witness side and the learned State Counsel. Subsequently, the learned trial Court passed the impugned judgment, whereby the appellant was convicted and sentenced as mentioned supra, which is now under challenge before this Court.

9. Learned counsel for the appellant contended that the case is riddled with material discrepancies. He argued that the seat of injury is disputed and the role assigned to the appellant by the complainant party is contradictory in nature. It was further contended that the statement of the accused was recorded without providing him access to relevant material, thereby depriving him of a fair opportunity to respond. The learned trial Court, it was argued, failed to consider the medical evidence, wherein the doctor opined that the injury was caused by a gun, whereas the appellant was alleged to be armed with a Kalashnikov. Moreover, the Investigating Officer was not examined during the trial and the learned trial Court made no serious effort to secure his presence merely relying on the statement of the process server. This omission, it was

submitted, casts serious doubt on the prosecution's case. Learned counsel further pointed out that the Ballistic expert report concluded that all crime empties secured from the place of incident were fired from the Kalashnikovs recovered from co-accused Manzoor and Mitho. This, according to the counsel, completely exonerates the appellant and breaks the chain of circumstances allegedly connecting him to the commission of the offence. In support of his contentions, learned counsel relied on the precedents: *Imtiaz alias Taj vs. The State* (2018 SCMR 344), *Akhtar Ali and others vs. The State* (2008 SCMR 6), *Shal Muhammad vs. The State* (2015 YLR 2413), *Mir Alam vs. Amroz Khan and another* (PLD 2015 Peshawar 125), *Naseer Khan vs. Said Qadeem and others* (2020 SCMR 293). He concluded by praying for the acquittal of the appellant.

10. On the other hand, the learned Law officers, assisted by the learned counsel for prosecution witness Ghulam Nabi, contended that the evidence of Ghulam Nabi was recorded in the absence of the main defense counsel. Although a junior associate was present at the time of the chief examination, he had not filed any vakalatnama, which, it was argued, was in violation of section 353 Cr.P.C. On merits, the learned Counsel submitted that the appellant had been assigned a specific role of causing firearm injury to the deceased and that the ocular account is corroborated by the medical evidence. Furthermore, the appellant had remained absconder for nearly 17 years, which in itself is sufficient to support the prosecution's case and raise an adverse inference against the appellant. It was emphasized that co-accused were also convicted on the same set of evidence. In support of their stance, reliance was placed on the authorities: *Nasir Ahmed vs. The State* (2023 SCMR 478), *Shaheen Ijaz alias Babu vs. The State* (2021 SCMR 500), *Noorullah vs. The State* (2012 YLR 168), *Ghulam Nabi Narejo and 3 others vs. The State* (2013 P.Cr.L.J. 499).

11. Heard the arguments advanced by the learned counsel for the respective parties. The material available on record has been perused with due care and a thorough appreciation of the facts, evidence; and legal aspects of the case has been undertaken.

12. Upon careful examination of the entire record and appreciation of the evidence, this Court finds that the prosecution has failed to establish its case against the appellant beyond reasonable doubt. As per the prosecution's own version, the alleged motive for the offence was a prior enmity stemming from a case registered in the year of 1999, in which both parties were implicated but

later acquitted of the charges**.** Importantly, the prosecution witness admitted that no further incident occurred between the parties from 1999. Furthermore, no evidence has been brought on record to demonstrate that the deceased had played any active or specific role in the prior litigation. In fact, the complainant himself did not attribute any special or prominent role to the deceased in the previous dispute. He merely alleged that a quarrel had taken place between the complainant party and the accused party, without providing details as to how or why the deceased would have been targeted, especially when the complainant, who was admittedly present at the scene, was neither injured nor shot at. This unexplained selectivity in the attack casts a serious doubt on the prosecution story. This Court is guided in this regard by the principle laid down in the judgment of the Hon'ble Supreme Court in ***Muhammad Nasir Butt and 2 others vs. The State and others*** **(2025 SCMR 662),** wherein it was held:

> *11. The motive of the occurrence was stated to be altercation between Muhammad Hamid Amjad (brother of the complainant) and convict Baqir Butt prior to the occurrence by the complainant. Muhammad Hamid Amjad, allegedly present at the crime scene during the occurrence, was neither targeted by the accused nor he received any injury. As per statement of Shumaila (DW-1) the deceased Abid Ali had held her hand in the street, in the meanwhile the convict Baqir Butt (brother of Shumaila) came there and rescued her from Abid Ali and at the same moment Abid Ali made firing on them and she received firearm injuries at her arm. The alleged motive lacks the force necessary to connect the convicts with the commission of the offence. Reliance in this regard is placed on the case of "Muhammad Ijaz v. The State".*
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> (underline is for emphasis)

13. The *ratio decidendi* in the above case squarely applies here. The prosecution has not only failed to prove a credible motive. Thus, in the totality of circumstances, the alleged motive fails to provide any rational explanation for the commission of the offence by the appellant.

