IN THE HIGH COURT OF SINDH, KARACHI

Before:
Mr. Justice Mohammad Karim Khan Agha
Mr. Justice KhadimHussainTunioJJ-

Criminal Appeal No. 311 of 2011

Abu Bakar	- - - - - - - -	*Appellant*
	Versus	
The State	- - - - - - - -	*Respondent*

Criminal Jail Appeal No. 319 of 2011

Rehan& others	- - - - - - - -	*Appellants*
	Versus	
The State	- - - - - - - -	*Respondent*

Confirmation Case No. 10 of 2011

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Mr. Bashir Ahmad Meerani, advocate for appellants Rehan &Haroon.
Mr. Muhammad Farooq, advocate for appellant Abu Bakr.
Mr.Javed Ahmed Chattari, advocate for appellant Javed.
Ms.HumairaNadeemRana, advocate for complainant.
Mr. Muhammad IqbalAwan, D.P.G.

Date of hearing: 22.08.2019& 23.08.2019

Date of decision: 02.09.2019

J U D G M E N T

KHADIM HUSSAIN TUNIO, J- By this common judgment, we intend to dispose of the above captioned appeals arising out of the common judgment dated 06.07.2011, passed by learned IVth Additional Sessions Judge Karachi South in Sessions Case No. 258 of 2005, culminated from FIR No. 64 of 2005, registered with Police Station Defence, Karachi for the offences punishable u/s 302, 396 and 34 PPC, whereby the present appellants were convicted and sentenced to death with fine of Rs. 10,000/- each and in default to further undergo S.I for 6 months.

2. Concisely, facts of the prosecution case are that on 12.03.2005, at about 0900 the complainant's mother, who was reciting the Holy Qur`an in her bedroom, was disturbed when appellant Rehan along with three others barged into the room and forcefully tied her. Thereafter, the appellants allegedly robbed numerous gold ornaments and cash and fled the scene. Afterwards, the complainant's mother freed herself and called the emergency hotline, while subsequently she telephoned her son, the complainant, about the incident at 1020 hours, who reached at the place along with his father. Upon entering the bungalow, the complainant found the dead bodies of two of the maids, namely Shanti and Rani. Therefore, F.I.R was lodged by the complainant.

3. On completion of investigation and receipt of challan, a charge was framed by the Court to which the accused pleaded not guilty and claimed trial. Subsequently, the appellant Haroon joined trial and an amended charge was framed against the present appellants to which they pleaded not guilty and claimed to be tried.

4. The prosecution, in order to substantiate its charge against the appellants, examined in all 13 witnesses and exhibited multiple documents and items. Thereafter, vide statement, the prosecution side was closed.

5. Statements of appellants were recorded u/s 342 Cr.P.C wherein they denied the allegations levelled against them and claimed to be falsely implicated. However, they neither examined themselves on oath nor produced any evidence in their defence.

6. After conclusion of the proceedings, the appellants were convicted and sentenced as mentioned *supra.*

7. Learned counsel for the appellants mainly contended that the appellants are innocent and have been falsely implicated in the present case; that the impugned judgment is bad in law and is not sustainable; that one Bilal failed to identify any other appellants except for Javed, which too is doubtful as he was not examined by the prosecution as a witness; that the presence of P.W Jehan Ara at the place of incident is doubtful; that no recoveries were made from the place of incident; that there are many contradictions in the evidence of prosecution witnesses; that no direct evidence is available on record to connect the appellants with the offence; that the recovered *Churra* was not from the exclusive possession of the appellant; that no descriptions or marks of identification were provided; that the recovery of *Churra* was foisted upon the appellant Rehan; that the recovery was made after 12 days of arrest of the appellants; that the appellant Rehan has been acquitted in the 13-E A.O case; that no direct evidence is available on record to connect any appellants to the commission of offence; that the investigation officer belonged to the same community as the complainant party and therefore implicated the appellants on the instance of Jehan Ara; that there is an unexplained delay in the lodging of F.I.R; that names of the appellants do not transpire in the F.I.R; that the confessional statement of the appellant Javed is illegal and in violation of law and the same is exculpatory and was later retracted; that the impugned judgment is unwarranted under the law as such same is against the norms, spirit and natural justice;

