# IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

***Mr. Justice Khadim Hussain Tunio***
***Mr. Justice Amjad Ali Sahito***

**Criminal Appeal No.648 of 2024**
**Confirmation Case No.12 of 2024**
**Criminal Acquittal Appeal No.33 of 2025**

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| Appellant<br>[in Crl. Appeal No.648/2024] | : | Rasheed S/o Babu Soomro<br>through Mr. Sanaullah Soomro, Advocate |
| Respondent | : | For State/Appellant in Acquittal Appeal<br>Mr. Muhammad Iqbal Awan, Addl. P.G. |
| Date of Hearing | : | 17.02.2026 |
| Date of Judgment | : | 23.02.2026 |

## J U D G M E N T

***Amjad Ali Sahito, J-.*** By this common judgment, we intend to dispose of instant Criminal Appeal, Criminal Acquittal Appeal and Confirmation Case. Through the Crl. Appeal, the appellant has impugned the Judgment dated 13.09.2024 passed by the learned Sessions Judge, Sujawal in Sessions Case No.11 of 2023 arising out of the FIR No.37/2018 U/s 302, 114, 34 PPC of PS Ladiyun; whereby the appellant was convicted for offence punishable under Section 302(b) PPC and sentenced to death and was ordered to hang by neck till he is dead. He was also liable to pay compensation to the tune of Rs.500,000/- to the legal heirs/walis of deceased Mubarak, failing which he shall undergo further S.I. for six months. Whereas, through Crl. Acquittal Appeal, the State challenges impugned order dated 13.09.2024 passed by learned Sessions Judge, Sujawal in Sessions Case No.08 of 2023 arising out of the FIR No.38/2018 U/s 23(1)(A) SAA, 2013 registered at PS Ladiyun; whereby Respondent/present appellant was acquitted.

2. Precisely, the prosecution case, as set forth by the Informant Siddique, is that his son, namely Mubarak, had

previously developed a dispute with Rasheed Soomro and others regarding the issue of passage in front of their house. It is alleged that on 20.11.2018, at about the time of Isha prayers, one Razzak son of Soomar Dhandhal approached the informant and conveyed that Mubarak had gone to the hotel of Ismail Soomro to lodge a complaint against Rasheed Soomro. During the said visit, an altercation ensued between Mubarak and Rasheed Soomro, and they exchanged harsh words. In the course of the quarrel, Ismail Soomro allegedly instigated Rasheed Soomro to commit the murder of Mubarak. Thereupon, Rasheed Soomro is stated to have drawn a pistol from the fold of his shalwar and, with the intention to commit murder, fired a shot at Mubarak. The firearm injury struck Mubarak on the left side of his head, causing him to fall to the ground.

3. Upon receiving the information, the informant rushed to the hotel of Ismail Soomro and found his son lying on the ground in an unconscious condition, while Rasheed Soomro, armed with a pistol, fled from the place of occurrence. The injured Mubarak was thereafter shifted to the hospital after arranging transportation; however, he succumbed to the injury sustained.

4. Subsequent to the funeral and burial rites of the deceased Mubarak, the informant approached the concerned police station and lodged the First Information Report (FIR) in respect of the aforesaid incident.

5. After registration of FIR and conducting usual investigation of the case, the investigating officer submitted charge sheets under section 173 Cr.P.C. in the Court of Civil Judge & Judicial Magistrate Sujawal in which accused Rasheed was shown to be in custody while name of accused Ismail was mentioned in column of absconder.

6. After initiating proceedings under section 87 & 88 Cr.P.C, Ismail son of Babu Soomro was declared as proclaimed offender; however, after the arrest of said absconding accused Ismail, amended charge was framed against present accused as well as

accused Ismail vide Ex.13, to which present accused pleaded not guilty vide Ex.13/A.

7. In order to substantiate its case, the prosecution examined as many as 07 witnesses and produced the relevant documentary evidence on record, which was exhibited at Ex.16 to 31. Thereafter, the learned ADPP for the State closed the prosecution side vide statement recorded at Exhibit 32.

8. The statement of appellant under Section 342 Cr.P.C. was recorded at Exhibit 34, wherein he denied the allegations levelled against him and stated that he has been falsely implicated n this case. However, the appellant neither examined himself on oath nor produced any witness in his defence.

