IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

*Criminal Appeal No.S-**112** of 2022*
(Niaz Hussain Shah v. The State)

*Criminal Appeal No.S-**113** of 2022*
(Niaz Hussain Shah v. The State)

Mr. Khan Muhammad Sangi, Advocate along with Appellant.
Syed Sardar Ali Shah, Additional P.G for the State.

Date of hearing: **27.02.2025**
Date of Decision: 28 **.04.2025**

J U D G M E N T

RIAZAT ALI SAHAR J.,- In both titled Criminal Appeals, the appellant, Niaz Hussain Shah, was tried by the learned Special Judge, Anti-Corruption (Provincial), Sukkur Division at Sukkur, in **Special Case Nos. 126 and 127 of 2010,** arising out of **Crime No. 05 of 1998,** registered with the Anti-Corruption Establishment, Sukkur, under Section 409 of the Pakistan Penal Code read with **Section 5(2) of the Prevention of Corruption Act, 1947**, and **Crime No. 19 of 1999**, registered at Police Station Thari Mirwah. Through both the impugned judgments dated 26.11.2022, with similar facts and circumstances, the appellant was convicted under **Section 5(2) of the Prevention of Corruption Act, 1947,** and sentenced to undergo rigorous imprisonment for five years, along with a direction to pay amounts equivalent to the misappropriated sums of Rs. 1,070,732.86 and Rs. 3,698,100/- respectively. In default of such payments, he was further directed to suffer six months'

imprisonment in each case. Additionally, he was convicted under Section 409 PPC and sentenced to undergo rigorous imprisonment for four years, together with a fine of Rs. 50,000/- **in each case**, and in default thereof, to further undergo simple imprisonment for three months in each case. Both sets of sentences were ordered to run concurrently, with the benefit of Section 382-B, Cr.P.C. duly extended to the appellant.

2. In relation to **FIR No. 05 of 1998**, the allegations levelled against the appellant are that, while serving as Food Supervisor and posted as Incharge of the Wheat Procurement Centre, Hingoro, during the wheat procurement season of 1996–97, he committed misappropriation involving 1,173 wheat bags, resulting in a shortage of 9,305 kilograms of wheat, along with 4,657 new empty bardana (gunny bags), causing a total loss to the public exchequer amounting to Rs. 1,070,732.86. It is alleged that the appellant thereby committed criminal breach of trust and violated the provisions of law as envisaged under Section 409 PPC read with **Section 5(2) of the Prevention of Corruption Act, 1947.**

3. In respect of **FIR No. 19 of 1999**, the allegations against the appellant are that, during the wheat procurement season of 1998–99, while serving as Food Supervisor and Incharge of the Wheat Procurement Centres at 'Akri' and 'Zafarabad', he committed misappropriation resulting in a shortage of 5,203 government-owned wheat bags, thereby causing a wrongful loss

to the public exchequer amounting to Rs. 3,698,100/-. It is alleged that the appellant, by such conduct, violated his official duties and committed criminal breach of trust, thereby attracting penal provisions under the relevant law.

4. On completion of usual investigation, the final reports under section 173 Cr.PC against the appellant were submitted before learned trial Court, where the formal charge was framed against him, to which he pleaded '**not guilty**' and claimed trial.

5. In connection with **FIR No. 05 of 1998**, the prosecution, in order to substantiate the allegations against the appellant, examined a total of eight witnesses. These included:

- PW-1 Mureed Ali Chandio,
- PW-2 Syed Changal Shah,
- PW-3 Tauheed Ahmed Awan (Office Superintendent, Food Department),
- PW-4 Agha Haq Nawaz,
- PW-5 Muhammad Anwar Khan (District Food Controller, Sukkur),
- PW-6 ASI Muharram Ali Jumani (ACE, Sukkur),
- PW-7 Khair Muhammad (Circle Officer, ACE, Sukkur),
- PW-8 PC Anwar Ali Rahoojo (ACE, Sukkur).