that the conviction and sentence awarded to the appellants be set aside and the appellants be acquitted of the charge. Learned counsel has relied on the case law reported as ***2011 SCMR 537, PLD 1974 Lahore 856, 2016 SCMR 274, PLD 2017 SC 202, 1999 P.Cr.L.J 1381, 2017 SCMR 898, SBLR 2008 Sindh 1058, 1982 SCMR 32, 1999 SCMR 2203, 2018 YLR 340, 2019 SCMR 301, 2016 SCMR 1554, 2017 SCMR 135, 2009 SCMR 230, 2017 SCMR 1601, 2009 SCMR 1382, 2019 SCMR 956 and PLD 2019 SC 488.***

8. Learned counsel for the complainant and learned D.P.G in one voice supported the impugned judgment while contending that the appellants confessed to the commission of offence; that the appellant Javed was identified by the Bilal in identification parade; that the crime weapon was recovered on the pointation of appellant Rehan. Learned counsel for complainant, however, has relied on the case law reported as ***PLD 2006 SC 30, 2010 SCMR 55 and 1999 SCMR 1744.***

9. We have given due consideration to the arguments advanced by learned counsel for appellants and complainant, considered the contentions of learned D.P.G for the State and have examined the material available on record.

10. Before proceeding into the merits of the case, it is noted that the facts as well as evidence produced before the trial Court find an elaborate mention in the impugned judgment and the same will not be reproduced herein for the sake of brevity. However, we feel that for safe administration of justice, the evidence of prosecution witness Jehan Ara (P.W-02) and her statement u/s 164

Cr.P.C need to be reproduced for ready reference. The same is as follows:

> ***Examination-in-chief (initial charge)***
>
> ***"On 12.03.2005, I was staying at the residence of my mother due to her death since about three months situated 2-B East Avenue, Phase-I DHA, Karachi. My sister, Shahnaz Meghani is professor in Business Management College, situated Korangi. Two maid servant Rani and Shanti were employed and one Rehan was also chowkidar in the house. Rani used to live in the servant room on upper story and Rehan was also in another room on upper story. On 12.03.2005 my sister Shahnaz left for her job at about 7.30 a.m. and Rehan opened the door for her. I alongwith Shanti went in kitchen. After some time Shanti informed me that she had seen a person coming from upper story. I called Rehan and asked him that who was that person, he told that he was his cousin and had come due to his leave from job. Thereafter, I went in the house and Shanti was in the kitchen. After some time, I heard cries of Shanti from kitchen calling me as Bajee, I rushed towards kitchen but before my reaching at kithen, four culprits came in front of me and one of them was having Churra and another was armed with gun. They tied my hands and asked me to sit down on the chair. They were also tying my face upon which I asked them that there was no other family member in the house and what they want, they should not muffle my face. They asked me to give the keys of Almarih e.t.c. I asked them to untie my hands which they did and I opened all the Almarih of the house. Thereafter, they tied my hands and got me sit down on gun point. They took 17,000/- US Dollar and Rs.17,000/- cash and ornaments of gold amounting to 60,000/- US Dollars as it was of diamond. They also took other articles of my mother in law from the house. I identified our employee Rehan who was the culprit and he brought other culprits in the house. Thereafter, the culprits went away. I informed my husband***

who was staying at the residence of our son situated at Bath Island. My son and husband told me to close the door of the kitchen from where the culprits came. When I went at Kitchen where I saw dead body of Shanti who was mercilessly tortured by the culprits. After five minutes, my son, husband and police came there. When they went at upper story where they also saw the dead body of Rani and she was killed much before the incident in the night. Police recorded my statement and statement of my son Sohail. Police took away the dead bodies and took sample of blood. Our relatives also came there. My statement was also record u/s 164 Cr.P.C. on 28.03.2005 before the Magistrate. I produce my that statement at Exh. 11/A and say that it is same, correct and bears my signature as well as RTI. Accused Rehan and other accused present in court are the same."