9. Upon appraisal of the entire evidence and hearing the parties, the learned trial Court convicted and sentenced the appellant vide judgment dated 13.09.2024, which has been impugned in the present appeal.

10. Learned counsel for the appellant contended that the appellant is innocent and has been falsely implicated in this case; that there are material contradictions in the evidence of prosecution witnesses; that the recovery had not been proved, however, from the face of evidence, it has been foisted upon the appellant; that there is no independent person shown as a witness to believe that the appellant has committed the said offence; that there is conflict between ocular and medical evidence. He further added that prosecution has miserable failed to prove the case against the appellant and thus, according to him, the appellant is entitled to his acquittal. Lastly, he contended that if acquittal is not possible then it is fit case which can be converted death to imprisonment for life. In support of his contention, he has relied upon the cases reported as 2009 MLD 616 (Niaz Muhammad vs. The State), 2000 PCRLJ 1786 (Lakhi vs. The State) and 1985 SCMR 662 (Muhabbat Ali and another vs. The State).

11. Conversely, learned Addl. P.G. has fully supported the impugned judgment and argued that the present appellant was implicated by the informant in the commission of murder of his son Mubarak; as such, he is not entitled for acquittal.

12. We have heard the learned counsel for the appellant as well as learned Addl. Prosecutor General, Sindh and have minutely examined the material available on record with their able assistance.

13. It is an admitted position that PW-1 Siddique, the informant is not an eyewitness to the occurrence in question. As borne out from the record, he was apprised of the incident by PW-2 Razzak, and it was on the basis of the information so conveyed to him that he proceeded further in the matter and lodged FIR. In the FIR, it was disclosed that on 20.11.2018, during the night hours, PW-2 Razzak came to his house and informed him that he and one Achar were present at the hotel of Ismail Soomro when Rasheed arrived there and, upon the instigation of his brother Ismail, took out a pistol from the fold of his shalwar and made a straight fire at Mubarak, which struck the right temporal side of his head. Upon receiving such information, the informant immediately proceeded to Thori Stop, where he found his son Mubarak lying in an injured condition, while the accused Rasheed, armed with a pistol, was present at the spot and, upon seeing him and other villagers, fled from the scene.

14. Upon careful appraisal of the entire material available on record, we are of the considered view that the conduct of the informant and the purported eyewitnesses does not inspire confidence. Their testimonies, when juxtaposed with other evidence on record, reveal material inconsistencies and contradictions that strike at the very root of the prosecution case.

15. The informant, while deposing before the Court, narrated a version materially divergent from that set forth in the FIR. In his examination-in-chief, he stated that a few days prior to the incident, his son and the appellant Rasheed had exchanged hot

words. On 20.11.2018, at about 7:30 p.m., PW-2 Razzak informed him that Mubarak was sitting at the hotel of Ismail Soomro and that, upon the instigation of his brother Ismail, Rasheed had killed him. Thereafter, he proceeded to the place of occurrence and found his son unconscious, while the accused Rasheed was holding a pistol in his hand and escaped upon seeing him. He then arranged a vehicle and shifted his son to Sujawal Hospital.

16. He further deposed that PW-2 Razzak went to the police station to report the matter, whereupon the police reached Sujawal Hospital, prepared the necessary documentation, and after conducting post-mortem examination, handed over the dead body to his brother Allah Bachayo. The FIR, however, was lodged on 22.11.2018. He also stated that on 25.11.2018, he informed the police that the accused was hiding in a forest near village Jan Muhammad Jat, whereupon he, along with mashirs, proceeded to the pointed place, leading to the arrest of the accused and the recovery of an unlicensed pistol from his personal search.

17. In his cross-examination, the informant admitted that the distance between his village and the place of occurrence was approximately half a kilometre and that the village comprised about 200–250 houses. He further admitted that at about 7:30 or 7:35 p.m., Razzak came to his house to inform him of the incident, and thereafter he, along with Iqbal, Razzak, and Allah Bachayo, proceeded in a Suzuki vehicle to the place of occurrence. He conceded that there was no electricity at the place of incident; however, he introduced an improvement by stating that a battery-operated bulb was illuminating the spot, a fact not mentioned in the FIR. The place of occurrence is stated to be a thickly populated area, yet no independent witness or mashir from amongst the shopkeepers or from the hotel situated at Thori Stop was associated in the investigation. The informant further disclosed that the said hotel belonged to Ismail Soomro.