14. It would be highly relevant to mention here that the motive is a double-edged weapon, which can be used either way or by either side i.e. for real or false involvement. As held by Honourable Supreme Court of Pakistan in case of ***Muhammad Hassan and another Versus The State and others*** **(2024 SCMR 1427);** ***Muhammad Ashraf alias Acchu v. The State*** **((2019 SCMR 652)**

15. The ocular evidence is the backbone of the prosecution's case. However, a careful examination of the testimony of prosecution witnesses reveals several inconsistencies and discrepancies which cast serious doubt on the reliability

and credibility of the ocular account. The complainant's testimony is contradictory. In his initial statement recorded in the FIR, the complainant mentioned that the accused Chanesar and Allah Dino (the appellant) fired upon the deceased, while the other accused made aerial firing. However, during the course of trial, the complainant's statement was improved and altered to include a wider role of other accused firing straight shots at the deceased. Similarly, the testimony of another prosecution witness, Muhammad Murad, is at variance with the complainant's FIR and deposition. Muhammad Murad stated that accused Chanesar fired with a rifle, Allah Dino and Mitho fired with Kalashnikovs, Manzoor also fired with a Kalashnikov, Fareed fired with a gun and two unknown accused fired in the air with TT pistols. This broader version that attributes firing to all accused differs from the FIR and complainant's earlier statement, which is a glaring contradiction. Further scrutiny of the complainant's testimony reveals inconsistency regarding the attendance at the marriage ceremony of Haji Ghulam Hussain Junejo. The complainant initially claimed that only he and the deceased attended the marriage, but later stated that the deceased's father and brother were also present. This inconsistency undermines the reliability of the prosecution story.

16. Furthermore, in cross-examination, prosecution witness Ghulam Nabi admitted he could not specifically identify or attribute the injuries sustained by the deceased to any particular accused. This admission significantly diminishes the evidentiary value of his testimony and renders it unreliable.

17. Moreover, prosecution witnesses Muhammad Murad and Ghulam Nabi traveled from Sukkur but failed to satisfactorily explain the purpose of their visit or whom they intended to meet there. During trial, the said eyewitnesses also did not offer any plausible reason or justification for being at the place of occurrence, nor did they establish any specific connection to the events leading up to the incident. This unexplained presence renders their testimony suspect and untrustworthy**.** In the absence of reliable corroboration and given the material contradictions, the ocular testimony of the prosecution witnesses cannot be safely relied upon to convict the appellant beyond reasonable doubt. In this context, further reliance is placed upon the case of ***Muhammad Javed versus The State*** **(2016 SCM R 2021)** wherein it had held that:

> *4. It has straightaway been observed by us that the occurrence in this case had taken place about a kilometer and a half away from the village abadi and at a*

> *place which was an open and uninhabited place inside a sugarcane field. The background of this case was a suspicion regarding illicit relations between Faiz Ullah deceased and a sister of Muhammad Javed appellant and in that backdrop a sugarcane field away from the village abadi looked like a perfect setting. Both the eye-witnesses produced by the prosecution, i.e. Ghulam Muhammad complainant (PW7) and Ehsan Ullah (PW8) were very closely related to Faiz Ullah deceased inasmuch as PW7 was a paternal uncle of the deceased and PW8 was a nephew of PW7. Both the said eye-witness were also chance witnesses as PW7 had claimed to have witnessed the occurrence when he was proceeding to Sargodha on a bicycle whereas PW8 had claimed to have seen the occurrence when he was going to meet a friend. Both the said eye-witnesses had completely failed to establish any reason for their presence at the scene of the crime at the relevant time inasmuch as PW7 had not even disclosed his reason for going to Sargodha and PW8 had not even named the friend that he was going to meet. The said related and chance witnesses had failed to receive any independent corroboration inasmuch as no independent proof of the motive set up by the prosecution had been brought on the record of the case and although a report of the Forensic Science Laboratory was received in the positive in respect of matching of the firearm recovered from the appellant's custody with a crime-empty secured from the place of occurrence yet the investigating officer (PW9) had clearly acknowledged before the trial court that the crime-empty had been sent to the Forensic Science Laboratory on the day when a carbine had been recovered from the custody of the appellant.*
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> (underline is for emphasis)

18. A further contradiction emerges from the depositions of the complainant and eyewitnesses regarding the seating arrangement at the time of the incident. The complainant testified that he was sitting alone on a cot, while the deceased was on a separate cot and the witnesses Muhammad Murad and Ghulam Nabi were sitting together on another cot. In contrast, Ghulam Nabi in his deposition stated that the complainant and deceased were sitting together on one bench and he along with Muhammad Murad were seated on another bench without any reference to cots. This inconsistency becomes more pronounced when examined in light of the memo of place of incident**,** which is entirely silent regarding the presence of any cot or bench**,** despite the prosecution claiming that blood was found on the cot. This difference between the ocular account, the site memo and the prosecution's reliance on physical exhibits (such as a blood-stained cot) renders the prosecution narrative internally inconsistent and unreliable**.** In this regard, reliance is placed upon the judgment in ***Nadir Khoso and others vs. The State and others*** **(2024 YLR 1565),** wherein held:

> *---that neither the tractor nor even the tractor seat where the deceased after sustaining injuries was lying, was produced and adduced in evidence; and that although it was natural that driving chair would have been stained with blood but no blood was secured therefrom.*

19. The place of occurrence, the hotel of Qazi Bahadur, had independent persons such as Qazi Bahadur (the hotel owner) and Abdul Khaliq Mahar who identified the dead body at the time of inquest report. However, prosecution failed to examine these independent and material witnesses, whose evidence could have corroborated or disproved the prosecution story. The absence of their testimonies weakens the chain of evidence and raises questions regarding the thoroughness of the investigation and prosecution.