<u>Examination-in-chief (after framing of the amended charge)</u>

"This incident took place on 12.03.2005. In those days, soul of my mother departed hence I had come from Canada and was residing with my sister Shahnaz Meghani, situated B-02, East Avenue Phase-I, DHA, Karachi. On the above mentioned date, I was present in my bed room at about 9.00 a.m. Thereafter, I came in Kitchen at about 9.30 and advised to Shanti to prepare tea for me. At that time said Shanti told me that some body is hiding himself behind the grills of the kitchen. I told Shanti to call Chowkidar Rehan. Rehan told me that his friends have also come to meet him. Thereafter, I advised Shanti to prepare tea for me and went away in my room. Subsequently, I heard great cries coming from said kitchen then I rushed towards Kitchen but in the meanwhile Rehan and his other four companions came in front of me, in veranda. Rehan was empty handed and one of his companion was having Churra and other was having gun and I can identify them by their faces. Remaining accused were empty handed. Then culprits tied my hands with cloth and made me sit on the chair. They also tried to tie

my mouth with cloth but I said them that I will not raise cry, therefore, they (incomprehensive) not do it. Rehan demanded keys from me of the Almarih. Then they untied my hands and I went into my room where I handed over them the keys and opened the doors of the cupboards. Thereafter, the accused again tied my hands with the rope and made me sit in the bed room. Thereafter, they robbed all valuable articles from the bungalow. The robbed articles were consisting on diamonds jewellery worth of Rs. 60,000/- dollars, 1700 dollars in cash and Rs. 70,000/- in cash of Pakistani currency. Thereafter, accused went away and I untied my hands with great difficulties and before this, I did not know that what happened in the Kitchen. Thereafter, I made phone call to my son Sohail Rasheed on which my son and husband advised to close the door of kitchen. Thereafter, I went in the kitchen and saw the dead body of Shanti lying there in the pool of blood. My husband and son reached there and my son went up stair and found the dead body of my another maid servant Rani who was serving with us for about 40 years and she was aged about 80 years. Thereafter, police came in the bungalow and went with my son at up stair and visited whole of the house. The accused persons also took away valuable of Rani. Then I also made phone call to my sister and thereafter she and other relatives reached there. My sister is having very sensitive nature and thereafter we had not shown the dead bodies of maid servants. Police completed all formalities upto 2.00 p.m. on that date. Said deceased Rani had grown up my sister Shahnaz Meghani since her child hood.

Note: At this stage, while deposing, the witness in witness box is very sad and tears are coming from her eyes.

I see accused Rehan, Abu Bakar and Abdul Rehman and say that they are the same. I also see another child accused present in court and say that he is also same and his name is Kamran. I further see another accused Jawaid present in court and say that he is also one of

the companions of culprits, who was also present at the time of incident. Except accused Rehan I do not know the names of other accused but I have recognized them as they were available at the time of incident. "

<u>164 Cr.P.C Statement of Jehan-Ara (True translation)</u>

Two weeks prior, on Saturday at about 9:30/10:00 AM, I was reciting in the room, the lady cook was working in the kitchen and the other maid was in the upper portion. On the said date, she did not come to work due to illness. My sister C.B.M had gone to University, where she teaches. 3 months ago, I had come in the house of my said sister. Suddenly, I heard a cry of maidservant from the kitchen, she called me as 'Baji', I thought that she had gotten electrocuted or she hadfell down. Having heard her noise, I ran towards her but in the veranda 4 boys came in front of me, out of them one was Rehan who was Chowkidar of our house and asked me to sit there (word not in focus), one had a gun in his hand and other had knife (CHHURA). They tied my hands with ropes and asked me to hand over the keys, then I said that my hands are tied, how I shall give them keys. Then they untied my hands and I gave them key for each and every safe containing ornaments valued at $17000 (Seventeen thousands) and $700 dollars in cash and Pak Rs.17000/-. Thereafter, they took me in my living room where tied my hands and closed the door. I then opened my hands with my own efforts and jumped from the window which had no grill in the veranda. I made phone call to my son Sohail Rasheed who said "Mother, wherever you are (paper torn) stay there, I'll make phone call to police". After speaking on phone with my son, when I came into kitchen, I saw the dead body of maidservant, they killed her badly. After about 5 minutes, police and my other relatives came and when police went up theyfound the dead body of other maidservant lying there. Out of all four boys, I identify one of them, Rehan, because he was Chowkidar of my house for last three months.

