IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Nazar Akbar
Mr. Justice Zulfiqar Ahmad Khan

Special Cr. Anti-Terrorism Appeal No.270 of 2018
Special Cr. Anti-Terrorism Jail Appeal No.315 of 2018

Appellant in Spl. Cr.ATA No.270 of 2018	:	Ahsanullah alias Imran through Mr. Muhammad Tamaz Khan, advocate.
Appellant in Spl. Cr.ATJA No.315 of 2018	:	Saad Aziz alias Tun Tun through Mr. Nadeem-ul-Haque, advocate.
State	:	Through Syed Meeral Shah Bukhari, Additional Prosecutor General, Sindh.
Date of Hearing	:	17.11.2020
Date of Judgment	:	17.11.2020

J U D G M E N T

Zulfiqar Ahmad Khan, J:- Appellants Ahsanullah alias Imran son of Talib Jan and Saad Aziz alias Tun Tun son of Aziz Shaikh were tried by learned Judge, Anti-Terrorism Court-XVII, Karachi in Special Case No. 398 of 2015 (New Special Case No.97 of 2017) [Crime No.690/2014, under sections 302/353/324/435/34 PPC read with Section 7 of ATA 1997}, registered at P.S. Preedy, Karachi. On conclusion of the trial, vide judgment dated 29.09.2018, the appellants were convicted and sentenced under section 265-H (II) Cr. P.C. as under:-

01. For the offences under Section 302(b)/34 PPC each and sentenced to undergo life imprisonment as (Tazir) and to pay fine of Rs.2,00,000/- each to the legal heirs of the deceased by way of compensation under section 544 Cr. P.C. In default

in payment of such fine, they shall further suffer S.I. for six months each.

02. For the offence under Sections 7(1)(a) of Anti-Terrorism Act, 1997 each and sentenced them to suffer life imprisonment with fine of Rs.2,00,000/- each and in default in payment of such fine, they shall suffer further S.I. for six months.

03. For the offence under Section 324 PPC each and and sentenced to undergo R.I. for ten years with fine of Rs.50,000/- each. In default in payment of such fine, they shall further undergo S.I. for four months

04. For offence under section 353 PPC each and sentenced to undergo R.I. for two years with fine of Rs.10,000/- each. In default in payment of such fine, they shall further suffer S.I. for two months.

05. For offence under section 435 PPC each and sentenced to undergo R.I. for two years with fine of Rs.25,000/- each and in default in payment of such fine, they shall suffer S.I. for two months each.

06. For offence under section 3 of Explosive Substances Act, 1908 each and sentenced to suffer life imprisonment.

Trial Court has ordered for forfeiture of movable and immovable properties of accused persons to the extent of Rs.5,00,000/- each and all sentences were ordered to run concurrently. Benefit of Section 382-B, Cr. P.C. was also extended to accused.

2. The prosecution story unfolded in the crime report (Exh.6/O) are that the duty office SIP Abdul Saeed Shaikh after conducting 174 Cr. P.C. proceedings of deceased H.C. Shams-ur-Rehman and PC Mubeen recorded 154 Cr. P.C. statement of complainant SIP Gul Faraz on 10.11.2014 at about 2240 hours who has stated that he was performing his duty as SIP at PS Preedy and on the same day i.e. 10.11.2014 his duty time was 0800 hours to 2000 hours and on tht day he was performing patrolling duty on government mobile No.SP-7198 mobile-1 Preedy alongwith his staff namely HC Shams-ur-Rehman, HC Ceesal Aijaz, PC Mubeen and driver/H.C Shahzad after visiting different spots when they reached during patrolling at M.A. Jinnah Road near Suzuki Showroom at

about 2000 hours suddenly he heard the sound of explosion from back side of mobile and immediately got stopped the mobile and laid off from the mobile and saw that fire was erupted on back side of the mobile and H.C Ceesal Aijaz and P.C Mubeen were raising cries and were seriously injured whereas H.C Shams-ur-Rehman was burnt alive and died at the spot, complainant and driver H.C Shahzad of the mobile took out H.C Ceesal Aijaz and P.C Mubeen from the mobile and H.C Ceesal Aijaz disclosed that 04 unknown persons on two motorcycles have thrown one cracker bomb on mobile and ran way towards garden signal. Complainant then sent both the injured persons to the Civil Hospital. The mobile was also damaged due to the burning and armed ammunition, gas gun, two SMGs and 16 rounds, two magazines and 12 shells, three bullet proof Jackets were also burnt and he complained against 04 unknown persons that they came on two motorcycles and thrown cracker bomb on the mobile and due to blast fire was erupted in the mobile and police personals H.C Shamsur Rehman was burnt alive in the mobile and P.C Mubeen succumbed to the injuries in the hospital and expired. Whereas H.C Ceesal Aijaz have received injuries. The 154 Cr. P.C statement of complainant was incorporated in 154 Cr.P.C book as Crime No. 690/2014 under sections 353/324/302/435/34 PPC R/W Section 7 of ATA 1997 and 3/4 Explosive Substances Act, 1908.

