

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Aftab Ahmed Gorar
Mr. Justice Amjad Ali Sahito

Criminal Appeal No.408 of 2016
Criminal Appeal No.411 of 2016

Appellant in Crl. Tanveer Ahmed Mangrio
Appeal No.408/2016: Through Mr. Haq Nawaz Talpur, Advocate

Appellant in Crl. Abdul Qadir Soomro
Appeal No.411/2016: Through Ms. Asia Ismail, Advocate

Respondent : The State
Through Mr. Muhammad Ahmed,
Assistant Attorney General.

Date of hearing : 02.04.2019 & 17.04.2019

Date of order : __.04.2019

J U D G M E N T

AMJAD ALI SAHITO, J :- Being aggrieved and dissatisfied with the judgment dated 22.10.2016 passed by the learned Presiding Officer, Special Court (Offences in Banks) Sindh at Karachi in Case No.29 of 2015 arising out of the FIR No.23/2015 registered at PS FIA, CBC, Karachi, for the offence under sections 409, 420, 468, 471, 477-A PPC, whereby both the appellants were convicted u/s. 409 PPC and sentenced them to suffer R.I. for ten (10) years each and fine of Rs.2 Million on each count and in default thereof, to suffer further R.I. for two (2) years each. The appellants were also convicted u/s. 420, 468, 471, 477-A PPC and sentenced them to suffer R.I. for seven (7) years each and in default thereof, to suffer further R.I. for one (1) year on each count. The benefit of section 382-B, Cr.P.C. were also extended to both the appellants and all the sentences of each count were ordered to be run concurrently.

2. Brief facts necessary for the disposal of the present case are that the accused Tanveer Ahmed Mangrio was posted as Cashier in MCB, Bhriya Road Branch, and, thereafter was posted as OG-III in Naushero Feroz Branch of MCB. During the course of his service, he in connivance with Branch Manager Abdul Qadir Soomro of Bhriya

Road Branch misappropriated the money through RTC of different persons and had received different amounts through deposit slips duly stamped/signed from eleven customers name of whom are mentioned in the FIR and instead of crediting the said amount in their account fraudulently pocketed the same as such they have committed embezzlement of Rs.82,44,300/- hence the FIR as stated above was registered them and challan has been sent in court against them to stand trial.

3. After compliance of Section 241-A Cr.P.C. vide receipt Ex.1, the charge against both the accused was framed on 14.10.2015 vide Ex.2 to which they pleaded not guilty and claimed to be tried to vide their pleas at Ex.2-A and Ex.2-B respectively, after framing the charge, prosecution has examined PW-1 Muhammad Rizwan Dosani S/o Muhammad Rafiq vide Ex.3 who produced various documents as well as complainant of account holders from Ex.3/A to Ex.3/A-8, PW-2 Abdul Hafeez S/o Abdullah Khan vide Ex.4, who produced various documents from Ex.4/A to Ex.4/E-3, PW-3 Ghulam Nabi Abbasi S/o Khamiso Khan vide Ex.5, who produced memo of arrest of the accused Tanveer Mangrio vide Ex.5/A, PW-4 Farooq Ali S/o Ali Ahmed vide Ex.6, who produced seizure memo of documents from Ex.6/A to Ex.6/A-D, PW-5 Abdul Rasool S/o Allah Dino vide Ex.7, PW-6 Adnan Ali vide Ex.8, PW-7 Abdul Nabi vide Ex.9, who produced internal investigation report vide Ex.9/A, PW-8 Muhammad Saleh vide Ex.11, who produced deposit slip, as well as its complaint, vide Ex.11/A and Ex.11/B, PW-9 Meharuddin vide Ex.12, PW-10 Shahnawaz vide Ex.13, who produced his deposit slip, its complaint cheque book from Ex.13/A to Ex.13/E, PW-11 Muhammad Ishaq vide Ex.14, who produced seizure memo of documents as well as his deposit slip and his complaint from Ex.14/A to Ex.14/C, PW-12 Saleem Raza Shah vide Ex.15, PW-13 Muhammad Islam vide Ex.17, PW-14 Rasheed Ahmed Shaikh Inspector FIA/I.O. vide Ex.18, who produced various cheques including a copy of the FIR from Ex.18/A to Ex.18/C-2. Prosecution closed its side vide statement at Ex.19. All the prosecution witnesses were cross-examined by the counsel for the accused persons. The statements of the accused persons were recorded under Section 342(1) Cr.P.C. by the learned trial Court vide Ex.21 and Ex.22, in which they denied the allegations as leveled

