

IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:-

Mr. Justice Naimatullah Phulpoto; and
Mr. Justice Shamsuddin Abbasi

Spl. CrI. A.T.J.A. No.20 of 2017

1. Aqil Abbas son of
Ali Abbas;

2. Muhammad Kamran son of
Muhammad Aslam; and

3. Muhammad Tanveer son of
Muhammad Siddique. Appellants

Versus

The State. Respondent

Appellants Through Mr. Nazakat Ali Mirani,
Advocate

Respondent Through Mr. Muhammad Iqbal Awan,
DPG

Date of hearing 13.02.2018
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JUDGMENT

Shamsuddin Abbasi, J: Through captioned appeal, the appellants have assailed the conviction and sentence recorded by the learned Judge of Anti-Terrorism Court No.X, Karachi, by a judgment dated 28.12.2016, passed in Special Case No.197 of 2016, arising out of FIR No.294 of 2015 under Section 384, 385 & 34, PPC read with Section 7 of Anti-Terrorism Act, 1997 registered at Police Station Mochko, Karachi.

2. FIR in this case has been lodged on 30.11.2015 at 1200 to 1215 hours whereas the incident is shown to have taken place on 12.12.2015 at 0030 hours. Complainant Asif Ali has stated that on

the fateful day two unknown persons came to his house and gave a chit to his family members, wherein a demand was made for payment of Rs.1,000,000/- as 'Bhatta' and a cell number 0304-2286346 was also mentioned thereon. On receipt of the chit, the father of the complainant made a phone call on the said number and the person, who received the call, confirmed that the said chit was given by him. The complainant made excuse that he cannot arrange such a huge amount. After few days, the complainant again received a call, wherein the caller demanded Rs.500,000/-, which was reduced to Rs.300,000/- on another call made later on. The culprits also extended threats that in case the amount is not paid, the complainant and his family members would be killed.

3. Based on the above threats and demand of Bhatta, complainant lodged a report at Police Station Mochko, Karachi, vide FIR No.294 of 2015 under Section 384 & 385, PPC.

4. Pursuant to the registration of FIR, the investigation was entrusted to SIO Inspector Jahan Khan Niazi. He visited the place of incident on the pointation of complainant and prepared memo of site inspection, recorded the statements of witnesses and also obtained CDR record of the mobile phone SIM. On 22.01.2016 by the orders of high ups the investigation was transferred and entrusted to Inspector Muhammad Sohail for further investigation. On receipt of investigation, he contacted the complainant and discussed the matter with him. On 23.01.2016 I.O. has received information from ASI Iftikhar Qureshi of SIU that accused Muhammad Kamran, Muhammad Tanveer and Aqil Abbas, arrested in other crimes, have confessed the commission of the present crime. On receipt of such information, I.O. proceeded to SIU and interrogated the accused

persons. During interrogation they voluntarily confessed the commission of the present crime and on their confession, the I.O. rearrested all the three accused in the present crime. During interrogation accused Aqil Abbas informed the I.O. that they used SIM number 0304-2286346 in making calls of Bhatta and further disclosed that he had picked the said SIM from the house of one Amjad, resident of Malir, where he had done painting work. On such disclosure, I.O. recorded the statement of witness Amjad, who confirmed that about three months back accused Adil Abbas had done painting work in his house and during such work accused picked the said sim from his house, but such fact came to his knowledge later on. I.O. collected CDR of the SIM number used in the present crime and also produced the accused persons before the learned Judicial Magistrate-II, Karachi (West) for holding their identification parade through eye witness Mst. Sumbul wife of Muhammad Adnan. He also recorded the statements of witnesses under Section 161, Cr.P.C. and after completing usual investigation submitted challan before the Court of competent jurisdiction under Section 384 & 385, PPC read with Section 7 of Anti-Terrorism Act, 1997.

5. Trial Court framed a charge against the accused persons in respect of offences punishable under Section 384, 385 & 34, PPC read with Section 7 of Anti-Terrorism Act, 1997 at Ex.3, to which they pleaded not guilty and claimed to be tried.