11. We would firstly like to discuss the merits of appeals of appellants Abu Bakr, Jawaid and Haroon as the same are distinguishable from that of appellant Rehan on material aspects of the case. P.W-02 Jehan Ara is the star witness of the prosecution case, the sole eye-witness and the case of the prosecution hinges upon this witness' testimony. Before anything, it is pertinent to note here that this witness nowhere in any of her statements on record had disclosed the description of any of the assailants or any distinguishable features. Besides her, no one had witnessed the alleged incident. The appellants Abu Bakr, Jawaid and Haroon were not known to her previously or to any other witnesses for that matter. She did not know their names and failed to mention any details about them while getting her statements recorded. Out of all the appellants, only appellant Javed was sent through the test of identification parade where he was identified by one Bilal. One of the shocking aspects of the identification parade here is that Bilal was not even a witness of the crime, therefore him identifying the appellant Abu Bakr is of no assistance to the prosecution. Even otherwise, since no distinguishing features or marks of identification were available at the time of identification parade, it would make it highly doubtful that the appellant was correctly picked out of the dummies as it leaves the identifier with a chance to falsely net out anyone from the crowd. Therefore the possibility that the appellant Abu Bakr was picked out of the dummies because the police believed him to be the suspect or had to satisfy ulterior motives cannot be ruled out. Furthermore, the in-court identification of the appellants before the trial Court by the eye-

witness can also not be given much importance because the eye-witness, on multiple occasions, could have seen the appellants in police custody or while being brought up for trial. It had been held by the Hon'ble Apex Court in the case of ***Javed Khan v. The State (2017 SCMR 524)*** while narrating the importance of availability of a description by an eye-witness with respect to identification parade and regarding in-court identification hat:-

> ***"7. We have heard the learned counsel and gone through the record. The prosecution case rests on the positive identification proceedings and the Forensic Science Laboratory report which states that the bullet casing sent to it (which was stated to have been picked up from the crime scene) was fired from the same pistol (which was recovered from Raees Khan in another case). We therefore proceed to consider both these aspects of the case. As regards the identification proceedings and their context there is a long line of precedents stating that identification proceedings must be carefully conducted. In Ramzan v Emperor (AIR 1929 Sind 149) Perceval, JC, writing for the Judicial Commissioner's Court (the precursor of the High Court of Sindh) held that, "The recognition of a dacoit or other offender by a person who has not previously seen him is, I think, a form of evidence, which has always to be taken with a considerable amount of caution, because mistakes are always possible in such cases" (page 149, column 2). In Alim v. State (PLD 1967 SC 307) Cornelius CJ, who had delivered the judgment of this Court, with regard to the matter of identification parades held, that, "Their [witnesses] opportunities for observation of the culprit were extremely limited. They had never seen him before. They had picked out the assailant at the identification parades, but there is a clear possibility arising out of their statements that they were assisted to do so by being shown the accused person earlier" (page 313E). In Lal Pasand v. State (PLD 1981 SC 142) Dorab Patel J, who had delivered the judgment***

of this Court, held that, if a witness had not given a description of the assailant in his statement to the Police and identification took place four or five months after the murder it would, "react against the entire prosecution case" (page 145C). In a more recent judgment of this Court, Imran Ashraf v. State (2001 SCMR 424), which was authored by Iftikhar Muhammad Chaudhry J, this Court held that, it must be ensured that the identifying witnesses must "not see the accused after the commission of the crime till the identification parade is held immediately after the arrest of the accused persons as early as possible" (page 485P).