against them by the prosecution. However, the appellants/accused persons neither examined themselves on oath in disproof of the charge nor led any evidence in their defence. The learned trial Court, after hearing the parties and on the assessment of the evidence, convicted and sentenced the appellants as stated above vide judgment dated 22.10.2016, which is impugned before this Court by way of filing the instant Criminal Appeals.

4. Mr. Haq Nawaz Talpur, Learned counsel for the appellant in Crl.Appeal No.408/2016 mainly contended that the impugned judgment is against the law and facts of the case; that the present appellant is innocent and has falsely been implicated in this case; that the private witnesses have not implicated the appellant in the commission of offence; that the learned trial Court has mainly relied upon the Ex.14-B which was produced by PW-11 Muhammad Ishaq but his evidence was not considered by the learned trial Court and convicted the appellant on the basis of deposit slips shown as Ex.14/B and presumed that the amount of Rs.100,000/- received by appellant Tanveer Ahmed Mangrio by comparing his signature on Vakalatnama, for which the learned trial court has no power to compare the signature; that the Ex.14/B was not confronted with the appellant while recording his statement under Section 342 Cr.P.C.; that no question regarding Ex.14/B was put to the appellant; that as per prosecution only the evidence available against the appellant was deposit slip (Ex.14-B), but his signature was not sent to the Expert for verification whether the same bears the signature of the appellant or not; that it is settled law while recording the statement under Section 342 Cr.P.C. any piece of evidence was not put to the accused could not be considered against him; that the conclusion arrived by the trial Court is erroneous and not tenable under the law. He lastly contended that the prosecution has miserably failed to prove its case against appellant Tanveer Ahmed Mangrio and thus, according to him, under the mentioned facts and circumstances, the appellant is entitled to his acquittal. In support of his contentions, he has relied upon the cases (1) *Muhammad Saddique vs. The State* (2018 SCMR 71), (2) *Imtiaz alias Taj vs. The State and others* (2018 SCMR 344), (3) *Qaddan and others vs. The*

State (2017 SCMR 148) and (4) *Muhammad Nawaz and others vs. The State (2016 SCMR 267)*.

5. Ms. Asia Ismail, Learned counsel for the appellant in Crl.Appeal No.411/2016 has supported the arguments advanced by the learned counsel for the appellant in Crl.Appeal No.408/2016. She further contended that appellant Abdul Qadir Soomro is innocent and has falsely been implicated in this case; that the private witnesses have not deposed against the appellant; that the learned trial Court has only considered the aspect of the alleged prosecution case, however, the cross-examination of the prosecution witnesses conducted by the counsel for appellant has completely been ignored by the learned trial Court, which resulted in the miscarriage of justice; that if any signature bears on the deposit slip does not belong to appellant Abdul Qadir as his specimen signatures were not sent to the Expert for verification, hence the appellant Abdul Qadir is innocent and the trial Court has no power to verify the signature by itself; that the conclusion arrived by the learned trial Court is enormous and not tenable under the law. that appellant Abdul Qadir Soomro is not a dangerous, desperate and hardened criminal as well as he is not a previous convicted, that the appellant is facing the agony of the trail for last four years and he was only bread earn of his family now his family is facing hardship. She lastly prayed for acquittal of the appellant, in support of her contention, she has relied upon the cases (1) *Mst. Nishat alias Shato v. Muslim Khan alias Musali (PLD 2011 Peshawar 23)*, (2) *Akhtar Ali and others v. The State (2008 SCMR 6)*, (3) *Muhammad Siddiqui v. The State (2018 SCMR 71)*, (4) *Land Acquisition Collector Sargodha and another v. Muhammad Sultan and another (PLD 2014 SC 696)* and (5) *Imtiaz alias Taj v. The State (2018 SCMR 344)*.