6. At the trial, the prosecution has examined as many as nine (09) witnesses. PW.1 complainant Asif Ali was examined at Ex.4, he produced FIR at Ex.4/A. PW.2 Sabghatullah, Civil Judge/Judicial Magistrate, Karachi (West) was examined at Ex.5, he produced memo

of identification parade at Ex.5/B. PW.3 Mst. Sumbul was examined at Ex.6. PW.4 Amjad Niaz was examined at Ex.7. PW.5 Ali Raza was examined at Ex.8, he produced memo of site inspection at Ex.8/A. PW6 ASI Iftikhar Qureshi was examined at Ex.9. PW.7 PC Ali Jan was examined at Ex.10, he produced memo of arrest of accused at Ex10/A, memo of seizure of CDR and call data at Exs.10/B and 10/C respectively. PW.8 DSP Jahan Khan was examined at Ex.11, he produced entry No.26 at Ex.11/A, entry No.36 at Ex.11/B, CDR reports at Ex.11/G and Ex.11/H. PW.9 Inspector Muhammad Sohail, I.O. of the case, was examined at Ex.12, he produced Roznamcha entry No.46 at Ex.12/B, Roznamcha entry No.47 at Ex.12/C and Roznamcha entry No.48 at Ex.12/D. Vide statement Ex.13, the prosecution closed it's side of evidence.

7. Statements of accused Aqil Abbas, Muhammad Kamran and Muhammad Tanveer under Section 342, Cr.P.C. were recorded at Exs.14, 15 and 16 respectively, wherein they had denied the prosecution case and pleaded their innocence. The accused opted not to make a statement on oath under section 340(2), Cr.P.C. and did not examine any witness in their defence.

8. Trial Court, on conclusion of trial and after hearing the learned counsel for the parties, convicted the accused persons under Section 384, 385 & 34, PPC read with Section 7(1)(h) of Anti-Terrorism Act, 1997 and sentenced to undergo rigorous imprisonment for five years each and to pay a fine of Rs.20,000/- each, in default whereof the accused persons were ordered to suffer rigorous imprisonment for six months more. However, benefit in terms of Section 382-B, Cr.P.C. was extended in favour of the accused.

9. Feeling aggrieved by the conviction and sentence recorded by the learned trial Court, referred to above, the appellants have preferred the present appeal.

10. Learned counsel appearing on behalf of the appellants at the very outset argued that it was a case of acquittal instead the learned trial Court recorded conviction without giving any sound reasons. It is next submitted that the witnesses have contradicted each other on material points, but such contradictions have not been considered by the learned trial Court. No iota of evidence or any other material was available on record to establish the involvement of the appellants in this case, hence no criminal liability could be pinned down on the appellants. The entire story fabricated in the F.I.R. is based on malafide and dishonest intention and further the complainant had not given the names of any of the accused in the FIR. Learned counsel further argued that the incident had taken place on 30.11.2015 whereas the FIR was lodged on 12.12.2015, after the delay of about 12 days of the incident without furnishing any plausible explanation with regard to delay. He has pointed out that the identification parade had been held after five days of arrest of accused Aqil Abbas, hence it has no legal value in the eyes of law. It is also submitted that no substantial evidence had been brought on record against the appellants to establish that they have committed the present crime. He has also pointed out that appellant Muhammad Kamran has been acquitted in a case of recovery of unlicensed revolver vide judgment dated 18.08.2016 passed by the learned Additional Sessions Judge-VIII, Karachi (West) and also placed a copy of the said judgment. Lastly, submitted that the prosecution had failed to discharge its liability of proving the guilt of

the accused beyond shadow of reasonable doubt and prayed for their acquittal.

11. Learned DPG for the State, on the other hand, refuted the arguments advanced by the counsel for the appellants. He submitted that the witnesses in their respective statements have supported the case of the prosecution and involved the accused with the commission of crime, without major contradictions or discrepancies and the minor contradictions are of no significance, and prayed for dismissal of appeal.

12. We have given anxious considerations to the arguments of learned counsel for the appellants and the learned DPG for the State and perused the entire material available before us.