8. The Complainant (PW-5) had not mentioned any features of the assailants either in the FIR or in his statement recorded under section 161, Cr.P.C. therefore there was no benchmark against which to test whether the appellants, who he had identified after over a year of the crime, and who he had fleetingly seen, were in fact the actual culprits. Neither of the two Magistrates had certified that in the identification proceedings the other persons, amongst whom the appellants were placed, were of similar age, height, built and colouring. The main object of identification proceedings is to enable a witness to properly identify a person involved in a crime and to exclude the possibility of a witness simply confirming a faint recollection or impression, that is, of an old, young, tall, short, fat, thin, dark or fair suspect. There is yet another aspect to the matter of identification of the culprits of this case. The Complainant had named three other persons who could recognize the assailants, but he did not mention SubedarMehmood Ahmad Khan (PW-6) as one of them. Nonetheless SubedarMehmood Ahmad Khan came forward to identify the appellants. Significantly, none of the three persons mentioned by the Complainant participated in the identification proceedings and two were not even produced as witnesses by the Prosecution. During the identification proceedings both the appellants had informed the Magistrates who were conducting the

> ***identification proceedings, and before the identification proceedings commenced, that they had earlier been shown to the witnesses. The Magistrates recorded this objection of the appellants in their reports but surprisingly did not attend to it, which can only be categorized as a serious lapse on their part. Therefore, for all these reasons reliance cannot be placed upon the report of the identification proceedings in which the appellants were identified.***
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> ***9. As regards the identification of the appellants before the trial court by Nasir Mehboob (PW-5), Subedar Mehmood Ahmed Khan (PW-6) and Idrees Muhammad (PW-7) that too will not assist the Prosecution because these witnesses had a number of opportunities to see them before their statements were recorded. In State v Farman (PLD 1985 SC 1), the majority judgment of which was authored by AjmalMian J, the learned judge had held that an identification parade was necessary when the witness only had a fleeting glimpse of an accused who was a stranger as compared to an accused who the witness had previously met a number of times (page 25V). The same principle was followed in the unanimous judgment of this Court, delivered by Nasir Aslam Zahid J, in the case of Muneer Ahmad v State (1998 SCMR 752), in which case the abductee had remained with the abductors for some time and on several occasions had seen their faces. In the present type of case the culprits were required to be identified through proper identification proceedings, however, the manner in which the identification proceedings were conducted raise serious doubts (as noted above) on the credibility of the process. The identification of the appellants in court by eye-witnesses who had seen the culprits fleetingly once would be inconsequential."***

Similar view had been taken by the Hon'ble Apex Court in the case of ***Mian Sohail Ahmed v. The State (2019 SCMR 956)***. Even otherwise, it is settled principle of law that it is the duty and obligation of the authority that precautionary measures are

necessary to conceal the identity of the accused from one place to another which is paramount duty of the police to ensure that the accused should not be seen by the witnesses before the identification parade. It is pertinent to mention that all these precautions should not only be taken but should be proved to have been taken and these precautions should be recorded in the initial record like general diary of the police station and the daily register and the same should be produced in court. In the absence of such precaution and evidence, no value can be attached to the identification of the accused by witnesses. Moreover, it is also settled principle of law that picking out of accused in identification parade is not a substantive piece of evidence. Such evidence is merely corroborative piece of evidence.

12. Now coming to the confessional statement of the appellant Jawaid, the same was against the norms of law. The confessional statement of the appellant was recorded by the learned Magistrate on oath which is patently illegal and no questionnaire had been put to the appellant Javed at the time of recording his confession which may have included questions such as the duration he had been in police custody; that he would not be handed over to the same police officer whether he confesses or not and whether he had been maltreated or pressurized to make a confessional statement. This careless dispensation would considerably diminish the voluntariness of the confession. Therefore, the confession of the appellant Javed, having no legal worth, is excluded from consideration by this Court. In this respect, reliance can be placed on the case law reported as ***2016 SCMR 274***

(Azeem Khan and another v. Mujahid Khan and another), wherein it has been held by the Hon'ble Apex Court that:-