6. Conversely, learned Asst. Attorney General for Pakistan appearing for the State while supporting the impugned judgment has contended that the prosecution has established its case against both the appellants from oral as well as documentary evidence; that there is no denial that the accused persons have not committed any fraud with the bank and private persons. He lastly prayed for dismissal of the instant appeals.

7. We have heard the learned counsel for the parties and have minutely perused the material available on record with their able assistance. On careful perusal of material brought on record, it appears that aggrieved person/private witness (PW-4) Farooq Ali in his evidence deposed that in the month of November 2012 he has deposited cash of Rs.335,000/- in his account which was received by accused Abdul Qadir, Branch Manager but the said cash amount was not credited in his account. He has produced the deposit slip of Rs.335,000/- at Ex.6-B and the said receipt was given to him by accused Abdul Qadir. In the month of December 2013, the cheque was passed and cleared in the sum of Rs.12,00,000/- from his account by the bank officials through the cheque of similar number which was available in his cheque book and was lying blank in his cheque book. The said cheque number was encashed but the same lying unused in the cheque book of PW-4 Farooq Ali. Hence, he has sustained the loss of Rs.15,35,000/- due to the fraudulent activity of the bank. In cross-examination, he has denied the suggestion that the deposit slip at Ex.6/B does not bear the signature of accused; voluntarily says that deposit slip bear the signature of accused Abdul Qadir but he has not deposed against accused/appellant Tanveer Ahmed. (PW-5) Abdul Rasool deposed that he has deposited three times cash in his account which was received by accused Abdul Qadir, Branch Manager. He has produced deposit slips as Ex.4/B-1 to Ex.4/B-3 respectively. The said receipts were given to him by appellant Abdul Qadir. He further deposed that after receipt of deposit slips from accused Abdul Qadir, he used to direct him to get rubber stamp affixed on these deposit slips from accused Tanveer Ahmed, who was posted as Cashier. He has deposited a total amount of Rs.15,75,000/- through deposit slips on different times. In the month of March or April 2014, he had paid four cheques to different parties in the aggregate amount of Rs.12,55,000/- and those cheques were honoured but were not honoured from his account by the bank officials. He has lodged the complaint by claiming of Rs.320,000/- which was paid by him to the bank. In cross-examination, he has deposed against accused Abdul Qadir. Furthermore, in cross-examination, he has admitted that **“it is correct to say that aggregate amount of Rs.15,75,000/- deposited at different times**

were not given to Cashier/Accused Tanveer Ahmed.” (PW-6) Adnan Ali has also deposed against appellant Abdul Qadir and submitted that on 05.02.2014 he had received four traveler cheques in the sum of Rs.10,000/- from the bank. After hearing the scam, he went to the bank and obtained a statement of his account which reveals that the whole funds were withdrawn on 03.12.2013. The accused Abdul Qadir committed fraud with him. In cross-examination, he admitted that” **it is correct to say that I had not presented any cheque before the Cashier (appellant Tanveer Ahmed)”**. The prosecution also examined (PW-8) Muhammad Saleh, who deposed that he has deposited cash of Rs.274,000/- in his account and such deposit slip was given to him but he does not know as to whether both the accused present in Court handed over the said deposit slip or not. It is pertinent to mention here that Ex.11-A bears the signature of Bank Manager Abdul Qadir. PW-9 Meher Din also deposed the same. He has deposited amount of Rs.150,000/- in his account but cash was not remitted in his account. He does not know who has passed on the deposit slip of cash amount of Rs.150,000/-. PW-10 Shahnawaz in his evidence deposed that at the time of his opening account, he had deposited a cheque of Rs.985,000/- and further he had deposited cash of Rs.15,000/- in his account but said cash was not remitted in his account. Accused Abdul Qadir had passed on both deposit slips at the time of submitting cheque and cash. He has produced both the deposit slips at Ex.13-A and Ex.13-B but he has not implicated appellant Tanveer Ahmed. (PW-11) Muhammad Ishaq in his evidence deposed that accused Abdul Qadir was posted as Branch Manager in MCB Bhriya Road and accused Tanveer Ahmed was posted as Cashier. On 30.12.2013 he had given cash of Rs.100,000/- to his driver Muhammad Islam to deposit in his account and he deposited the same amount in his account and brought the deposit slip and gave it to him. After one month, he had obtained his account statement but it was transpired that the cash of Rs.100,000/- was not credited in his account. He has produced the deposit slip at Ex.14-B, but his examination-in-chief was remained un-shattered, as both the accused persons have not cross-examined properly. Lastly, the prosecution examined private witness (PW-13) Muhammad Islam,