18. The informant further admitted during cross-examination that upon their arrival at the place of occurrence, his son was found injured and lying on a chair. However, in the FIR he had categorically stated that his son was lying on the ground and had subsequently expired at Sujawal Hospital. In the FIR, it was further disclosed that at about 8:30 p.m., they proceeded with the dead body from Thori Stop towards Sujawal Hospital and reached there at about 9:30 p.m. He deposed that 5 to 7 doctors were present at the hospital and that they arrived there within approximately one and a half hours. He also stated that a police official came on a motorcycle and prepared the necessary documentation.

19. It is indeed surprising to note that PW-2 Razzak, who claims to be an eyewitness and asserts that the appellant Rasheed committed the murder of the informant's son Mubarak in his presence, has deposed in material contradiction to the version furnished by the informant. In his testimony, he stated that on 20.11.2018, he along with the deceased Mubarak and the appellant Rasheed were present at the hotel of Ismail Soomro at Thori Stop. At about 8:30 p.m., the accused Rasheed allegedly took out a pistol from the shop and pointed it towards Mubarak. Upon this, Mubarak cautioned him that the pistol was not a toy and asked him to put it down, whereupon Rasheed fired at him, the shot striking the right temporal side of his head. After sustaining the firearm injury, Mubarak fell down, and PW-2 raised cries, upon which villagers gathered at the spot. The villagers arranged a Suzuki vehicle, and Mubarak was shifted to Sujawal Hospital for treatment. Thereafter, PW-2 proceeded to Jhoongho Jalbani Police Post to obtain a letter for medical treatment. He deposed that he obtained the said letter and that the police accompanied him to Sujawal Hospital, where Mubarak had already expired. The police then completed the formalities, prepared the memo of the dead body and the Danishnama, which he and one Loung signed; the same were exhibited as Ex.17/A and Ex.17/B. The dead body was thereafter handed

over to Allah Bachayo, and it was brought back to the village for burial.

20. PW-2 admitted that his statement was not recorded by the police. In cross-examination, he conceded that he had reached the hotel/place of occurrence at about 7:00 p.m., where only three persons, Rasheed, Mubarak, and himself, were present. He further admitted that the place of occurrence is a thickly populated area, yet no other independent person was cited as a witness in the case. He acknowledged that there was no electric connection and that it was dark at the relevant time, as there is no electricity in their village. He also admitted that the deceased was sitting on a chair at the time he sustained the injury. Furthermore, he conceded that the informant had filed an application to give up witness Achar from the case. He stated that he went on a motorcycle to obtain the letter from the police post and that the police visited the place of occurrence after 2–3 days. He also admitted that signatures were obtained by the police in the hospital on blank papers.

21. It is pertinent to note the glaring contradiction regarding the timing of the incident. The informant asserted that PW-2 Razzak came to his house at about 7:30 p.m. and informed him that his son had been killed by the appellant. Conversely, PW-2 deposed that at about 8:30 p.m. the accused Rasheed took out the pistol, pointed it at Mubarak, and fired upon him. The informant stated that upon receiving information, he proceeded to the place of occurrence, whereas PW-2 stated that immediately after the firing, he and the villagers arranged a Suzuki and shifted the injured to Sujawal Hospital, and that he thereafter went to the police post for a treatment letter. The informant, however, maintained that Razzak went to the police station to report the matter and that the police reached the hospital and prepared the proceedings there. Although PW-2 stated that the police completed proceedings in the presence of the informant, he admitted that after completing formalities, the memo of the dead body and Danishnama were prepared, and the dead body was handed over to Allah Bachayo and taken to the village.

22. The inconsistencies do not end here. The informant admitted in cross-examination that "it was about 7:35 or 7:30 p.m. when Razzak came to my house and informed me about the incident." If this assertion is accepted as true, it becomes irreconcilable with the version of PW-2, who categorically stated that the accused fired upon Mubarak at about 8:30 p.m. Furthermore, PW-2 deposed that the villagers shifted the injured to the hospital for treatment, whereas PW-1 Siddique stated that he arrived at the place of occurrence at about 9:30 p.m. Both witnesses admitted that it was dark and there was no electricity at the relevant time. PW-2 stated that the informant came to the place of occurrence on foot, whereas PW-1 stated that he arrived in a Suzuki vehicle belonging to Usman. These contradictions are material and go to the root of the prosecution case.