> ***14. The judicial confessions, allegedly made by both the appellants are the material piece of evidence in the prosecution hand, therefore, we would deal with the same in the first instance.***
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> ***15. Keeping in view the High Court Rules, laying down a binding procedure for taking required precautions and observing the requirements of the provision of section 364 read with section 164, Cr.P.C. by now it has become a trite law that before recording confession and that too in crimes entailing capital punishment, the Recording Magistrate has to essentially observe all these mandatory precautions. The fundamental logic behind the same is that, all signs of fear inculcated by the Investigating Agency in the mind of the accused are to be shedded out and he is to be provided full assurance that in case he is not guilty or is not making a confession voluntarily then in that case, he would not be handed over back to the police. Thereafter, sufficient time for reflection is to be given after the first warning is administered. At the expiry of that time, Recording Magistrate has to administer the second warning and the accused shall be assured that now he was in the safe hands. All police officials whether in uniform or otherwise, including Naib Court attached to the Court must be kept outside the Court and beyond the view of the accused. After observing all these legal requirements if the accused person is willing to confess, then all required questions formulated by the High Court Rules should be put to him and the answers given, be recorded in the words spoken by him. The statement of accused be recorded by the Magistrate with his own hand and in case there is a genuine compelling reason then, a special note is to be given that the same was dictated to a responsible official of the Court like Stenographer or Reader and oath shall also be administered to such official that he***

would correctly type or write the true and correct version, the accused stated and dictated by the Magistrate. In case, the accused is illiterate, the confession he makes, if recorded in another language i.e. Urdu or English then, after its completion, the same be read-over and explained to him in the language, the accused fully understand and thereafter a certificate, as required under section 364, Cr.P.C. with regard to these proceedings be given by the Magistrate under his seal and signatures and the accused shall be sent to jail on judicial remand and during this process at no occasion he shall be handed over to any police official/officer whether he is Naib Court wearing police uniform, or any other police official/officer, because such careless dispensation would considerably diminish the voluntary nature of the confession, made by the accused.

16. In the instant case, the Recording Magistrate namely, Ch. Taufiq Ahmed did not observe least precautions, required under the law. He was so careless that the confessions of both the appellants were recorded on oath, grossly violating the law, the same, therefore, has rendered the confession inadmissible which cannot be safely relied upon keeping in view the principle of safe administration of justice.

17. The Recording Magistrate committed successive illegalities one after the other as after recording the confessions of the appellants on oath, both were handed over to the same police officer, who had produced them in the Court in handcuffs. This fact bespeaks volumes that the Recording Magistrate was either not knowing the law on the subject or he was acting in the police way desired by it, compromising his judicial, obligations. This careless attitude of the Magistrate provided premium to the Investigating Agency because it was thereafter, that the recoveries of the so-called incriminating articles were made at the instance of the appellants, detail of which is

> ***mentioned above.***
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> ***18. In our considered view, the confessions of both the appellants for the above reasons are of no legal worth, to be relied upon and are excluded from consideration, more so, when these were retracted at the trial. Confessions of this nature, which were retracted by the appellants, cannot mutually corroborate each other on the principle that one tainted evidence cannot corroborate the other tainted piece of evidence. Similar view was taken by this Court in the case of Muhammad Bakhsh v. The State (PLD 1956 SC 420), while in the case of Khuda Bux v. The Crown (1969 SCMR 390) the confession made, was held not voluntary because the accused in that case was remanded back to the police after making confession."***

13. Adverting to the case of appellant Rehan, it is a cardinal principle of justice that ocular account in such cases plays a decisive and vital role and once its intrinsic worth is accepted and believed then the rest of the evidence, both circumstantial and corroboratory in nature, would be required as a matter of caution. To the contrary, once the ocular account is disbelieved then no other evidence, even of a high degree and value, would be sufficient for recording conviction on a capital charge therefore, we have to see the probative value of the ocular account in light of the facts and circumstances of the case. There are successive contradictions and numerous improvements in the evidence of the star witness of the episode, JehanAra, who provides the ocular account of the incident. As observed earlier, she had deposed in her initial examination-in-chief that *"After some time Shanti informed me that she had seen a person coming from upper story"*, whereas after the framing of amended charge, in her examination-in-chief, she improved on this statement while stating that "*At*