who in his evidence deposed that on 30.12.2013 he has deposited the cash amount of Rs.100,000/- and handed over to accused Tanveer Ahmed who had passed on the deposited slip to him duly stamped. In order to support the contention of the private witnesses, the prosecution examined official witness (PW-1) Muhammad Rizwan, who in his evidence deposed that in the year 2014, they started receiving various customer complaints from the customers of Bhriya Road Branch of MCB making grievance that some flying entries in their account were made and their funds were misappropriated. In cross-examination, he admitted that according to a computer system, the flying entries could be identified as to who had to input it and who had supervised on the basis of their IDs; voluntarily says that flying entries could only be identified on the basis of a complaint made by the customers. He further admitted that **“it is correct to say that no customer had filed a complaint directly against the accused Tanveer, voluntarily says that customer had filed the complaint regarding missing of amount from their account and on inquiry from the record, name of accused Tanveer Ahmed was discovered to be the culprit”**. But he has implicated accused Abdul Qadir. In cross-examination, he admitted that **“it is incorrect to say that no customer had made any complaint against accused Abdul Qadir since the year 2012 to 2014.”** (PW-2) Abdul Hafeez in his examination chief deposed that on 13.06.2014 he had taken over the charge of Bhriya Road Branch of MCB. After taking over the charge, one customer Faheem Ali visited his branch and inquired about his account balance which was informed to him and on hearing of such balance he became surprised and informed that his balance must be more than the balance informed him. On scrutiny, ten other cases were also surfaced thereafter other persons made complaints and handed over deposit slips which he had produced at Ex.4-A/1 to Ex.4/A-11. In cross-examination, he admitted that **“it is correct to say that vouchers of daily transaction used to seal at the end of the day by the peon and the said vouchers may be given by him to the Branch Manager. After payment of vouchers, Cashier has no concern with the said vouchers”**. The prosecution also examined (PW-12) Saleem Raza Shah, who was posted as a Cashier in MCB Bhriya Road Branch Road from the year 2011 to 2014. who

in his evidence deposed that he is **illiterate** and cannot use his ID because of his illiteracy. His ID is being used by accused Tanveer Ahmed and most of the posting used to make by accused Tanveer Ahmed. The accused had misappropriated an amount of Rs.985,300/-, Rs.13,30,000/- and Rs.300,000/- by using his ID. He further deposed that he cannot say that the accused has transferred money from the account of Shahnawaz, Ghulam Rasool and Abdul Baqi. In his cross-examination, he admitted that he had not made any complaint to Zonal Office about misappropriation of the amount of Rs.985,300/-, Rs.13,30,000/- and Rs.300,000/- because he came to know after registration of the case. Lastly, the prosecution examined I.O. of the case Inspector Rasheed Ahmed Shaikh.

8. Learned counsels for the appellants have forcefully argued that after the arrest of the appellant or at the time of recording the evidence, the learned trial Court has not obtained the specimen signature from the accused persons to verify from the Expert, whether the signatures bear on the deposit slips were made by the appellants or not. Hence, at this juncture, it is appropriate to reproduce the **Article 84 of Qanoon-e-Shahadat Order 1984**, which reads as follows:

“84. Comparison of signature, writing or seal with others admitted or proved. (1) *In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.*

(2) *The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.*

(3) *This Article applies also, with any necessary modifications, to finger-impressions.”*

9. A bare reading of the aforementioned Article, which empowers the Court to make the comparison to the words or figures or writing over the disputed documents with those of the admitted writing or signatures and to exercise their judgments and resemblance of admitted writing on record. Further, the High Court can form its own

opinion if the trial Court fails to apply its mind. Article 84 whereof, further confirms the power of the Court to examine the suspected documents so as to determine whether the signature was tracing. The Court itself can compare the signature on the document. In this context, the reliance is placed upon the case of **Ghulam Rasool and others v. Sardar-ul-Hassan and another (1997 SCMR 976)**, in which the Hon'ble Supreme Court of Pakistan has held that:-

“3.....The above contention is untenable as it is within the power of a Court to compare the disputed signature with the admitted signature and to form it's view though it is advisable to refer the matter to the handwriting expert. However, the fact that the same was not referred would not render the order/judgment legally infirm as to warrant interference.”