20. The post-mortem report indicates that the deceased's body was identified by one Bhai Khan (father of the deceased) and Ghulam Nabi. However, Ghulam Nabi did not claim to have been present at the hospital at the time of identification and Bhai Khan was neither examined by the Investigating Officer nor produced as a witness by the prosecution. The withholding of such crucial evidence is highly detrimental to the prosecution case and suggests a deliberate attempt to suppress material facts. Support for this view is drawn from the case of ***Iftikhar Hussain alias Kharoo vs. The State*** **(2024 SCMR 1449),** as held that:

> *13. In view of the material contradictions in the statements of eye-witnesses and the fact that they did not accompany the deceased in the hospital and that their names were neither mentioned in Inquest report nor in post-mortem report as the identifiers of the dead body speaks volumes about the absence of the eye-witnesses at the place of occurrence. Hence, their testimonies are unreliable.*

21. It is settled principle that when independent or marginal witnesses, who are naturally available and could have offered impartial corroboration, are withheld without justification**,** an adverse inference may be drawn against the prosecution. In this regard, reliance is placed upon the authoritative judgment of the Hon'ble Supreme Court in ***Muhammad Ramzan vs. The State*** **(2025 SCMR 762),** wherein it was held:

> *----At the trial, the prosecution has not produced Matloob Hussain, the owner of the house as witness. An adverse inference is drawn under Article 129(g) of the Qanun-e-Shahadat Order, 1984 to the effect that had the above witness been produced by the prosecution at the trial, they would not have supported the version of the prosecution. Reliance in this regard is placed on the case of "Mst Saima Noreen v. The State" (2024 SCMR 1310).*

22. Another major deficiency in the prosecution's case is the non-production of witness, the Tapedar, who prepared the site sketch, was admittedly examined in the earlier round of litigation involving co-accused persons.

However, in the instant trial, the prosecution failed to examine him again. There is no explanation provided as to why he was withheld in this trial, particularly when the sketch forms a crucial part of the physical evidence. Similarly, the Investigating Officer (ASI Imtiaz Shoukat), who conducted the primary investigation and secured key evidence, was not produced at trial. The prosecution merely submitted a statement of a process server that the Investigation Officer had shifted to Kashmir and his whereabouts could not be determined. Surprisingly, the learned trial Court accepted this excuse, without issuing summons, seeking assistance from government departments (such as NADRA or the police hierarchy), or taking any effective step to secure the IO's presence. Given that the IO is a public functionary, it is unconvincing and legally unacceptable to presume that he simply could not be traced. In this context relied upon the case of ***Shaukat and 2 Others versus The State*** **(1981 SCMR 444),** as held that:

> *9. The learned counsel for the appellants contended that the statements of Liaquat Ali and Mahboob were transferred to the Sessions file in violation of section 33 of the Evidence Act as it was not strictly proved that they had absconded and, therefore, would not be available in the near future to give evidence in the case. In support of it he relied on the statement of Muhammad Rafiq, P. W. 8, and the reports Exhs. P. W. 8/C and P. W. 8/D submitted by him. All that he stated was "both the P. Ws. are absconders in case F. I. R. No. 174 dated 28th of November, 1973, under section 302/ 307/34, P. P. C. for murdering Mushtaq who was accused in the present case. There is no likelihood of their arrest in the near future." This process server is of the same Police Station and the information apparently given is from the record available at the Police Station. No effort seems to have been made by him to execute the summons nor did he depose to the fact that warrants were issued for their arrest in the other case but as their whereabouts were not known, by reason of their abscondence they could not be executed and, therefore, they were declared to be proclaimed offenders under sections 87 and 88, Cr. P. C. Therefore, what was deposed to was hearsay which cannot take the place of strict proof as was necessary to be adduced according to the dictum of this Court in Ali Haider v. The State (P L D 1958 S C (Pak.) 392). The trial Court took the statement of the process server on its face value while holding it to be a reality in the absence of further proof that an attempt was made to search them but as they had absconded, their whereabouts were not known which could further be proved by adducing evidence that they had been declared absconders in the other case. The High Court also without applying its mind on this aspect of the procedure merely held their non availability to have been established by the prosecution" which was a disregard of the provisions of section 33 of the Evidence Act. This alone would suffice to keep their statements out of consideration as they do not legally form part of the evidence in the case. But nonetheless we examined the worth of the solitary eye-witness, Liaquat Ali, as to whether it could form the basis of conviction ; and as regards Mahboob, his evidence in no way advance the case of the prosecution.*
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> (under line is for emphasis)

This Court in case of ***Asif vs. The State*** **(2025 YLR 757)** has held:

> *Initial investigation of the case was conducted by I.O/SIP Sagheer Ahmed Baig, he has not been examined by the prosecution for the reason that he has retired from the service, the retirement of the employee may not be a valid reason for his non-examination*