13. The onus to prove it's case lies on the prosecution. To discharge such onus, the prosecution has examined as many as nine witnesses. For the sake of proper appreciation of evidence and its scrutiny, it would be advantageous to discuss and highlight herein below the brief evidence of the prosecution witnesses.

14. PW.1 complainant Asif Ali (Ex.4) has deposed that on 30.11.2015 he was present at his shop, situated at Hawksbay when he received a phone call from his wife, she informed him that two boys came on motorcycle and handed over a brown coloured envelope to Mst. Sumbul, their neighbor, who at that time was present in their house and opened the door on knock, with direction to give the said envelope to Asif. The wife of complainant further informed that when she opened the envelope, there was one piece of cloth having blood stains and one chit wherein Rs.1,000,000/- were demanded as Bhatta and a cell number 0304-2286346 was also written. On receipt of such information, the complainant rushed towards his house. On

reaching the house, he checked the envelope and then went to Rangers Chowki, situated at Sector 6, informed the incident to them and on their advised made a call on the said cell number, but due to insufficient balance, the call was not made and thereafter he made a call from the cell number of his father, the person who received the call made confirmation about receiving Bhatta chit, the complainant made excuse that he could not arrange such a huge amount on which the person threatened him of dire consequences. On next day the complainant again made a call on the said number and the person receiving the call repeated his demand and told that they needed Rs.1,000,000/- for the release of one of their companion, who was behind the bars and finally they reduced the amount to Rs.300,000/-, but the complainant refused and on the advised of Rangers lodged FIR at P.S. Mochko. The complainant further deposed that police visited his house and prepared mashirnama. Police also met with Mst. Sumbul, who told the police that she can identify the person who had given the chit to her. After few days, Inspector Sohail informed the complainant that police has arrested accused involved in this crime and on 28.01.2016 complainant alongwith Mst. Sumbul went to the Court of Magistrate for identification of accused and during such parade Mst. Sumbul identified one accused namely, Aqil Abbas.

15. PW.2 Sabghatullah, Civil Judge & Judicial Magistrate, Karachi West (Ex.5) has supported the case of the prosecution with regard to holding of identification parade of accused, Aqil Abbas, Muhammad Kamran and Muhammad Tanveer, before him on 28.01.2016 and deposed that during such parade witness Mst. Sumbul correctly picked and identified accused Aqil Abbas while

accused Muhammad Kamran and Muhammad Tanveer were not identified by her.

16. PW.3 Mst. Sumbul (Ex.6) has deposed that on 30.11.2015 she was present in the house of her neighbor's namely, Asif when someone knocked the door. She opened the door and found one boy standing there who confirmed from her that the house belonged to Asif and she replied in affirmative. Thereafter, the said boy handed over her a chit and she had given the same to the wife of Asif, who opened it and found one cloth having blood stains. The wife of Asif called her husband Asif, who told her that he is coming. Thereafter, she went away to her house and on next day she was called at P.S. where Inspector Jehan Khan Niazi recorded her 161, Cr.P.C. statement. She further deposed that on 26.01.2016 the said Inspector came to her house and gave a notice for her appearance before the concerned Magistrate for identification parade. On 28.01.2018 she appeared before the Magistrate and identified one accused during identification parade.

17. PW.4 Amjad Niaz (Ex.7) has deposed that he used to supply designing cloths to shopkeepers. On 29.01.2016 he received a phone call from SI Muhammad Sohail of SIU, Karachi, whereby he was informed that his SIM number 0304-2286346 has been recovered from the possession of accused Aqil Abbas, who had been arrested in a crime and he was directed to appear at police station. Thereafter, he went to his house and tried to find out his SIM but could not find it and on 31.01.2016 he went to police station and met with SI Muhammad Sohail, who had recorded his statement. He informed to police that arrested accused Aqil Abbas used to work at his house as painter and during work he might have stolen his SIM.

Police recorded his statement under Section 161, Cr.P.C. In his cross-examination, this witness admitted that he did not make any report regarding missing of his sim even he was unaware that his SIM was stolen and used in a crime. He has denied that he was using the said SIM till 31.01.2016.