The prosecution also produced relevant documentary evidence, including the FIR, various reports, official correspondence, records pertaining to the bardana (empty gunny bags), and

documents relating to the arrest of the appellant in support of the oral testimony.

6. In relation to **FIR No. 19 of 1999**, the prosecution examined:

- PW-1 Dil Shad Ahmed Behan,
- PW-2 Abdul Hakeem Channa,
- PW-3 Shoukat Ali Soomro (District Food Controller), who also produced all relevant documents in support of the prosecution's case.

Thereafter, the learned State Counsel formally closed the prosecution's side.

7. The present appellant in his statement recorded in terms of section 342 Cr. PC, denied the allegations leveled against him by pleading his innocence. He stated that the prosecution's evidence was false or manipulated and that he had not misappropriated any wheat or bags.

8. The learned trial Court on evaluation of the material brought on record and hearing counsel for the parties convicted and sentenced the present appellant vide impugned judgment, as discussed above.

9. Mr Khan Muhammad Sangi, learned counsel for the Appellant, has argued that the impugned convictions represent a grave miscarriage of justice and merit being set aside. He

submitted that the testimonies of the prosecution witnesses are fraught with material contradictions and inconsistencies, particularly on critical aspects such as the handling of wheat bags, the discrepancy between the quantities dispatched and received, and the procedures adopted during the screening and transportation processes. These inconsistencies, he argued, severely undermine the credibility of the prosecution's case and render its version of events wholly unreliable. The learned counsel maintained that the prosecution's evidence is neither coherent nor conclusive enough to warrant a conviction in criminal proceedings. He further argued that there is no concrete or direct evidence linking the Appellant to the alleged misappropriation of wheat or bardana. Mere shortages discovered post-screening, or unaccounted-for sacks, do not, in and of themselves, constitute proof of dishonest misappropriation by the Appellant. No recovery of wheat bags or empty bardana was effected from the Appellant's possession, either during or subsequent to the investigation, thus precluding any definitive inference of culpability on his part. It was contended that the case of the prosecution is primarily built upon inferences and presumptions rather than upon substantive evidence. The prosecution, he argued, has entirely failed to establish *mens rea*—a necessary element in cases of criminal breach of trust. There is no evidence to suggest that the Appellant gained any personal gain or gave benefit to anyone from the alleged shortages. Given that the wheat procurement and storage

operations involved multiple individuals—including transport contractors and other supervisory staff—it is unjust to presume exclusive liability on the part of the Appellant in the absence of clear and particularised proof. The learned counsel further drew attention to the fact that although PW-1, Mureed Ali Chandio, in FIR No. 5 of 1998, alluded to the existence of a departmental inquiry report, the same was conspicuously not produced in evidence. This, he argued, casts a shadow over the prosecution's case and suggests that the said inquiry may have been exculpatory. The non-production of such a crucial document ought to be construed adversely to the prosecution. Additionally, it was argued that the entire investigation was vitiated by malice, departmental politics, or ulterior motives. The FIRs were registered belatedly—years after the alleged procurement seasons (FIRs lodged in 1998 and 1999 for seasons allegedly occurring in 1996–97 and 1998–99, respectively), but the trials concluded in 2022. Such an extraordinary delay, it was contended, lends credence to the suspicion that the prosecution was tainted by mala fides. On the legal plane, the learned counsel underscored the cardinal principle of criminal jurisprudence—that the benefit of the doubt must be extended to the accused as of right. Since the prosecution has failed to establish its case beyond reasonable doubt, the convictions cannot be sustained. The Appellant, he urged, is entitled to acquittal on settled principles of law. In conclusion, it was prayed that the convictions and sentences awarded to the Appellant be

set aside, and that he be acquitted of all charges in the interest of justice.