In another case of **Messrs Waqas Enterprises and others v. Allied Bank of Pakistan and two others (1999 SCMR 85)**, the Hon'ble Supreme Court of Pakistan has held that:-

“7. It is settled principle that in certain eventualities Court enjoins plenary powers to itself compare the signature along with other relevant material to effectively resolve the main controversy. We, therefore, carefully went through this process and compared documents attributed to have been executed by petitioner Ashfaq Hussain with his admitted signatures on record, which obviously had complete similarity and tallied with each other. The other evidence on record also negated the stand of petitioner as regards merits. When learned counsel for petitioners was confronted with aforesaid situation he felt great difficulty in disputing this factual aspect.

Now keeping in view above discussion, opinion formed on the basis of comparison of signatures and scrutiny of preponderant material on record we are satisfied that impugned judgment does not suffer from any impropriety or legal infirmity.”

10. From the perusal of the documents available on record, it is an admitted position that appellant Tanveer Ahmed Mangrio was posted as Cashier MCB branch and only a piece of evidence available against him was the evidence of Muhammad Ishaq (PW-11), who in his evidence deposed that he has deposited amount of Rs.100,000/- in his account but the said deposit slip was given to him by his *munshi* and after one month, he had obtained his account statement which revealed that the said amount i.e. Rs.100,000/- was not

credited in his account. The said slip was signed by appellant Tanveer Ahmed Mangrio and same deposit slip was produced by him at Ex.14-B. The main contention of the learned counsel for appellant Tanveer Ahmed Mangrio is that this piece of evidence was not confronted to the appellant at the time of recording statement under Section 342 Cr.P.C. It is settled proposition of law that all incriminating pieces of evidence, available on record, are required to be put to the accused, as provided under section 342, Cr.PC in which the words written for the purpose of enabling the accused to explain any circumstances appearing in evidence against him which clearly demonstrate that not only the circumstances appearing in the examination-in-chief are put to the accused but the circumstances appearing in cross-examination-in- chief or re-examination are also required to be put to the accused, if they are against him. . In this context, reliance is placed on the case of **Qaddan and others vs. The State (2017 SCMR 148)**, the Hon'ble Supreme Court of Pakistan has held that:-

“3.....The law is settled that a piece of evidence not put to an accused person at the time of recording of his statement under Section 342, Cr.P.C. cannot be considered against him.”

In another case of **Muhammad Saddique Vs. The State (2018 SCMR 71)**, the Hon'ble Supreme Court of Pakistan has held that:-

“8.....Besides the above all, not a single question of earlier statements of Jumma Khan recorded during the trial in absentia was ever put to the appellant during his statement recorded under section 342 Cr.P.C. Law on the subject is very much clear and settled that any piece of incrimination evidence must be put to accused in his statement under section 342 Cr.P.C. otherwise the same cannot be used against him.”

In another case of **Imtiaz alia Taj Vs. The State and others (2018 SCMR 344)**, the Hon'ble Supreme Court of Pakistan has held that:-

“3. it is undeniable that a positive report statedly received from the Forensic Science Laboratory in respect of the said firearm had not been put to appellant at the at the time of recording of his statement under section 342 Cr.P.C. The law is settled

that a piece of evidence or a circumstance not put to an accused person at the time of recording his statement under section 342 Cr.P.C. cannot be considered against him and, thus, no corroboration to the ocular account was forthcoming on this score.”