18. PW.5 Ali Raza (Ex.8) has deposed that he is a mechanic by profession and on 30.12.2015 after finishing his work he went to his house at about 5.00 or 6.00 pm when he came to know that someone has given a chit to the family members of his uncle Asif, wherein a demand for payment of Rs.500,000/- has been made and a cloth having some blood spots was also there, after that his uncle Asif started receiving the calls of dire consequences. He further deposed that on 12.12.2015 Asif lodged FIR and on the same day Inspector Jehan Khan Niazi visited the house of Asif. Asif gave him a khaki envelope alongwith a piece of cloth having blood spots to said Inspector, who prepared memo of inspection and also recorded his statement under Section 161, Cr.P.C.

19. PW.6 ASI Iftikhar Qureshi (Ex.9) has deposed that on 23.01.2016 he was posted at SIU Saddar. He received FIRs No.05 of 2015 and 06 of 2016 under Section 23(1)(a) of Sindh Arms Act, 2013 for investigation purposes under the orders of high ups so also he received custody of accused, relevant papers and case property. He interrogated the accused and during interrogation accused disclosed that in the month of November, 2015 they wrote extortion slip to one Asif's house alongwith blood stained cloth and they have also informed that they belong to gang war. They further disclosed that they have also written Bhatta chit to Faisal Transport Company at their workshop in the name of Faisal, the owner of the said

workshop. They have also confessed that they set the wheels of the truck on fire. He then contacted P.S. Mauripur and P.S. Mochko and get confirmation report. He also met PI Sohail of SIU, who was dealing with these cases and handed over the custody of accused to him, who arrested accused in Crime No.294 of 2015 and 09 of 2016 and later on his statement under Section 161, Cr.P.C. was also recorded by Inspector Sohail. During his cross-examination, this witness has admitted that he has mentioned FIR No.05 of 2015 and 06 of 2015 in his statement under Section 161, Cr.P.C. and at the same time resiled from his version by stating that it was written mistakenly. He also admitted that it is not mentioned in his 161, Cr.P.C. statement that during interrogation present accused had disclosed that they have sent blood stained cloth to one Asif. He has specifically admitted that he did not produce the accused before Magistrate for recording their confessional statements under Section 164, Cr.P.C. He shown his ignorance that accused have been acquitted from the charges of FIR No.05 of 2016 and FIR No.06 of 2016.

20. PW.7 PC Ali Jan (Ex.10) has deposed that on 22.01.2016 he was posted at P.S. SIU/CIA as police constable and was on patrolling duty alongwith ASI Muhammad Amin, PC Mustafa and two other police officials. During patrolling ASI Amin received spy information that three persons were coming from Hescol petrol pump on their motorbike and they were nominated in many FIRs. On receiving information they started snap checking. Meanwhile, they saw three suspicious persons on motorbike, they intercepted them but said accused tried to escape from the scene, but they got succeeded to arrest them on the spot under Section 54, Cr.P.C. who

disclosed their names as Aqil Abbas, Tanveer and Kamran. ASI Amin conducted their search and recovered one mobile phone alongwith two sims, CNIC and some cards from accused Aqil Abbas, one mobile phone alongwith SIM, one pistol and some cards from accused Tanveer and one mobile phone alongwith sim, pistol and some cards from accused Kamran. Thereafter, they brought the accused at P.S. where ASI Amin registered FIRs against accused Aqil Abbas, Tanveer and Kamran. He further deposed that during interrogation, accused disclosed that they had sent Bhatta chit to one Muhammad Asif, resident of Mauripur and one Faisal, owner of Faisal Transport Company. Police also recovered sim number 0304-2286346. After transfer of investigation, the custody of accused and police papers were handed over to Inspector Sohail, who arrested accused in Crime No.294 of 2015 and Crime No.09 of 2016, prepared memo of arrest at police station and obtained his signature. He further deposed that on 26.01.2016 he was present in his office at about 3.00 pm when Inspector Muhammad Sohail obtained Call Data Record from Technical Branch and prepared memo in his presence and in presence of PC Muhammad Mustafa.