10. Conversely, Syed Sardar Ali Shah, the learned Additional Prosecutor General appearing on behalf of the State, opposed the instant appeals and fully supported the judgments rendered by the learned trial court. He submitted that the prosecution had successfully discharged its burden of proof through cogent, consistent, and reliable evidence. All the prosecution witnesses, particularly those from the Food Department and the Anti-Corruption Establishment, had provided a coherent narrative, affirming that the Appellant, being the Food Supervisor and custodian-in-charge of the respective procurement centres, was responsible for the substantial shortages of wheat and bardana. The learned Addl. P.G. contended that the trial court had rightly relied upon the cumulative effect of the testimonies which, when considered in conjunction with the documentary evidence produced, established the Appellant's culpability beyond reasonable doubt. He maintained that any minor inconsistencies in the statements of witnesses were inconsequential and did not undermine the substantive case of the prosecution. According to him, these minor deviations were natural and to be expected in any case involving multiple witnesses over a long lapse of time, particularly considering the fact that the offences were committed during crop seasons as far back as 1996–97 and 1998–99. He further argued that the enormity of the discrepancy—thousands of wheat bags going missing—was not something that

could be explained away as a clerical error or simple miscalculation. The Appellant, being the officer entrusted with the custody of this government property, bore a legal duty to account for the same. His failure to do so, in the absence of any plausible or documented explanation, amounted to a breach of trust and misuse of official authority. The learned Addl. P.G. also submitted that the prosecution witnesses were public officials discharging their duties in an official capacity and had no personal animosity against the Appellant. Therefore, there existed no reason for them to falsely implicate him. He maintained that the investigation had been conducted in a fair and lawful manner and that the record did not support any allegation of mala fide on the part of the investigating agency or the witnesses. It was further argued that the Appellant's mere denial of allegations, in the face of overwhelming evidence, could not exonerate him. Once the prosecution had established a prima facie case, the burden shifted to the Appellant to account for the shortages. His failure to do so, the learned State Counsel argued, warranted the drawing of an adverse inference against him. In conclusion, the learned Addl. P.G. submitted that the findings recorded by the trial court were in accordance with law, based upon proper appreciation of evidence, and free from any legal infirmity. He, therefore, prayed that both the appeals be dismissed as being devoid of merit and that the convictions and sentences awarded to the Appellant be maintained.

11. I have given thoughtful consideration to the arguments advanced by both sides and have undertaken a meticulous examination of the entire trial record, assisted ably by learned counsel. In line with the settled principles governing a first appellate court in a criminal matter, this Court has conducted an independent **re-appraisal of the evidence** to reach its own conclusions. Upon such re-examination, it emerges that the prosecution's case is beset with significant doubts and material infirmities which were either overlooked or insufficiently addressed by the learned trial court. A holistic evaluation of the record reveals that, while the prosecution witnesses have attempted to support the allegations against the Appellant, their evidence, when scrutinised in light of the available documentary and circumstantial material, is riddled with contradictions, omissions, and inherent improbabilities that substantially weaken the prosecution's version. To begin with, in the first case arising out of **FIR No. 05 of 1998**, the central accusation was that the Appellant had misappropriated 1,173 bags of wheat while functioning as Incharge of the Wheat Procurement Centre at Hingoro during the crop season 1996–97. However, the prosecution's own evidence introduces considerable ambiguity regarding this assertion. **PW-1, Mureed Ali Chandio** (the complainant), deposed that on 29.04.1998, he received a letter from the District Food Controller, Sukkur, stating that the entire loss had been recouped save for a shortfall of 9,305 kilograms of wheat, which was detected following a screening process

conducted on the stocks dispatched from the Hingoro Centre to the Arain Road godown in Sukkur. He produced this letter in evidence. This contemporaneous document emanating from the Food Department suggests that any alleged misappropriation may have been substantially made good, with only a residual deficit remaining — and that too after screening, a process which is known to involve weight loss due to extraneous matter in the wheat. **PW-2, Syed Changal Shah**, the Storage Officer, corroborated that upon conducting screening, he found a deficit of 9,305 kilograms of wheat in the consignment. While he attributed responsibility to the Appellant, his conclusion appears to be drawn without reference to any formal departmental findings or audit report. Notably, neither PW-1 nor PW-2 brought on record any official inquiry report, audit, or written findings from the competent departmental authority that squarely fixed liability on the Appellant. Although PW-1 made a vague reference to some departmental inquiry, he did not produce the report nor shed light on its conclusions. The absence of such a critical document — which, if adverse to the accused, the prosecution would be expected to rely upon — raises an adverse inference under the settled rules of evidence. It is trite law that the prosecution must present the best available evidence in support of its case. The omission to produce the inquiry report, despite its apparent relevance, constitutes a material gap in the evidentiary chain. Consequently, this Court has been deprived of the benefit of any formal or authoritative determination by the department as to

the cause of the shortfall or the precise role, if any, of the Appellant in its occurrence.