23. Moreover, the very presence of PW-2 Razzak at the place of occurrence appears doubtful. The incident is alleged to have taken place at about 8:30 p.m., at a time when there was complete darkness and no electricity available at the hotel. PW-2 is neither the owner of the hotel nor has he offered any plausible explanation as to why he was present there, such as for taking tea or for any other purpose. In these circumstances, his presence at the spot becomes highly questionable. Legally speaking, in such a situation, the status of the prosecution witness would not be superior to that of a chance witness, whose testimony requires cautious scrutiny and independent corroboration before it can be safely relied upon. *Mst. Rukhsana Begum & Ors v. Sajjad & ors* 2017 SCMR 596 as:-

> "chance witness is one who, in the normal course is not supposed to be present on the crime spot unless he offers a cogent, convincing and believable explanation, justifying his presence there.

In the same case, while following the ***golden*** principle of Criminal Administration of Justice, it was further observed as:-

> "…Single doubt reasonably showing that a witness's presence on the

crime spot was doubtful during the occurrence, it would be sufficient to discard his testimony as a whole.

24. Thus, it can safely be concluded that in the instant case the prosecution was under a legal obligation, in the first instance, to plausibly establish the presence of its witnesses at the place of occurrence at the relevant and specific time, and thereafter to render their narration credible through corroboration by attending circumstantial evidence. In view of the principles governing appreciation of ocular testimony, we are of the considered opinion that the presence of the said witness at the place of incident is doubtful and has not been proved beyond reasonable doubt.

25. A perusal of the record further reveals that the motive, as set up by the informant in the FIR (Exh.16/A), was that 2/3 days prior to the occurrence, the accused and the deceased had exchanged hot words over the issue of passing in front of their house; however, no report in that regard was lodged with the police. From the evidence of PW-2 Razzak, it transpires that on the day of the incident they were present at the hotel of Ismail when the accused Rasheed allegedly took out a pistol from the shop and pointed it towards the deceased. Upon this, Mubarak is stated to have remarked that the pistol was not a toy and asked him to put it down. Such narration does not establish the existence of any deep-seated enmity or extraordinary strained relationship between the accused and the deceased. In the absence of any prior report or cogent evidence demonstrating a serious dispute between appellant Rasheed and deceased Mubarak, the alleged motive remains unsubstantiated. Consequently, the prosecution has failed to prove the motive attributed to the appellant.

26. PW-6 ASI Ali Muhammad, who claimed to be both the author of the FIR and the Investigating Officer of the case, presented yet another version of events. He deposed that on 20.11.2018, while posted at Police Post Jhoongho Jalbani, he received information at about 1930 hours via cellphone from

WHC Muhammad Ashraf, who informed him that a quarrel had taken place at village Jan Muhammad Jatt, Thori Stop, and that the injured party was proceeding towards the police post. He stated that at the relevant time he was at Jati for personal work and directed ASI Ghulam Muhammad Jamali, the Duty Officer, to issue a letter for medical treatment of the injured. According to him, he reached the police post at about 04:00 a.m., where he was informed that injured Mubarak had expired. He further deposed that upon contacting the informant, the latter stated that after completion of burial rites they would approach the police station for registration of the FIR. Accordingly, on 22.11.2018 at about 0800 hours, the informant Siddique, along with others, appeared at the police station and lodged the FIR.

27. However, during cross-examination, PW-6 admitted that ASI Ghulam Muhammad Jamali, along with WPC Abdul Rehman, proceeded from Police Post Jhoongho Jalbani to Civil Hospital, Sujawal, and that the injured was brought there along with the informant. The distance between the police post and the Civil Hospital was stated to be approximately 35/36 kilometers. It is noteworthy that prior to recording his evidence, ASI Ghulam Muhammad Jamali had passed away; consequently, the police proceedings were produced through PW-6. He further admitted that the injured was first brought by the informant party to Police Post Jhoongho Jalbani at about 2000 hours and that the injured was not in his senses. A letter for medical treatment was issued and handed over for presentation before the doctors. He also conceded that the informant appeared at the police station on 22.11.2018 at about 1500 hours and that the FIR was registered at 1620 hours. Thus, the FIR was lodged with a delay of approximately two days, for which no plausible explanation has been furnished by the informant. PW-6 further admitted that there was no electricity at Thori Stop and that he was both the author of the FIR and the Investigating Officer in the case.