that time said Shanti told me that some body is hiding himself behind the grills of the kitchen". Again, during her initial examination-in-chief, she deposed that "*I called Rehan and asked him that who was that person, he told that he was his cousin and had come due to his leave from job."* While improving this statement during the examination-in-chief after the amended charge, she deposed that *"I told Shanti to call Chowkidar Rehan. Rehan told me that his friends have also come to meet him".* It is also significant to note here that the eye-witness, in her initial depositions, deposed that "*They took 17,000/- US Dollar and Rs.17,000/- cash and ornaments of gold amounting to 60,000/- US Dollars as it was of diamond."* However, in her later depositions, she disclosed that "*The robbed articles were consisting on diamonds jewellery worth of Rs. 60,000/- dollars, 1700 dollars in cash and Rs. 70,000/- in cash of Pakistani currency."* With regard to flow of information about the incident by the eye-witness, she deposed in the initial examination-in-chief that "*I informed my husband who was staying at the residence of our son situated at Bath Island."* Later on, in her examination-in-chief after the amended charge, she deposed that "*Thereafter, I made phone call to my son Sohail Rasheed on which my son and husband advised to close the door of kitchen."* Besides these two examination in chief, an entirely different version of the story is given by the eye-witness in her 164 Cr.P.C statement while also missing on important aspects of the case. In her 164 Cr.P.C statement, JehanAra stated that on the incidental day, she was *reciting* in her room. Whereas in her examination-in-chief, she remains silent about her activities in the room. While disclosing details about the robbed articles, Jehan Ara, in her 164 Cr.P.C statement deposed that *"ornaments valued at $17000*

(Seventeen Thousands) and $700 dollars in cash and Pak Rs. 17000/-". Moreover, the witness, in her 164 Cr.P.C statement, deposed that she jumped out of a window that had no grill to get to the *veranda*, however no such act was mentioned by her during either of her examination-in-chief. As far as the evidence of P.W-1 Sultan Rasheed and P.W-2 Miss ShahnazMeghani, the same is hear-say which, in the eyes of law, is the weakest type of evidence and cannot be awarded any credibility or made basis for conviction.

14. The above contradictions and improvement makes the story of prosecution doubtful. The rule for safe administration of justice is that improvements made by an eyewitness in order to strengthen the prosecution case, lose their credibility and evidentiary value and when a witness made contradictory statement or changing his version to suit the situation, if found to be deliberate and dishonest, would cause serious doubt on their veracity qua guilt of the accused. In this regard, reliance is placed on the case law cited as ***"Farman Ahmad v. Muhammad Inayat" (2007 SCMR 1825) and "Mst. Rukhsana Beghum and others v. Sajjad and others" (2017 SCMR 596)***. It has been held in the case of ***"Muhammad Saleem v. Shabbir Ahmed and others (2016 SCMR 1605)*** by the Hon'ble Apex Court that:

> ***After hearing the learned counsel for the parties and going through the record we have observed that the occurrence in this case had taken place during a night in the month of December and according to the FIR the culprits had remained unknown at the spot. The FIR in this case had been lodged by the complainant upon an information supplied to him by PW12 namely Mst. Saleeman Bibi, mother of Rehana Kausar deceased, and according to that information PW12 had not been able to***

identify any of the culprits at the time of the occurrence. PW12 had not noticed anything unusual in the conduct of respondent No. 1 who was her son-in-law and according to the story narrated by the said witness even respondent No. 1 was one of the persons who had been forcibly taken away by the culprits. Before the trial court PW12 had improved her version and had implicated respondent No. 1 along with the other accused persons and it had been maintained by the prosecution before the trial court that the other accused persons were in connivance with respondent No 1 and it was respondent No. 1 who had maneouvered the murder of his wife namely Mst. Rehana Kausar through an incident which was planned by respondent No. 1. No evidence had been produced before the trial court regarding hatching of any conspiracy by respondent No. 1 with his co-accused vis-à-vis the murder in issue. The prosecution had produced two witnesses regarding the last-seen evidence and they were PW6 and PW7. PW6 was closely related to the complainant and to PW12 and the conduct displayed by him was nothing but unusual detracting from the veracity of his statement. PW7 was in fact not a witness of last-seen because he had claimed to have seen some of the accused persons at a time when Mst. Rehana Kausar deceased was not with them. The prosecution had produced PW8 as a witness of an extra-judicial confession allegedly made by respondent No. 1 but the said witness had made significant improvements before the trial court and had also made a contradictory statement. The medical evidence produced by the prosecution was not of much avail to the prosecution because the murder in issue had remained unwitnessed and, thus, the medical evidence could not point an accusing finger towards any of the culprits implicated in this case. The only other piece of evidence relied by the prosecution was in the shape of recovery of the weapon of offence and its matching with a crime-empty secured from the place of occurrence. We have noticed that the weapon