12. Moreover, the cross-examination of key prosecution witnesses exposed further vulnerabilities in the prosecution's case. PW-2, Syed Changal Shah, the officer who allegedly discovered the wheat shortage following a screening process, made several material admissions during cross-examination which significantly undermined the credibility of his evidence. Notably, he acknowledged that his statement under Section 161 Cr.P.C., recorded during the course of investigation, had not been provided to the Anti-Corruption Establishment (ACE) police. This represents a fundamental procedural lapse, as such statements form an essential part of the investigative record and their omission raises questions regarding the transparency and completeness of the investigative process. Furthermore, PW-2 conceded that he neither maintained nor produced any receipts or documentation for the payments made to labourers engaged in conducting the screening process. Equally significant is his failure to produce any weight records of the wheat bags, either before or after the screening. These omissions are of considerable evidentiary value because, in the absence of such documentary proof, the methodology, accuracy, and legitimacy of the screening process cannot be independently verified. The alleged shortfall, therefore, rests upon uncorroborated oral testimony, lacking empirical support. Additionally, PW-2 admitted that he was unaware of any complaints from the District Food Controller

(DFC) relating to shortages at the procurement centre during the time of his inspection. Even more crucially, he stated that the transport contractor — the individual responsible for transporting wheat from the procurement centre to the government godown — had never lodged any complaint against the Appellant. He was also unable to specify the exact dates of dispatch and arrival of the wheat consignments from the Hingoro Centre to the Sukkur godown. These admissions, viewed cumulatively, cast substantial doubt on the reliability of PW-2's evidence. They also fail to exclude the possibility that the alleged shortage may have occurred during transportation, or prior to the Appellant assuming custody of the stock. In the absence of documentary evidence establishing a clear chain of custody and quantifiable shortage traceable directly to the Appellant, the prosecution's case lacks the necessary cogency to sustain a conviction for criminal breach of trust or misappropriation.

13. **PW-3, Tauheed Ahmed Awan**, who served as Office Superintendent in the District Food Controller's office, also furnished testimony which, upon scrutiny, appears to significantly weaken the prosecution's case. During cross-examination, he described various wheat consignments dispatched from the Hingoro Procurement Centre and the corresponding dates of their receipt at the Sukkur godown. For instance, 99 bags dispatched on 28.06.1997 were received on 02.07.1997; 17 bags dispatched on 04.07.1997 were received on 08.07.1997; 67 bags on 08.07.1997 reached on 11.07.1997; 101

bags dispatched on 16.07.1997 arrived on 19.07.1997; another 101 bags dispatched on 19.07.1997 were received on 21.07.1997; and 43 bags sent on 21.07.1997 were received as late as 29.07.1997. These details establish that there were considerable delays between dispatch and receipt — a factor that cannot be disregarded in assessing where the alleged shortages might have occurred. Crucially, PW-3 also conceded during cross-examination that in his prior statement recorded under Section 161 Cr.P.C., he had affirmed that the Appellant deposited 4,657 bardana (empty wheat bags) in 1998. This is a highly material admission, as 4,657 is precisely the number of missing empty sacks alleged by the prosecution in this case. If the Appellant indeed deposited these sacks — as acknowledged in PW-3's earlier statement — it materially contradicts the core allegation that those sacks were misappropriated. Rather, it supports the defence narrative that the stock was either returned or duly accounted for, thereby eroding the foundation of the prosecution's charge regarding criminal breach of trust in respect of the bardana.Furthermore, as rightly pointed out by the learned counsel for the Appellant, no transport contractor or independent carrier was produced during trial. Given that the wheat consignments were transported from the procurement centre to the central godown via trucks — presumably under third-party contractual arrangements — it was incumbent upon the prosecution to examine the relevant transporter(s) or produce evidence of the logistical chain (such as handing over/taking over