28. PW-6 further claimed that in his presence and in the presence of mashirs, the appellant was arrested and an unlicensed pistol was recovered from his possession, for which

memo of arrest and recovery (Ex.24/F) was prepared. However, this version was not corroborated by PW-5 Babu, who was cited as mashir of the said memo. PW-5 admitted that he had produced the memo at Ex.22/B and that it bore his signature; nevertheless, he categorically stated that the accused was not arrested in his presence and that nothing was recovered from the possession of the accused in his presence. In cross-examination, he further admitted that although the memo of arrest and recovery bore a thumb impression, he could not state whether it was his own. He denied the suggestion that the police arrested the accused in his presence and in the presence of mashir Iqbal and recovered one pistol along with two live bullets from his possession. He also denied that he was deposing in favour of the accused out of fear.

29. In these circumstances, the prosecution has failed to establish, through reliable and confidence-inspiring evidence, the recovery of the alleged 30-bore pistol purportedly used by the appellant in the commission of the offence.

30. As regards the Forensic Science Laboratory (FSL) report, the opinion to the effect that the crime empty was fired from the pistol allegedly recovered from the accused carries no evidentiary weight in the circumstances of the present case. The mashir of arrest and recovery, PW-5 Babu, has not supported the prosecution version and has categorically deposed that nothing was recovered from the possession of the accused in his presence. In the absence of reliable proof of recovery, the very foundation upon which the FSL report rests becomes doubtful; consequently, such report is rendered inconsequential in the eyes of law.

31. The matter does not rest there, as even the ocular account fails to find corroboration from the medical evidence. PW-3 Dr. Rasool Bux, Medical Officer, deposed that on 20.11.2018 he was posted at Taluka Hospital, Sujawal. The dead body of deceased Mubarak was brought to the hospital along with letter No. PS/497 dated 20.11.2018 issued by ASI Ghulam Muhammad

Jamali. He commenced the postmortem examination at 09:30 p.m. and concluded it at 10:00 p.m. On examination, rigor mortis was present on the face and neck. He observed a firearm entry wound measuring approximately 2 cm x 2 cm on the anterior aspect of the left temporal bone of the skull and an exit wound on the posterior aspect of the skull with everted margins. He stated that no internal examination was conducted as the bullet had passed through from the anterior left side to the posterior mid portion of the skull. According to his opinion, the time elapsed between death and postmortem was about one hour and thirty minutes.

32. In cross-examination, the doctor admitted that the dead body was brought to the hospital at about 09:20 p.m., and in his opinion, the deceased had died instantaneously at the spot upon receipt of the injury. He further stated that the body was initially shifted to Rural Health Centre Chuhar Jamali and thereafter brought to Civil Hospital Sujawal, and that the distance between the said Rural Health Centre and Civil Hospital could be covered within approximately half an hour by car. He was unaware as to whether the deceased was transported by ambulance or any other vehicle. He also deposed that the police arrived at the hospital at about 09:20 p.m. in a police mobile, and that the letter for conducting postmortem was handed over to him by the ASI. After completion of the postmortem, the dead body was handed over to the police, who prepared the requisite documentation.

33. The doctor further opined that the firearm shot was made from a distance of approximately two feet. However, throughout his testimony, he made no mention of the presence of blackening, tattooing, or charring around the wound. According to standard medical jurisprudence, including Modi's Medical Jurisprudence and Toxicology (21st Edition, p. 354), when a firearm is discharged from a distance of one to two feet, blackening is ordinarily present around the entry wound. The absence of such characteristic findings creates a material inconsistency between the medical evidence and the

prosecution's case.In this context, the reliance is placed upon the **case of Muhammad Zaman v. The State (2014 SCMR 749),** wherein the Hon'ble Supreme Court of Pakistan has held that:-

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

34. The informant, in the FIR, disclosed that PW-2 Razzak informed him that he, along with Achar, was present at the hotel of Ismail Soomro when Rasheed arrived there and the incident allegedly took place. However, the said witness Achar, who was stated to be present at the scene and thus a material witness to the occurrence, was not examined by the prosecution without any plausible explanation.