21. PW.8 DSP Jahan Khan Niazi (Ex.11) has deposed that on 12.12.2014 he was posted at P.S. Mochko as SIO and on that day he received FIR No.2094 of 2015 under Section 384, 385, PPC read with Section 7 ATA, 1997 for investigation purposes. He visited the place of incident on the pointation of complainant Asif Ali and prepared memo of site inspection in presence of mashirs Muhammad Saleem and Ali Raza. He further deposed that Muhammad Asif handed over him a khaki colour envelope containing a piece of cloth having some red stains and disclosed that it was the same envelope which was

received by Mst. Sumbul from the accused, but the Bhatta chit was handed over by him to Rangers officials. He recorded the statements of witnesses under Section 161, Cr.P.C. and then returned back to P.S. He also obtained CDR records and also made efforts for accused of accused but to no result as such he prepared a report under 'A' class and on 22.01.2016 the investigation of the case was transferred from him and entrusted to SIU.

22. PW.9 Inspector Muhammad Sohail (Ex.12) has deposed that on 22.01.2016 he was posted at SIU Saddar when he received an order of SSP directing him to conduct investigation of FIR No.09 of 2016 under Section 385, 386 read with Section 7 ATA, 1997 of P.S. Mauripur and FIR No.294 of 2015 under Section 385, 386 read with Section 7 ATA, 1997 of P.S. Mochko. After receiving FIRs and case papers, he visited the place of incident on 22.01.2016 where complainant has handed over him envelope containing Bhatta chip of Rs.2,000,000/- and cloth having red stains of blood. He prepared seizure memo and obtained the signature of complainant as well as of PC Muhammad Mustafa. On 23.01.2016 he received call from ASI Iftikhar of SIU who informed him about the arrest of accused Aqil, Kamran and Tanveer under FIRs No.09 and 294 of 2015. He was further informed that police recovered three mobile phones and four SIMs from the possession of accused including sim number 0304-2286346, which was used in this crime. Thereafter he took custody of accused and interrogated them, who confessed the commission of present crime as such he arrested that in the present crime in presence of mashirs PC Mustafa and PC Ali Jan. He also collected CDR record from Technical Branch and prepared memo of seizure in presence of mashirs PC Mustafa and PC Ali Jan. On 26.01.2016 he

approached the concerned Magistrate and applied for holding of identification parade of accused. The Magistrate fixed the date as 28.01.2016. On said date Mst. Sumbul appeared before Magistrate and identified accused Aqil Abbas in identification parade. After completing investigation he submitted challan in Court. In his cross-examination, he admitted that, *It is correct to suggest that it is mentioned in 161, Cr.P.C. statement of ASI Iftikhar, PC Ali Jan and PC Mustafa that present accused persons were arrested in FIR No.05 of 2015 and 06 of 2015 and the same is mentioned in final challan, but justified this as a typing mistake. He has also admitted that ASI Iftikhar, PC Mustafa and PC Ali Jan were his subordinates. He also admitted that he has not moved any application to the Magistrate for recording confessional statements of accused. He also admitted that neither he has sealed the case property nor made entry in Register No.19 regarding case property. He also admitted that present accused persons remained in his custody from 23.01.2016 to 28.01.2016.*

23. Prosecution has failed to prove it's case against the accused beyond shadow of doubt for the reason that in the identification parade, held before learned Magistrate, the eye witness PW Mst. Sumbul had only identified accused Aqil Abbas while accused Muhammad Kamran and Muhammad Tanveer were not identified by her. So far the identification of accused before Magistrate is concerned, it is an admitted fact that the incident had taken place on 15.12.2015 and accused Aqil Abbas was arrested in this crime on 23.01.2016 but the identification parade was held on 28.01.2016 after the delay of five days of his arrest. Therefore, the possibility of showing the accused to eye witness before holding of identification parade at P.S. cannot be ruled out. Even no plausible

explanation has been brought on record with regard to the delay in holding of identification parade, hence it would be unsafe to rely upon such identification parade, held in violation of rules. Reliance is placed on the case of *Umar Farooque v The State* (NLR 2008 Criminal 104), wherein it has been observed as under:-