> ***in issue had allegedly been recovered from a place which was open and accessible to all and sundry and, thus, it was unsafe to place reliance upon such recovery. Apart from, that none had seen respondent No. 1 firing at the deceased and, thus, mere recovery of a weapon of offence matching with a crime-empty was not sufficient to provide corroboration to the other pieces of circumstantial evidence. It had never been proved before the trial court that the weapon of offence had been kept in the Mal Khana safely after its recovery and its dispatch to the Forensic Science Laboratory was also not proved by any witness. For all these reasons the High Court had concluded that the prosecution had failed to prove its case against respondents Nos. 1 and 4 beyond reasonable doubt and had, thus, acquitted the said respondents of the charge. Upon our own independent evaluation of the evidence available on the record we have not been able to take a view of the matter different from that taken by the High Court. Apart from that no misreading or non-reading of the record on the part of the High Court has been pointed out by the learned counsel for the appellant so as to warrant interference with the impugned judgment of acquittal. This appeal is, therefore, dismissed. The bail bonds and sureties of respondents Nos. 1 and 4 shall stand discharged.***

15. In a case of this nature where there is contradiction in the ocular version being furnished by a sole eye-witness of the occurrence qua other corroborative/supporting evidence then it becomes duty of the prosecution to establish its case through cogent and convincing evidence, which element is missing in the present case. It is also an admitted fact that the sole eye-witness was the employer of the two maids, one of whom had been with her for around 40 years, therefore her testimony

would fall under the category of interested witness which casts further doubt on the reliability of her evidence.

16. When ocular-account being furnished by sole eye-witness is not of such a caliber to be safely relied upon, the other corroborative evidence will come into field in order to prove the guilt of accused. In this case, although the trial Court considered the recovery of knife *(Churra)* on the pointation of the appellant Rehan from the kiari *(flower belt)*after 4 days of his arrest *i.e.* on*25.03.2005* to be corroboratory, this Court observes that neither in the F.I.R nor in the depositions of the eye-witness had appellant Rehan been shown wielding the alleged recovered knife *(Churra)*. Therefore, the said recovery is inconsequential and cannot be considered as a corroborative piece of evidence. Even otherwise, the prosecution failed to bring on record the FSL report so as to ascertain that the knife *(churra)* was stained with blood or not and, if so, who's blood was it. Moreover, the place wherefrom the alleged crime weapon was recovered was not in the exclusive possession of the appellant and the same was easily accessible to everyone. Not only this, none of the relatives of either of the deceased were made mashirs of any proceedings and no independent witnesses were cited as recovery mashirs of the alleged crime weapon *(churra)*. Therefore, we are not satisfied that the recovery alone is enough to hold the appellant responsible of two grievous murders. Moreover, the investigation agency failed to recover anything from the place of incident, no incriminating piece of evidence was recovered that would connect the appellants with the offence. The investigation

officer has also failed to collect the rope with the sole eye-witness Jehan Ara was tied, nor has he recovered the rope, wire or *dupatta* with which the maid Rani was throttled. Significantly, none of the alleged stolen jewellery or money was recovered from Rehan*(or from any other accused)* who appeared to be the mastermind of the dacoity which casts further doubt on the prosecution version of events.

17. The prosecution case is not free from doubts. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. Reliance in this behalf can be made upon the cases of ***Tariq Pervez v. The State (1995 SCMR 1345), GhulamQadir and 2 others v.The State (2008 SCMR 1221), Muhammad Akram v.The State (2009 SCMR 230), Muhammad Zaman v.The State (2014 SCMR 749) and MianSohail Ahmed and others v.The State and others (2019 SCMR 956).***

18. For the foregoing reasons, this Court is of the considered view that the prosecution has miserably failed to prove its case against the appellants. Therefore, present appeals are allowed. Consequently, conviction and sentences awarded by the learned trial Court, vide impugned judgment dated 06.07.2011, are set-aside and the appellants are acquitted of the charge while extending benefit of doubt to them. They shall be released forthwith if not required in any other custody case. The death

confirmation case made by the learned trial Court is answered in negative.

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