records or delivery receipts). In a case where the allegation pertains to misappropriation during the course of enroute transit or transfer, the absence of such testimony creates a significant evidentiary vacuum. This omission becomes even more pertinent in light of the admitted delays between dispatch and receipt, which raise the possibility of pilferage, mismanagement, or procedural lapses occurring during transit — a phase arguably beyond the direct control of the Appellant. The failure of the prosecution to account for this segment of the custody chain militates against the claim that the Appellant alone bears criminal responsibility for the shortages. It also offends the well-established principle of criminal law that the **burden to prove guilt** beyond reasonable doubt rests squarely with the prosecution, and that no conviction can rest on inference or conjecture, particularly when material gaps exist in the chain of evidence.

14. In light of the evidentiary infirmities discussed above, the defence plea advanced by the Appellant acquires significant credibility. Throughout the trial, the Appellant consistently maintained that he had not misappropriated any stock, and that if any shortfall did occur, it was either minimal and later rectified or occurred outside his direct control—such as during transportation or due to weight discrepancies, which were subject to adjustment through the screening process. The material on record supports the plausibility of this stance. The prosecution's own documents and admissions – particularly the letter

indicating that most of the alleged loss had been recouped, the absence of documented proof of screening results, the non-production of any departmental inquiry report, and the unexplained transportation delays – lend reasonable support to the Appellant's narrative. Where the explanation furnished by the accused appears reasonable and consistent with innocence, even if not proved conclusively, the settled principle of criminal jurisprudence demands that the benefit of doubt be extended to the accused. The prosecution must independently establish guilt beyond reasonable doubt; the accused bears no legal burden to establish his innocence. If the facts are susceptible to an interpretation that is consistent with innocence, such an interpretation must prevail. It is trite law that the prosecution's case must stand on its own strength and not on the weakness or absence of the defence. **A holistic evaluation of the evidence** reveals that the prosecution failed to discharge its burden to prove the guilt of the Appellant to the requisite legal standard. The evidence adduced is not of the unimpeachable and confidence-inspiring quality which the law requires to sustain a conviction. On the contrary, the evidentiary record is riddled with ambiguities, contradictions, and lacunae. Material evidence – such as comprehensive audit reports, the testimony of transport contractors, or the physical recovery of allegedly misappropriated stock – is conspicuously absent. Where evidence was produced, it is marred by inconsistencies or lacks corroboration. Notably, PW-3's contradiction between his courtroom testimony concerning

dispatch and receipt dates and his earlier statement that the Appellant had deposited precisely the number of bardana sacks alleged to have been misappropriated is irreconcilable. This alone significantly undermines the prosecution's version in relation to FIR No. 05 of 1998. Similarly, PW-2's admission that no transport contractor raised any complaint and no action was initiated against such carriers further casts doubt upon the theory of massive misappropriation occurring under the Appellant's supervision. In a case involving an alleged disappearance of thousands of kilograms of wheat, it is implausible that no transporter would be held to account if the theft had genuinely occurred in transit. These glaring omissions, contradictions, and evidentiary gaps go far beyond trivial inconsistencies – they strike at the core of the prosecution's ability to prove the essential elements of the offence, namely **actus reus** and **mens rea**. As such, the cumulative effect of these deficiencies creates more than a shadow of doubt; it raises grave and substantial doubts that must operate to the benefit of the Appellant under the golden thread of criminal law: ***"It is better that ten guilty persons escape than that one innocent suffer."***