35. In such circumstances, an adverse presumption is liable to be drawn against the prosecution under Illustration (g) of Article 129 of the Qanoon-e-Shahadat Order, 1984, to the effect that had the said witness been produced and examined, his testimony would have been unfavorable to the prosecution case. Moreover, PW-2 Razzak candidly admitted in his deposition that he was aware that the complainant had filed an application and given up witness Achar from the case, thereby reinforcing the inference that the prosecution withheld a material witness without justification.

36. It is a cardinal principle of criminal jurisprudence that the prosecution is under a legal obligation to prove its case against the accused beyond reasonable doubt by producing evidence that is cogent, reliable, and trustworthy. The testimony of prosecution witnesses must be natural, consistent, and free from material embellishments or improvements.

37. In the present case, however, the informant and the alleged eyewitnesses have failed to present a truthful and complete account before the Court. Their statements are marred by deliberate improvements, omissions, and material discrepancies inter se, which cannot be brushed aside as minor or inconsequential contradictions. The overall tenor of their

testimony and their conduct in the witness box suggest that they have not approached the Court with clean hands. The suppression of material facts coupled with the introduction of new facts during trial casts serious doubt upon the veracity of their claims. Even where a witness is not wholly unreliable, the presence of such infirmities creates a dent in the prosecution case. It is well-settled that where witnesses are found to be unreliable or their testimony suffers from material infirmities, conviction cannot be based solely upon such evidence unless it receives independent and unimpeachable corroboration.

38. In the instant matter, the ocular account furnished by PW-2 Razzak is not supported by the version of the informant. Furthermore, PW-6 ASI Ali Muhammad, the Investigating Officer, has introduced yet another version in his deposition. The informant asserted that he was informed by PW-2 Razzak about the incident at about 7:30 p.m.; however, PW-2 deposed that the occurrence took place at about 8:30 p.m. PW-6 stated that he received information at 19:30 hours that a quarrel had taken place at village Jan Muhammad Jat. On the other hand, PW-3 Dr. Rasool Bux deposed that he commenced the postmortem examination at 9:30 p.m. The informant, in cross-examination, admitted that they arrived at about 9:30 p.m. at the place of occurrence and shifted the injured to the hospital, where he succumbed to the injuries. The memo of dead body (Ex.18/B) reflects that it was prepared on 20.11.2018 at about 2200 hours. These glaring contradictions with respect to the time and sequence of events render the presence of PW-2 Razzak at the place of occurrence highly doubtful.

39. The alleged incident is stated to have occurred at village Thorhi, an area surrounded by houses, shops, and hotels. Despite the place being thickly populated, no independent inhabitant, shopkeeper, or hotel staff was cited or examined as a witness to substantiate the prosecution version. The witnesses examined are closely related to the deceased, including the real son of the informant. Moreover, the Investigating Officer failed to

record the statement of Ismail Soomro, the owner of the hotel, who was a most material and natural witness to the occurrence.

40. In view of the foregoing contradictions, omissions, and investigative lapses, the testimony of the prosecution witnesses is rendered unreliable. These infirmities are sufficient to cast serious doubt upon the prosecution case and undermine its credibility in its entirety. In this context, the reliance is placed upon the case of **Zaffar v. The State (2018 SCMR 326)**, wherein the Hon'ble Supreme Court of Pakistan has held that:-

> *"11. Having discussed all the aforesaid aspects of the case, it has been observed by us that, medical evidence, motive, recovery and for that matter absconding of appellant are merely supportive / corroborative piece of evidence and presence of eyewitness at the place of occurrence at the relevant time has been found by us to be doubtful, no reliance can be placed on the supportive/corroborative piece of evidence to convict the appellant on capital charge."*

41. The rule of benefit of the doubt is essentially a rule of prudence, which cannot be ignored while dispensing justice in accordance with law. The conviction must be based on unimpeachable evidence and certainty of guilt and doubt arising in the prosecution case must be resolved in favor of the accused. The said rule is based on the maxim "*It is better that ten guilty persons be acquitted rather than one innocent be convicted"* which occupied a pivotal place in the Islamic Law and is enforced strictly in view of the saying of the Holy Prophet (*PBUH*) that the "*mistake of Qazi (Judge) in releasing a criminal is better than his mistake in punishing an innocent*".