11. From the perusal of the evidence of PW-11 Muhammad Ishaq reveals that an amount of Rs.100,000/- was deposited through his driver i.e. PW-13 Muhammad Islam in MCB Bank and appellant Tanveer Ahmed Mangrio has issued deposit slip Ex/14/B which bears his signature. Such piece of evidence was not put to the appellant to obtain his clarification about his signature, in such situation, if any piece of incriminating evidence available on record must be put to accused in his statement under Section 342 Cr.P.C. otherwise the same cannot be used against him. Furthermore Pw-11 Muhammad Ishaq first time introduced Pw-13 Muhammad Islam as his driver, who has deposited the amount in his account and got deposit slip from the appellant Ex.14/B, during course of inquiry it transpired the signature appears on deposit slip does not resemble with the account holder then in order to fill the lacuna in the case, prosecution examine PW-13 Muhammad Islam by moving an application under section 540 Cr.PC and notice was issued to learned counsel for the appellant and he had raised his objection that the name of PWs Muhammad Islam was not in challan nor any 161,Cr.PC statement filed by the prosecution and on same date the application was allowed, in his examine-in-chief he deposed that he used to deal the account of Muhammad Ishaq in the bank whereas the claim of PWs Muhammad Ishaq, that he used to maintain his bank account, but all these pieces of evidence was not put to accused while recording his evidence. In view of above, it would not be appropriate that after four years of the trial remanded back the case to the trial court to provide a chance to prosecution to fill the lacuna by putting all above questions while recording his fresh statement under section 342, Cr.PC. In this context, the reliance is placed upon the unreported case of ***Nusrat Ali Shar and others V. The state (Criminal Appeals No.24-K, 25-K, and 26-K of 2018)*** the Hon'ble Supreme Court of Pakistan has held that:

“It is pertinent to mention here that all the above-mentioned pieces of evidence relied upon by the

prosecution were not put to the appellant and their co-accused at the time of recording of their statements under Section 342 Cr.P.C. and the High Court had remanded the case to the trial court for recording fresh statements of the appellants under Section 342 Cr.P.C. so as to remove the said lacuna. The law is settled by now that a piece of evidence or a circumstance not put to an accused person at the time of recording of his statement under section 342 Cr.P.C. cannot be considered against the accused person facing the trial. In the case in hand through an act or omission of the Court a serious lacuna in that regard had crept into the case of the prosecution and the accused persons could not be prejudiced on account of the said act or omission of the Court. Through the impugned judgment passed by it, the High Court had allowed that lacuna to be filled through remand to the detriment of the appellants. The High Court was expected to hold the scales of justice in balance and not to tilt the same in favour of the prosecution. In this view of the matter remand of the case by the High Court to the trial court to fill that lacuna to the detriment of the accused persons has been found by us to be militating against the interest of justice. These appeals are, therefore, allowed, the impugned judgment passed by the High Court remanding the case to the trial court is set aside.”

12. Furthermore PW-12 Saleem Raza in his evidence deposed that he is an illiterate person and he cannot use his ID and his ID was being used by appellant Tanveer Ahmed, which is not appealing to mind that, who happened to be cashier of bank is illiterate and uneducated cannot use the computer and same was being used by appellant Tanveer, while making such a statement he tried to get away from his criminal liability. PW-1 Muhammad Rizwan in his cross-examination deposed that **“According to computer system the flying entries could be identified as to who had supervised on the basis of their ID”** in further cross-examination, he deposed that **“It is correct to say that official whose ID is used for any flying entries is responsible for such flying entries”**. By showing this he (PW-12) cannot be exonerated from his responsibility/liability, otherwise, he himself admitted that he has never complained to the high-ups regarding using of IDs by the appellant. (PW-5) Abdul Rasool deposed that after receiving the cash amount by appellant Abdul Qadir, he was directed to get rubber stamp affixed on deposit slip from accused Tanveer Ahmed but from the perusal of that deposit slip, the signature available on Vakalatnama and other

documents of appellant Tanveer Ahmed do not have resemblance with the said slip hence, this piece of evidence does not support the prosecution case to connect the appellant Tanveer Ahmed in the commission of offence.