15. It is pertinent to recall that, in criminal jurisprudence, both *actus reus* (the guilty act) and *mens rea* (the guilty mind) are essential and inseparable components of any criminal offence. In the context of the present charges—namely, criminal breach of

criminal intent, derived personal benefit, or orchestrated the alleged discrepancy. Indeed, no recovery of missing stock was made from the Appellant, nor was any pecuniary gain traced to him. The prosecution relied instead on presumptions, rather than proof, in attributing liability to the Appellant. Yet, it is trite law that every deficiency in record or irregularity in inventory cannot *ipso facto* amount to a criminal offence. The law demands that misconduct, to be criminal, must be wilful, deliberate, and actuated by dishonest intent. In the absence of substantive evidence of such intent, particularly in a case involving multiple actors and procedural lapses, the prosecution's case collapses under its own weight. The doctrine of presumption has no place in criminal law unless supported by direct or circumstantial evidence that meets the standard of proof beyond reasonable doubt. Suspicion, however grave or well-founded, cannot take the place of legally sufficient evidence. **As our Criminal jurisprudence has repeatedly cautioned, criminal convictions cannot be founded on conjecture, surmise, or probabilities**—they must rest on firm, credible, and admissible proof that leaves no room for reasonable doubt. Furthermore, in such circumstances, the accused is under no obligation to prove his innocence or to account for every allegation. The burden of proof lies squarely and exclusively with the prosecution, from commencement to conclusion of the trial, and never shifts to the accused. Where that burden remains unmet, the presumption of innocence must prevail. Consequently, in the present case, where

both *actus reus* and *mens rea* are not established to the requisite legal threshold, the Appellant is entitled, as a matter of right and not indulgence, to the benefit of the doubt and acquittal.

16. It is a cardinal principle of criminal jurisprudence that a conviction cannot be sustained unless the prosecution proves its case beyond reasonable doubt. The phrase "beyond reasonable doubt" connotes a standard of proof so compelling that a reasonable and prudent person would not hesitate to rely upon it in the gravest affairs of their own life. The law does not permit a conviction to rest upon conjecture, speculation, or mere probabilities; any substantive doubt arising on the evidence must be resolved in favour of the accused. This standard is more than a procedural technicality—it is the bedrock of the right to a fair trial and the presumption of innocence. Our superior courts have consistently reiterated this principle. In ***Muhammad Zafar and another v. Rustam and others*** **(2017 SCMR 1639)**, the Honourable Supreme Court held in unequivocal terms that the prosecution must establish its case on the strength of its own evidence and cannot derive any benefit from shortcomings in the defence. Where the facts proven by the prosecution are equally consistent with the innocence of the accused as with his guilt, the prosecution must be deemed to have failed in discharging its burden. This judicial consensus mirrors the long-established principles of English common law. As often expressed, if two interpretations of the evidence are reasonably possible—one pointing to guilt and the other to innocence—the latter must be

preferred. The accused must be acquitted unless the prosecution's version is the only reasonable inference to be drawn from the evidence. This is encapsulated in the Latin maxim *in* ***dubio pro reo***—"when in doubt, favour the accused." The so-called "golden thread" running through criminal law is that it is better for ten guilty persons to escape than for one innocent person to suffer. The presumption of innocence remains until displaced by cogent, credible, and confidence-inspiring evidence. A court that finds itself in doubt must not speculate to bridge evidentiary gaps; rather, it is duty-bound to give the benefit of doubt to the accused. That is not a concession but a right guaranteed by the principles of justice and enshrined in our Constitution.

17. It is equally well-established in our criminal jurisprudence that, particularly in cases involving grave consequences such as lengthy imprisonment, the courts must prioritise the ***quality*** **of evidence over its** ***quantity.*** A conviction cannot lawfully rest upon evidence that is doubtful, inconsistent, or tainted by inherent weaknesses. Rather, it must be grounded in testimony that is credible, reliable, and of unimpeachable character. The test is not merely whether some evidence exists, but whether the evidence is of such probative value as to exclude all reasonable doubt regarding the accused's guilt. Our superior courts have repeatedly cautioned against the dangers of basing findings of guilt upon testimony that contains material contradictions, dishonest embellishments, or uncorroborated assertions. Such evidence must be approached with extreme circumspection.