23. The significant deficiency in the prosecution's case is that the entire case rests on the statements of close relatives of the deceased**,** such as the complainant and related witnesses, whose presence, credibility, and consistency are already under serious doubt due to contradictions and improvements in their depositions. Furthermore, even memos were not attested by any independent private persons**,** further weakening the evidentiary value of the prosecution case. This Court is mindful that in the absence of compelling justification, such as threats, unavailability, or unwillingness of independent witnesses, the failure to examine them can render the prosecution case suspicious. In this regard, support is drawn from the judgment of the Hon'ble Supreme Court in ***Muhammad Nasir Butt and 2 others vs. The State and others*** **(2025 SCMR 662),** where it was held:

> *9. No private witness of the locality was associated to attest the alleged recovery of crime weapon on the pointation of convict Baqir Butt. Due to non-association of any private witness of the locality to attest the recovery of alleged weapon of offence/lack of independent corroboration, the same is disbelieved. Reliance in this regard is placed on the case of "Muhamamd Ismail v. The State[3]".*
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> *10. At the trial, the prosecution has not produced the injured passerby Shehbaz and Abdul Jabbar who was mentioned to be an eye-witness of the occurrence by the complainant. An adverse inference is drawn under Article 129(g) of the Qanun-e-Shahadat Order, 1984 to the effect that had the above two witnesses been produced by the prosecution at the trial, they would not have supported the version of the prosecution. Reliance in this regard is placed on the case of "Mst. Saima Noreen v. The State[4]".*

24. Further, the inquest report shows that the dead body was identified by persons other than the complainant**,** namely Qazi Bahadur and Abdul Khaliq Mahar. The complainant later deposed that he left the dead body with witnesses and proceeded to lodge the FIR. However, this sequence contradicts the overall prosecution narrative and undermines the complainant's credibility, where the presence of eyewitnesses at the scene is not convincingly established and their testimony lacks independent corroboration, the benefit of such doubt must be extended to the accused. In this context, reliance is placed upon the case of ***Ghulam Muhammad vs. The State and another*** **(2023 YLR 2266),** wherein held that:

> *"Complainant could not explain as to whether the eye-witness disclosed his purpose on the spot and as to whether the eye-witness had reached, the moment they reached the clinic-"*

25. Further in case titled ***Liaquat Hussain and others v. Falak Sher and others*** **(2003 SCMR 611),** it was held by the Honourable Apex Court that:

> *"Eye-witnesses including the complainant had failed to furnish a plausible and acceptable explanation for being present on the scene of occurrence and were chance witnesses---Prosecution case did not inspire confidence and fell for short of sounding probable to a man of reasonable prudence".*

26. Turning to the aspect of forensic evidence, the record reveals that the Investigating Officer secured blood-stained earth from the scene of occurrence and also collected the blood-stained clothes of the deceased, which were sent to the Chemical Examiner for analysis. The Chemical Examiner's report confirmed the presence of human blood on both the earth sample and the deceased's garments. However, the limited evidentiary scope of such a report must be understood within the proper forensic and legal framework. The primary function of the Chemical Examiner is to detect the presence of blood and determine whether it is of human origin**.** However, unless a grouping or comparative analysis is conducted to establish whether the blood samples originate from the deceased**.** As highlighted in ***Parikh's Textbook of Medical Jurisprudence, Forensic Medicine and Toxicology (7th Edition), Part 4, Section 7, on Forensic Examination of Biological Fluids and Stains***, it is specifically noted:

> *The points that are usually required to be determined regarding stains are: (1) the nature of the stain, (2) if due to blood, the species (human or animal) it has come from, and (3) if, human the group to which it belongs.*

27. Merely detecting the presence of human blood on an article does not establish its connection with a particular person unless a grouping or matching analysis is conducted. To establish that the blood found on one object belongs to the same source as another, a comparison of blood groups or DNA profiling is essential. In the present case, the report does not indicate any blood grouping or comparative analysis to link the stains found on the earth with those on the deceased's clothes. As such, the forensic evidence fails to establish a conclusive nexus between the scene of occurrence and the deceased, let alone with the accused. Furthermore, no attempt was made by the prosecution to establish that the blood stains were fresh, relevant to the time of occurrence, or that they

excluded the possibility of contamination or unrelated origin**.** The stages of examination of Blood stains are specified in ***Modi's Medical Jurisprudence, 26th Edition, Chapter 17 Examination of Biological Stains and Hair.*** For ready reference the same is read as under:

> *The successive stages are given below:*
>
> *(a) the identification of blood in the stains;*
> *(b) examination of the blood stain patterns;*
> *(c) the identification of the species-origin of blood in the stains;*
> *(d) the identification of the blood group of the human blood detected in the stains, under various blood group systems as already described under examination of blood.*

28. This position is fortified by the judgments in case of ***Naveed Asghar and 2 others vs The State*** **(PLD 2021 Supreme Court 600)** as held that:

> *Statement of the investigating officer that the seat-cover of the recovered motorcycle was bloodstained and such fact suggested that it was the same motorcycle that was used in the crime was not found confidence inspiring; had the seat-cover of the motorcycle been really bloodstained, the investigating officer would have sent the same for examination by the Chemical Examiner for ascertaining whether the bloodstain was that of human blood and whether that bloodstain matched with the blood of any of the deceased persons or the accused persons---In absence of the reports of the Chemical Examiner and the Serologist on these facts, the assertion of the investigating officer as to use of the said motorcycle in commission of the crime carried no legal worth---Failure on part of the investigating officer to ascertain registration number and name of the registered owner of the motorcycle was also fatal to his assertion that the recovered motorcycle belonged to one of the accused persons---*
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> (underlines for emphasis)
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> ***Khalid Javed and another versus The State*** **(2003 SCMR 1419)**, as *Held, in the absence of the evidence that the blood stains on clothes matched with the blood group of the deceased it would not be in the interest of justice to connect the accused with the commission of the offence.*

29. Coming to the Ballistic expert evidence, the prosecution relied upon the Examination Report of Firearms through an Investigating officer, namely Muhammad Sharif, during the earlier trial of co-accused Mitho alias Muhammad Mithal and Manzoor. The said officer was assigned the role of arresting those co-accused and effecting recoveries, including their weapons. He also sent the crime empties secured from the place of occurrence for forensic examination. According to the Ballistic report, five crime empties of Kalashnikov (C-9 to C-13) and five empties of 12-bore cartridges (C-14 to C-18) were recovered from the scene. The expert categorically opined that the

Kalashnikov empties (C-9 to C-13) were all fired from weapon marked as "A", which had been recovered from co-accused Mitho alias Muhammad Mithal**.** Similarly, no attribution of these empties was linked to any weapon allegedly associated with the present appellant. This discrepancy creates a break in the prosecution's theory. If all crime empties match the weapon recovered from co-accused Mitho**,** then the allegation that the appellant fired at the deceased becomes factually untenable**,** especially in light of the prosecution's own evidence confirming that all relevant fire was traced to the co-accused's weapon.

30. Proceeding further to the medical aspect of the case, a significant inconsistency arises from the testimony of the Medical Officer who conducted the post-mortem examination. Despite the claim that the deceased sustained multiple firearm injuries, but no hole, tear, or damage was observed on the clothes of the deceased**.** In a firearm injury, particularly when bullets or pellets pierce through the body, corresponding damage to clothing is expected. In this context, guidance may be drawn from the judgment in ***Asjad Mehmood v. The State*** **(2024 YLR 1892),** wherein held that: *"Even the Female Medical Officer had not observed corresponding holes on the shirt".* Further refernce is made to the case of ***Zahoor Ahmed and others vs The State and others*****, (2022 YLR 189)**, as held that:

> *---Medical Officer held the autopsy and observed three injuries including two entry wounds and the other was exit of injury---During the cross-examination, the Medical Officer admitted that he observed no corresponding holes on the clothes of the deceased---Had he seen any hole, he would have definitely mentioned the same in post-mortem examination report---Statement of said witness further reflected that it was possible that fire shots strike the body of the deceased in naked condition---Medical evidence, therefore, contradicted the ocular account---Circumstances established that the prosecution had failed to prove its case against the accused beyond reasonable doubt---Appeal against conviction was allowed, in circumstances. Muhammad Akram v. The State and others 2016 SCMR 2081; Nasrullah alias Nasro v. The State 2017 SCMR 724; Nadeem alias Kala v. The State 2018 SCMR 153 and Najaf Ali Shah v. The State 2021 SCMR 736.*
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> (underline is for emphasis)

31. A vital inconsistency in the prosecution's case pertains to the nature, number and location of firearm injuries allegedly sustained by the deceased. According to the FIR, the deceased was stated to have suffered firearm injuries on (i) the right side of the neck, exiting near the left ear; (ii) below the left nipple, said to have exited near the right elbow; (iii) over the chest near the

right nipple; and (iv) on the left buttock. However, upon examining the post-mortem report and the deposition of the Medical Officer, it becomes apparent that there is no mention of any injury to the buttock, or any specific exit wound that corresponds with the injury below the nipple and exiting at the right elbow, as suggested by both the ocular evidence. More importantly, the two injuries on the neck (one below the mandible on the right and one on the left ear) were both noted by the Medical Officer to be inverted wounds, meaning they were likely entry wounds. This contradicts the prosecution's theory that one was an entry wound and the other an exit wound of the same shot. Further contradiction arises in relation to the injury on the right forearm. While the ocular account and inquest report suggest that the wound on the right elbow was the exit point for a bullet entering below the left nipple, the Medical Officer reported two wounds on the right forearm, one on the front and one on the back, set apart them as through and through injuries, not as an exit of a wound originating from the chest. This disassociation between injuries significantly breaks the purported sequence of bullet route claimed by the prosecution. In the present case, the inconsistencies between the ocular version, investigative documentation and medical findings are not minor or peripheral but go to the root of the prosecution's story. As such, the medical evidence not only fails to corroborate the prosecution's claim but contradicts it materially, thereby rendering the entire case highly doubtful. Reference may be made to the case of ***Bashir Muhammad Khan v. The State*** **(2022 SCMR 986),** it was held that:

> *"The medical evidence is inconsistent with the ocular account as regards injury No. 3 on the right hip of the deceased is concerned, which in fact was an exit wound but according to the prosecution witnesses of ocular account the same was an entry wound in these circumstances, a dent in the prosecution's case has been created, benefit of which must be given to the appellant".*

Further reliance upon the cases of ***Muhammad Idress and another versus The State and others*** **(2021 SCMR 612),m** held that:

Ocular account and the contents of the crime report were also inconsistent with the medical evidence on the record with respect to number of fire shots received on the thighs of the deceased---Prosecution had failed to establish its case against the accused beyond reasonable doubt

G. M. Niaz versus The State **(2018 S C M R 506),** held that:

The medical evidence had given a big lie to the ocular account furnished by the above mentioned eye-witnesses inasmuch as in the post-mortem examination of the deadbody three blunt weapon injuries had been found on the deadbody which

had not been explained by the eye-witnesses

Akhtar Saleem and another v. The State and another**(2019 MLD 1107),** it was held that:

"The above factors, material contradictions between ocular and medical evidence create serious doubts in the happening of alleged occurrence and it is well settled law that even a single doubt, if found reasonable, would entitle the accused person to acquittal and not a combination of several doubts".

32. Further, reference is made to the case of ***Gulab alias Jamaluddin vs Ghulam Muhammad and 5 others*** **(2020 YLR 2286)** with regard to that facts suggested that ocular evidence was contradictory to the medical evidence. Further, in this consideration, reliance is placed upon the case of ***Muhammad Naveed vs The State*** **(2023 PCr.LJ 896- DB, Lahore)** as it was held that:

14. As far as the medical evidence is concerned, it evinces from the record that even the medical evidence runs contrary to the prosecution's case as according to Abdul Waheed, complainant (PW.1) and Mst. Sughran Bibi (PW.3), the appellant made straight fire shot hitting Mst. Noreen Bibi (deceased) at her right cheek thereafter, he made repeated fire shots hitting at different parts of her body. It appears that both the PWs failed to describe the specific seat of injuries except one injury and according to the medical evidence (post mortem report Exh. PE) the only specific injury described by the eye-witnesses on the right cheek of the deceased (injury No.2) is an exit wound. Moreover, Doctor Momina Arif, WMO (PW.7), who conducted autopsy on the dead body of the deceased, during her cross-examination has stated as under:-

"….it is correct that direction of injury No.1 was from lower side to upward. The track/direction of injury Nos. 5 and 6 was also from downward to upward…"

These glaring contradictions between the ocular version and the medical evidence have sufficiently established that the alleged eye-witnesses were not present at the spot at the relevant time, which aspect of the case prompts this Court not to place any reliance on them. Keeping in view the afore-stated circumstances, this Court is of the view that the prosecution version with regard to ocular account seems to be tainted, not inspiring confidence and result of due deliberations as well as consultations, hence the same cannot be given any legal credence. Reliance is placed upon the case law titled as "Ghulam Abbas and another v. The State and another" (2021 SCMR 23).

33. Another serious contradiction in the prosecution's case emerges from the medical testimony concerning the type of weapon used. The Medical Officer in his deposition testified during cross-examination that circular wounds are usually the result of a pellet bullet, whereas other type of wound is caused by a gun rather than a Kalashnikov**.** However, nothing in his written post-mortem report or his examination-in-chief described the wounds as circular or specifies the shape or pattern of the injuries. This inconsistency, when evaluated in the

context of the prosecution's specific allegation that the appellant fired with a Kalashnikov, becomes material. More importantly, even if the medical evidence confirms the presence of firearm injuries**,** it does not specifically connect the appellant to the infliction of those injuries**.** Reliance is placed upon the judgment in ***Naveed Asghar and 2 others vs. The State*** **(PLD 2021 SC 600),** wherein the Hon'ble Supreme Court of Pakistan observed:

> *Medical evidence by itself does not throw any light on the identity of the offender. Such evidence may confirm the available substantive evidence with regard to certain facts including seat of the injury, nature of the injury, cause of the death, kind of the weapon used in the occurrence, duration between the injuries and the death, and presence of an injured witness or the injured accused at the place of occurrence, but it does not connect the accused with the commission of the offence*
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> (underline is for emphasis)

34. The learned trial Court appears to have also relied upon the abscondence of the appellant as a contributing factor in arriving at the conviction. However, this reasoning does not stand legal scrutiny. It is settled that mere absconsion, in the absence of trustworthy and substantive evidence is not sufficient to establish guilt**.** Therefore, the dependence placed by the learned trial Court on the appellant's abscondence without reliable and trustworthy substantive evidence was legally misconceived and misplaced. The absence of any credible corroborating material renders this factor insufficient to sustain the conviction. Support is drawn from the cases of ***Rafaqat Ali alias Foji and another versus The State and others*** **(2024 SCMR 1579),** as held that:

> *8. While awarding conviction and sentence to the convicts, both the Courts below have also considered the absconsion of about three years and eight months of the convict. In this regard both the Courts below have failed to appreciate that mere absconsion of an accused cannot be made a basis of conviction and that absconsion of an accused, being a relevant fact, can be used as a corroborative piece of evidence which cannot be read in isolation but it has to be read along with the substantive piece of evidence. Reference in this regard is made to the case of 'Rohtas Khan v. The State'[1].*
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> *Both the Courts below have also failed to appreciate that mere absconsion is not conclusive proof of guilt of an accused. It is only a suspicious circumstance which cannot take place of proof. The value of absconsion, therefore, depends on the fact of each case. Reference in this regard is made to the case of 'Haji Paio Khan v. Sher Biaz'[2].*
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> *9.According to the settled principles of law abscondence can never remedy the defects in the prosecution case as it is not necessarily indicative of guilt. Moreover, abscondence is never sufficient by itself to prove the guilt.*

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1 2010 SCMR 566

2 2009 SCMR 803

Reference in this regard is made to the case of 'Muhammad Khan v. The State'[3].