13. It is a well-settled proposition of law that the prosecution is bound to prove its case beyond any shadow of a doubt. If any reasonable doubt arises in the prosecution case, the benefit of the same must be extended to the accused not as grace or concession, but a matter of right. Likewise, it is also the well-embedded principle of criminal justice that there is no need of so many doubts in the prosecution, rather any reasonable doubt arising out of the prosecution evidence pricking the judicious mind is sufficient for the acquittal of the accused. In this respect, reliance is placed upon the case of **Mohammad Mansha v. The State (2018 SCMR 772)** the Hon'ble Supreme Court of Pakistan has held as under:

“4. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to 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 Tarique Parvez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Mohammad Akram v, The State 2009 SCMR 230) and Mohammad Zaman v. The State (2014 SCMR 749).”

14. For the upshot reasons in CrI. Appeal No.408/2016 as discussed hereinabove, the convictions and sentences awarded to appellant Tanveer Ahmed Mangrio by the learned trial Court vide impugned judgment dated 22.10.2016 is set aside. Accordingly, Criminal Appeal No.408/2016 is allowed. Appellant Tanveer Ahmed Mangrio is acquitted from the charge leveled against him in this case by extending the benefit of the doubt. The appellant Tanveer Ahmed Mangrio is in jail, he is directed to be released forthwith, if not required in any other custody case.

15. Reverting to the case of appellant Abdul Qadir Soomro in CrI. Appeal No.411/2016, it is an admitted position that the appellant was posted as Branch Manager and so many documents are available in the R&Ps from page 689 to 699 and other documents which bear the original signature of appellant Abdul Qadir and on the comparison of the signature, it is quite clear that deposit slips at Ex.4/B-1, Ex.6/B, Ex.11-A, Ex.13-A, and Ex.13-B bear the signature of appellant Abdul Qadir. Furthermore, all the private witnesses have deposed against appellant Abdul Qadir that they have deposited their amount to appellant Abdul Qadir and after receiving the cash amount, he used to give the deposit slips to them, all the private witnesses, who had deposited their cash amount with the MCB Branch, deposed against appellant Abdul Qadir that he is a real culprit, who had committed fraud and cheating with them, hence sufficient material is available on record to connect him with the commission of offence.

16. As regards, the contention of learned counsel for appellant Abdul Qadir Soomro that he is not a dangerous, desperate and hardened criminal as well as he is not a previous convict, it is a matter of record that the appellant is in jail for a period of six (6) years, two (2) months and fourteen (14) days including remissions and the family of appellant per learned counsel, is passing a miserable life due to his confinement in jail. Needless to say that normally, it is very difficult for a family to survive without the support of earning member of the family. The position, being so, would be nothing but causing misery to the family of the appellant on account of his act. The peculiar facts and circumstances, so pleaded by the counsel for the appellant, has gone unchallenged by the prosecution may well be taken into consideration for departing from the normal practice. Further, as per the jail roll dated 21.02.2019, the conduct of the appellant during confinement is "satisfactory". He is the first offender and has no previous criminal history in his credit. Besides, the appellant claims himself to be only male member of the family and has also served for a period of six (6) years, two (2) months and fourteen (14) days imprisonments including remissions, therefore, while taking lenient view and following the principle laid down by the Hon'ble Apex Court the in a case of Niazuddin V.The state (2007

SCMR 206) Hon'ble Supreme Court of Pakistan was pleased to reduce the sentence from imprisonment of ten years to six year. In another case of **Gul Naseeb v. The State (2008 SCMR 670)** the Hon'ble Supreme Court of Pakistan has reduced the sentence from imprisonment for life to ten years. In such circumstances, in our view, the appellant had suffered adequate punishment and the ends of justice have been satisfied. It is appropriate that the appellant may be given an opportunity to improve himself as a law-abiding citizen.

17. Keeping in view the above facts and circumstances of the case, we are of the considered view that the prosecution has discharged its burden of proving the guilt of the appellant beyond a shadow of reasonable doubt, thus, the instant appeal is dismissed on merits. Accordingly, the sentences awarded to the appellant Abdul Qadir Soomro in Case No.29/2015 arising out of FIR No.23/2015 are reduced from 10 years to five (5) years two (2) months and 14 days on each count and in case of non-payment of fine, appellant shall suffer R.I. from two (2) years to one (1) year more on each count. With the above modifications, the instant appeal i.e. Criminal Appeal No.411/2016 stands dismissed being devoid of merits.

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