In ***Sardar Bibi v. Munir Ahmed*** **(2017 SCMR 344)** and ***Muhammad Arif v. The State*** **(2019 SCMR 631),** the Honourable Supreme Court categorically held that when prosecution witnesses introduce deliberate improvements or deviations in their testimony to artificially strengthen the case, their credibility is irreparably compromised. Such conduct renders their entire deposition suspect. In the case at hand, the prosecution's evidence is fraught with precisely such flaws. As demonstrated through the preceding analysis, several witnesses made statements that were either inconsistent with their earlier recorded versions or were not supported by documentary evidence. Their testimony lacked the ring of truth required to **inspire judicial confidence.** In such circumstances, the legal threshold for sustaining a conviction has not been met.

18. For the reasons discussed hereinabove, I have arrived at the considered conclusion that the prosecution has wholly failed to establish its case against the appellant/convict beyond reasonable doubt. It is a firmly entrenched principle of criminal jurisprudence that to extend the benefit of doubt to an accused person, it is not essential that numerous circumstances must co-exist to generate uncertainty. Rather, the emergence of a single plausible circumstance which raises a reasonable doubt as to the guilt of the accused is sufficient to entitle him to an acquittal. Such doubt must always be resolved in favour of the accused as of right, not as a concession. In this regard, reliance is placed upon the judgment of the Honourable Supreme Court of Pakistan

in ***Muhammad Hassan and Another v. The State*** **[2024 SCMR 1427],** wherein it was authoritatively held that:

> *"According to these principles, once a single loophole/ lacuna is observed in a case presented by the prosecution, the benefit of such loophole/lacuna in the prosecution case automatically goes in favour of an accused."*[1]

19. In the final analysis, and as a natural corollary to the foregoing discussion, this Court is of the considered view that the prosecution has utterly failed to establish the charge against the Appellant beyond the shadow of a reasonable doubt. The manifold deficiencies, contradictions, and omissions in the prosecution evidence give rise to serious and substantial doubt regarding the alleged misappropriation and the Appellant's role therein. In keeping with the well-settled principles of criminal jurisprudence, as discussed supra, the Appellant is entitled to the

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[1] See also; *MUHAMMAD MANSHA v. The STATE 2018 SCMR 772- "4. 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 be 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 Tarique Parvez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v.The State (2008 SCMR 1221), Mohammad Akram v. The State 2009 SCMR 230) and Mohammad Zaman v.The State (2014 SCMR 749)."*

See alos; Daniel Boyd (Muslim Name Saifullah) and another v. The State (1992 SCMR 196); Gul Dast Khan v. The State (2009 SCMR 431); Muhammad Ashraf alias Acchu v. The State (2019 SCMR 652); Abdul Jabbar and another v. The State (2019 SCMR 129); Mst. Asia Bibi v. The State and others (PLD 2019 SC 64) and Muhammad Imran v. The State (2020 SCMR 857).

benefit of doubt as a matter of right and not as a concession. Accordingly, the convictions and sentences recorded against Appellant Niaz Hussain Shah by the learned trial Court through the impugned judgments dated 26.11.2022 in Special Case No.126 of 2010 and Special Case No.127 of 2010 are hereby **set aside.** Consequently, both Criminal Appeals, i.e., Criminal Appeal No. S-112 of 2022 and Criminal Appeal No. S-113 of 2022, are ***allowed.*** The Appellant stands **acquitted** of all charges. The Appellant, who remained on bail during the pendency of these appeals, is present before the Court and has been informed of his acquittal in open Court. His bail bonds are hereby cancelled, and the sureties are discharged forthwith. If any amount of fine has been deposited by the Appellant in advance, the same shall be refunded to him in accordance with law.

Before parting with the file, it is directed that the Office shall place a signed copy of this judgment in the record of each connected appeal, namely Criminal Appeal No. S-112 of 2022 and Criminal Appeal No. S-113 of 2022, as both were heard together and are disposed of through this common judgment.

JUDGE

Announced by me.

28/4/25