42. The overall discussion involved a conclusion that the prosecution has failed to prove the guilt against the present appellant beyond any reasonable doubt and it is the well-settled principle of law that for creating a shadow of a doubt, it is not necessary that there should be many circumstances. If a single circumstance creates reasonable doubt in the prudent mind, then its benefit is to be extended in favour of the accused not as

a matter of grace or concession, but as the matter of right. The reliance is placed on the case of **Muhammad Masha v. The State (2018 SCMR 772)**, wherein the Honourable Supreme Court of Pakistan has held that:-

> *"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 accused, then accused would be entitled to the benefit of such doubt, not as a matter of grace and concession but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted". Reliance in this behalf can be made upon the cases of Tariq Pervez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Muhammad Akram v. The State (2009 SCMR 230) and Muhammad Zaman v. The State (2013 SCMR 749).*

43. In this case, the learned trial Court has not evaluated the evidence in its true perspective and thus arrived at an erroneous conclusion by holding the appellant guilty of the offense. Resultantly, the Criminal Appeal No.648 of 2024 is **ALLOWED**. The impugned judgment dated 13.09.2024 passed by the learned Sessions Judge, Sujawal in Sessions Case No.11/2023 is **set aside**. Appellant Rasheed S/O Babo Soomro is **acquitted** of the charges by extending him the benefit of the doubt. The appellant shall be released forthwith if he is no more required in any other custody case.

44. As a result of our above findings, the reference as provided u/s 374 Cr.P.C. submitted by the trial Court for confirmation of the death sentence answered in to **Negative** and disposed of accordingly.

45. So far as the Criminal Acquittal Appeal is concerned, the prosecution case with regard to the alleged recovery of weapon from the present appellant has not been substantiated through reliable and confidence-inspiring evidence. Consequently, the

acquittal of the appellant on this count appears to be fully justified. PW-6, who claimed that the appellant was arrested in possession of an unlicensed pistol and live bullets, has not been corroborated by the mashir of arrest and recovery, PW-5 Babu. The said mashir categorically denied that the appellant was arrested in his presence or that any weapon was recovered from him before him. He further expressed uncertainty regarding the thumb impression appearing on the recovery memo and denied having witnessed the arrest and recovery proceedings. Such denial strikes at the very root of the prosecution's claim and casts serious doubt upon the authenticity and integrity of the alleged recovery.

46. A plain reading of the evidence adduced by the prosecution further reveals that the testimony of PW-01/informant ASI Ali Muhammad is neither credible nor confidence-inspiring. He deposed that he arrested the accused on the pointation of the informant Siddique in Crime No. 37 of 2018 registered at Police Station Ladiyun and recovered an unlicensed pistol along with bullets from his possession in the presence of private witnesses, namely Iqbal and Babu. However, the private mashir Babu, examined at trial, unequivocally stated that he neither witnessed the arrest proceedings nor the recovery of the alleged weapon and ammunition in his presence. Thus, the testimony of the informant regarding arrest and recovery remains uncorroborated and devoid of evidentiary value.

47. From the overall discussion and appraisal of evidence, it becomes manifest that the learned Additional Prosecutor General has failed to establish the guilt of the respondent/accused beyond any shadow of reasonable doubt. In these circumstances, the learned trial Court has rightly and judiciously evaluated the evidence while recording the acquittal of the respondent.

48. It is a settled principle of criminal jurisprudence that every accused is presumed to be innocent until proven guilty, and once an acquittal has been recorded by a Court of competent jurisdiction, such presumption of innocence is further reinforced

and strengthened. Interference in an acquittal requires very strong, cogent, and compelling reasons. Upon careful examination of the impugned judgment, we find that the reasons assigned by the learned trial Court are neither arbitrary, fanciful, nor capricious so as to justify interference by this Court.

49. Consequently, the present Criminal Acquittal Appeal filed by the State through the learned Prosecutor General is devoid of merit and is hereby **dismissed.**

**JUDGE**

**JUDGE**

KAMRAN/PS