In the case of 'Shafgat Abbas v. The State'[4] it has been held that in absence of any other incriminating piece of evidence mere absconsion does not entail penal consequences against accused or to expose him to the criminal liability.

Ghulam Abbas and another vs. The State and another **(2021 SCMR 23)**

9. It is case of the prosecution that after the occurrence, Ghulam Abbas and his co-accused Mulazim Hussain remained fugitive from law. Non-bailable warrants of arrest, reports thereon as well as the proclamation issued against the appellant and his co-accused and reports thereon were not put to Ghulam Abbas (appellant) while examining him under section 342, Code of Criminal Procedure, therefore, the same cannot be used against the appellant to maintain his conviction and sentence on a capital charge, which even otherwise is merely a supportive piece of evidence.

Iftikhar Hussain alias Kharoo versus The State **(2024 SCMR 1449)**

15. Learned Deputy Prosecutor General has also laid much emphasis on the abscondence of the petitioner as proof of his guilt. The fact of abscondence of an accused can be used as a corroborative piece of evidence, which cannot be read in isolation but it has to be read along with substantive piece of evidence. This Court in the case of Asadullah v. Muhammad Ali,[4] has held as follows:-

"The object of corroborative evidence is to test the veracity of the ocular evidence. Both have, therefore, to be read together and not in isolation as the learned Judges did in the instant case."

This Court in the case of Rasool Muhammad v. Asal Muhammad,[5] has ruled as under:-

> *"Abscondence per se is not a proof of the guilt of an accused person. It may, however, create suspicions against him but suspicions after all are suspicions. Consequently, we find the impugned judgment of acquittal as neither perverse, nor the reasons given for acquittal as artificial. We, therefore, refuse to interfere with the impugned judgment."*

16. In the case of Muhammad Sadiq v. Najeeb Ali,[6] this Court has observed that abscondence itself has no value in the absence of any other evidence. It was also held in the case of Muhammad Khan v. The State,[7] that abscondence of the accused can never remedy the defects in the prosecution case. In the case of Gul Khan v. The State,[8] this Court has held as under:-

> *"The abscondence of an accused itself may not point out towards his guilt. It depends upon the facts and circumstances of each case as to whether abscondence is a pointer or not This view was taken by this*

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3 1999 SCMR 1220
4 2007 SCMR 162
4 (PLD 1971 SC 541)

5 (1995 SCMR 1373)
6 (1995 SCMR 1632)
7 (1999 SCMR 1220)
8 (1999 SCMR 304)

> *Court in the judgment reported as Aminullah v. The State (PLD 1976 SC 629). It was laid down that abscondence as a circumstance proving the guilt is based upon the assumption that the guilty man tries to escape from the police violence, the innocent man rushes to the police to vindicate his innocence. It was further held by this Court such assumption is based upon several other assumptions and it would not be safe to hold that abscondence of an accused automatically amounts to proof of his guilt."*

Similarly, in the cases of Muhammad Arshad v. Qasim Ali,[9] Pir Badshah v. The State,[10] and Amir Gul v. The State,[11] it was observed that conviction on abscondence alone cannot be sustained. In the present case, substantive piece of evidence in the shape of ocular account is untrustworthy as mentioned above, therefore, no conviction can be based on abscondence alone. Reliance is placed on the cases of Muhammad Farooq and another v. The State,[12] and Rohtas Khan v. The State.[13]

35. The argument advanced by the learned State Counsel that the evidence of prosecution witness Ghulam Nabi was recorded in the absence of the senior defense counsel and thus falls violation of section 353 Cr.P.C is untenable. The plain language and object of section 353 Cr.P.C is to ensure the presence of the accused during the trial**,** particularly when evidence is being recorded. It is an admitted fact that at the relevant stage, the accused was present before the learned trial Court and a junior associate of the defense counsel was also present. More importantly, the cross-examination of the said witness was expressly reserved and was subsequently conducted by the senior defense counsel on the next date of hearing. This clearly shows that no prejudice was caused to the accused, nor was any objection raised by the defense or state at the relevant time regarding the alleged procedural lapse. . Thus, to now raise an objection selectively only in relation to one witness does not warrant remand or nullification of trial proceedings. Further, it is pertinent to observe that several other prosecution witnesses were cross-examined by junior counsel without objection**,** of the State; and the defense did not treat such participation as prejudicial. Furthermore, upon careful examination of the entire record and proceedings, it is apparent that not a single document was formally exhibited during the recording of prosecution evidence in the second round of trial. It is a settled legal principle that mere production or reference to a document does not make it part of the evidence on record unless it is exhibited in accordance with the law. Even if certain documents had been exhibited in a previous round of