“Coming to the circumstantial evidence of test identification parade, it may be remarked that this one is the strangest piece of evidence used against them. It is an admitted fact that right from the day of their physical apprehension they were brought to the police station. They must have been produced before the Magistrate for remand during investigation and it was after twenty days from their arrest that they were produced before Mr. Muhammad Iqbal, Magistrate for identification parade. It has been proved beyond doubt that during these days they remained under custody of some police which had registered a case against them and the members whereof were to appear against them as eye-witnesses. They were, subsequently, identified by the same witnesses under whose custody or under the custody of whose colleagues, they remained throughout. There cannot be a false identification parade than the one in hand. No conviction at all can be based on an identification which is witnessed by police officials in a case where police itself is a complainant and the accused remained in the custody of that very police for about or more than twenty days”.

24. In each case, the investigating officer is an important character, who is under obligation and duty bound to dig out the truth. In the case in hand, it appears that just formalities have been completed and no sincere efforts have been made by the investigating officer towards fair and transparent investigation to dig out the truth. Nothing incriminating had been brought on record against the appellants except the SIM allegedly recovered from the possession of appellants, but it is an admitted fact on record that the police has not sealed the said SIM at the time of its recovery. This fact not only has made the recovery doubtful, but has demolished the whole case of the prosecution and also shattered the entire fabric of the testimony of witnesses. We do not find any surrounding circumstances to

believe that the said SIM has been recovered from the present appellants. It is also a matter of record that appellant Muhammad Kamran and Muhammad Tanveer have been acquitted from the charges of recovery of arms under Section 23(1)(a) of Sindh Arms Act, 2013 by the Court of competent jurisdiction.

25. Needless to mention that in the matters of demanding Bhatta, the criminals generally choose a person or party having sound financial status and handsome source of income. In the case in hand, the prosecution has failed to disclose the financial status or income of the complainant against which accused had demanded Bhatta from him. In the absence of any tangible evidence with regard to sound financial position of the complainant, the demand of Bhatta from him does not appeal to mind of a prudent man. Reliance is placed on the case of *Sagheer Ahmed v The State* (2016 SCMR 1754), wherein it has been observed as under:-

“The averments of FIR are silent regarding the financial status and source of income of the complainant against which accused have been demanding Bhatta. Complainant has also not disclosed the specific dates, times and places of demanding Bhatta by accused persons nor any such evidence was produced before the Investigating Officer to prima facie establish such allegations. In absence of any tangible material, mere allegations of demanding Bhatta do not attract section 6(2)(k) of Anti-Terrorism Act, 1997, in the present case nor said section was mentioned in the FIR and Challan. Perusal of Challan reflects that Investigating Officer had made a request to the Anti-Terrorism Court for return of FIR and other documents so that Challan may be submitted before the ordinary Court of law as no case under the provisions of Anti-Terrorism Act, 1997 was made out, but his request was declined by the Anti-Terrorism Court vide order dated 09.06.2014, and cognizance was taken by the Court.

Cumulative effect of the averments of FIR, surrounding circumstances and other material available on record have replicated that offence having been committed on account of previous old enmity with a definite motive. The alleged offence occurred at Faiz Wah bridge, which is not situated in any populated area, consequently, the allegations of aerial firing have not appeared to us to be a case of terrorism as the motive

for the alleged offence was nothing but personal enmity and private vendetta. The intention of the accused party did not depict or manifest any act of terrorism as contemplated by the provisions of the Anti-Terrorism Act, 1997. Consequently, we are of the considered view that complainant has failed to produce any material before the Investigating Officer that at the time of occurrence sense of fear, panic, terror and insecurity spread in the area, nevertheless it was a simple case of murder due to previous enmity, thus, alleged offence does not fall within purview of any of the provisions of Anti-Terrorism Act, 1997. While probing the question of applicability of provisions of Anti-Terrorism Act, 1997, in any crime, it is incumbent that there should be a sense of insecurity, fear and panic amongst the public at large to invoke the jurisdiction of the Anti-Terrorism Court. Indeed, in each murder case there is loss of life which is also heinous crime against the society but trial of each murder case cannot be adjudicated by the Anti-Terrorism Court, except existence of peculiar circumstances as contemplated under sections 6, 7, 8 of Anti-Terrorism. Act, 1997."