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9 (1992 SCMR 814)
10 (1985 SCMR 2070)
11 (1981 SCMR 182)
12 (2006 SCMR 1707)
13 (2010 SCMR 566)

trial, it was the prosecution's primary responsibility to have them formally re-exhibited in the present proceedings, either in original or at least in the form of certified true copies**.** The omission to do so constitutes a serious procedural lapse**,** which adversely affects the evidentiary value of those documents. The failure to properly exhibit prosecution documents, including memos, medical reports, sketch and forensic reports, renders them legally ineffectual for supporting a conviction. Reliance is placed upon the case of ***Khalid Mehmood alias Khaloo versus The State*** **(2022 SCMR 1148),** as held that:

> *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 v. 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 v. 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*
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> (underline is for emphasis)

Syed Ali Nawaz Shah and 2 others versus The State (2023 YLR 1887), held that:

6. In terms of Section 353, Cr.P.C. all evidence is to be taken in presence of accused; except as otherwise expressly provided, and when his personal attendance is dispensed with, in presence of his pleader. Admittedly, insofar as the earlier evidence, including the documents which were exhibited are concerned, were never brought in the evidence before the present Appellants, hence, the same cannot be treated as evidence recorded in presence of the accused. As to earlier proceedings, it is a matter of record that the trial Court had treated them as guilty of having entered into a plea bargain with NAB, and therefore, were never required to attend the Court as accused at the time of evidence of the prosecution. Insofar as Article 47 of the 1984 Order is concerned, it provides relevancy of certain evidence for proving the same in subsequent proceedings, and states, that the evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving the same, in a subsequent proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable. It further provides that such proceedings should be between the same parties or their representatives in interest and the adverse party in the first proceeding had the right and opportunity to cross-examine and the questions in issue were substantially the same in the first as in the second proceeding. Now when both these provisions are read into juxtaposition, it appears that apparently, the learned trial Court failed to appreciate these provisions and simply allowed the prosecution to rely/mention these documents in their deposition/subsequent examination in chief which were exhibited by them in the earlier proceedings. Though the witnesses produced subsequently, (including some of the earlier witnesses as well as new witnesses in place of those who had expired), were cross-examined on behalf of the Appellants, but at no point of time, any of the documents and the exhibits recorded in the earlier evidence were ever brought on the record of the subsequent proceedings in hand. We have labored ourselves through the entire R&Ps of this Reference, and are surprised to note that not even certified copies of the earlier exhibits were produced in their examination in chief by the witnesses, and instead they only stated that all documents have already been exhibited in the earlier evidence. In our considered view, a bare minimum, production of certified copies could have sufficed, as in that case the Court could have permitted production of such certified copies, being part of the judicial proceedings to be exhibited once again in the subsequent proceedings. As noted, in R&Ps there is nothing on the record in this Reference, and admittedly, the trial Court may be for the reason that it had the privilege of examining the earlier record and the evidence, simply referred to the exhibit numbers of the earlier proceedings and thought that they are also part of the present proceedings and can be used as evidence against the present Appellants. We are afraid this procedure adopted by the learned trial Court was not only irregular; but apparently is an illegality which perhaps cannot be cured in any manner. In Muhammad Younis[1], a learned Division Bench of the learned High Court was seized with almost an identical situation, wherein certain witnesses were common in three cases and when one of these witnesses appeared in the witness box, his statement was recorded in one case and then a verbatim copy of his statement was placed on record of two other cases, with the addition of such matter brought out in cross-examination for the special purpose of that particular case. It was held that the witness was

thus not examined in full in each case.

(underline is for emphasis)

36. It is settled principle of Law that the benefit of doubt must be extended to an accused if there exists even a single circumstance that creates reasonable doubt regarding his guilt in prudent mind. It is not necessary that there be a multitude of doubts or inconsistencies. A solitary, credible doubt is sufficient to entitle the accused to an acquittal. Reliance in this regard is placed upon the authoritative judgments of the Hon'ble Supreme Court in ***Sajjad Hussain v. The State*** **(2022 SCMR 1540),** ***Abdul Ghafoor v. The State*** **(2022 SCMR 1527)** and the judgment of the Division Bench of this Court in ***Nadir Hussain v. The State*** **(2025 YLR 487).**

37. For the foregoing reasons; and in light of the detailed discussion and analysis set out hereinabove, it is evident that the prosecution has failed to establish its case against the appellant beyond the shadow of reasonable doubt. Accordingly, the instant Criminal Appeal is allowed. The conviction, sentence, and compensation awarded to the appellant are hereby set aside. The impugned judgment dated 10.03.2020, passed by the learned Ist Additional Sessions Judge Sukkur / Model Criminal Trial Court in Sessions Case No. 165 of 2019 (arising out of Crime No. 20 of 2002 registered at Police Station Bagerji under Section 302(b), 337-H(ii), 148, 149 PPC) is set aside to the extent of the present appellant. Consequently, the appellant is acquitted of the charge. He shall be released forthwith, if not required to be detained in any other criminal case.

JUDGE