We note that observation made by the High Court is based upon the record of the case and no misreading in this respect was pointed out before us. The submission of learned counsel for the petitioner that in evidence petitioner has brought on record sufficient material to substantiate the fact of demand of Bhatta in FIR that complainant party was doing business of brick kiln. There is no allegation in the FIR that complainant party was engaged in brick kiln business. Be that as it may, we find that High Court has rightly dealt with the matter and prima facie there is nothing on record to deviate from the same. The petition is, therefore dismissed and leave refused".

26. The case of the prosecution is full of lacunas, contradictions and discrepancies, explained herein above and at this juncture, it is very difficult for us to give due weight to the testimony of prosecution witnesses. The credibility of PWs is highly doubtful and untrustworthy. It is a well settled law that no one should be construed into a crime unless his guilt is proved beyond reasonable doubt by the prosecution through reliable and legally admissible evidence. On the point of benefit of doubt, rule of Islamic Jurisprudence has been laid down in the judgment rendered by the Hon'ble Supreme Court of Pakistan in *Ayub Masih's case* (PLD 2002 SC 1048), wherein the apex Court has ruled as under:-

*“It is also firmly settled that if there is an element of doubt as to the guilt of the accused, the benefit of the doubt must be extended to him. The doubt, of course, must be reasonable and not imaginary or artificial. The rule of benefit of doubt, which is described as the golden rule, is essentially a rule of prudence, which cannot be ignored while dispensing justice in accordance with law. It is based on the maxim, “It is better that ten guilty person be acquitted rather than one innocent person be convicted”. In simple words it means that utmost care should be taken by the Court in convicting an accused. **It was held in “The State v Mushtaq Ahmed (PLD 1973 SC 418)** that this rule is antithesis of haphazard approach or reaching a fitful decision in a case. It will not be out of place to mention here that this rule occupies a pivotal place in the Islamic Laws and is enforced rigorously in view of the saying of Holy Prophet (P.B.U.H) that the mistake of Qazi (Judge) in releasing a criminal, is better than his mistake in punishing an innocent”.*

27. Needless to mention that in criminal cases the burden to prove its case rests entirely on the prosecution. The prosecution is duty bound to prove the case against accused beyond reasonable doubt and this duty does not change or vary in the case in which no defence plea is taken by the accused. The defence plea is always to be considered in juxta position with the prosecution case and in the final analysis if the defence plea is proved or accepted, then the prosecution case would stand discredited and if the defence is substantiated to the extent of creating doubt in the credibility of the prosecution case then in that case it would be enough but it may be mentioned here that in case the defence is not established at all, no benefit would occur to the prosecution on that account and its duty to prove its case beyond reasonable doubt would not diminish even if the defence plea is not proved or is found to be false. The Hon’ble apex Court has settled the principle in a case of *Tariq Pervez v The State* reported in 1995 SCMR 1345 on the point of benefit of doubt, which is reproduced as under:-

“The concept of benefit of doubt to an accused person is deep-rooted in our country. For giving benefit of doubt to an accused, it is not necessary that there should be many

circumstances creating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right”.

28. For the reasons, discussed herein above, we are of the considered view that the prosecution has failed to discharge its liability of proving the guilt of the appellants beyond shadow of doubt. Therefore, while extending the benefit of doubt in favour of the appellants, we hereby set-aside the conviction and sentence recorded by the learned trial Judge by impugned judgment dated 28.12.2016, acquit the appellants of the charge and allow this appeal. The appellants shall be released forthwith if not required to be detained in any other case.

29. By our short order dated 13.02.2018, we had allowed this appeal and these are the reasons thereof.

JUDGE

JUDGE

Naeem