3. After usual investigation, challan was submitted against the accused under the above referred sections.

4. Trial court framed charge against the accused at Exh.24 in the case, to which accused pleaded not guilty and claimed to be tried.

5. At trial, prosecution examined ten witnesses. Thereafter, prosecution side was closed.

6. Statements of accused under Section 342 Cr. P.C were recorded at Exh.43 and 44, wherein the accused denied all the incriminating pieces of prosecution evidence brought against them on record and claimed false implication in this case. Appellant Ahsanullah raised plea that the identification parade was highly doubtful and was not reliable as he had been shown to the witnesses prior to identification parade. In a question what else he has to say, he replied that he is innocent and has not committed this offence and falsely implicated by police as he had been apprehended on 16.03.2015 from his shop by CTD/CIA police and thereafter implicated in three cases i.e. Crime Nos.64, 65 and 66/2015, wherein he has been acquitted on 21.04.2017 by this Court. Whereas, appellant Saad Aziz has stated that he was apprehended by the civil and uniformed personnel in the night in between 17/18.05.2015 from his house and they involved him in Crime No. 88/2015, registered at P.S. CTD under sections 353/324/34 PPC read with section 4/5 of Explosive Substances Act on 20.05.2015 and various criminal cases were foisted by CTD Police and he remained in CTD police custody for long time and he has no connection with any prohibited organization.

7. Trial Court after hearing the learned counsel for the parties and assessment of evidence, by judgment dated 29.09.2018 convicted and sentenced the appellants as stated above. Hence these appeals.

8. Learned counsel for the appellants contended that the impugned judgment is illegal, unlawful, arbitrary and is unwarranted by law. He further contended that learned trial Court did not consider the improvements, discrepancies, and contradictions in the statements of PWs while deciding the case, that appellants/accused were booked by the police in this case falsely by foisting arms upon them. He further contended that no specific role has been assigned to the appellants. He also contended that the learned trial Court has erred in holding that the

prosecution has proved the case against the appellants while there was contradictory evidence which is not trustworthy due to material contradictions and conviction handed down to the appellants is illegal and the same is result of mis-reading of facts and evidence on record. Learned counsel further contended that the appellants are innocent and have falsely been implicated in this fake and managed case of encounter and no features/descriptions of the culprits have been given by the PWs. Learned counsel further contended that the learned trial Court has miserably failed to appreciate the evidentiary value of evidence and also failed to prove the case beyond the shadow of doubt. Learned counsel further contended that no independent witness has been cited by the prosecution in this case despite the fact that the place of occurrence was thickly populated area. Lastly, learned counsel has prayed for acquittal of the appellants.

9. Learned Additional Prosecutor General has argued that the prosecution has examined four PWs and they have fully implicated the accused in the commission of offence. He further argued that police officials had no enmity to falsely implicate accused in this case and trial court has rightly convicted the accused. Learned Additional Prosecutor General prayed for dismissal of the present appeals.

10. We have carefully heard the learned Counsel for both the parties and scanned the entire evidence available on record.

11. At the trial, prosecution examined PW-01 ASI Ceesal Aijaz has deposed that on 10.11.2014, he was posted at PS preedy and his duty timing was from 0800 to 2000 hours and he was on mobile duty with SIP Gul Faraz and other police personnel namely DHC Shahzad, HC Shamsurrehman and PC Mubeen were with them in mobile bearing No.7198 and were patrolling at M.A road, at about 2000 hours. They saw

that four persons came on two motorcycles and they have thrown something at the police mobile and blast took place at the mobile and they ran away from the spot on the motorcycles. He was injured and saw that PC Mubeen was also seriously injured and HC Shamsurrhman was burnt alive due to fire. SIP Gul Faraz and HC Shahzad remained safe and they have taken me and PC Mubeen in the Rickshaw and brought at Civil Hospital where PC Mubeen has succumbed to injured and died. Since he was seriously injured, he was shifted to PNS Shifa. Where he remained under treatment. **Since it was night time they have not seen the culprits who have thrown the cracker on the police mobile.** During his cross-examination he admitted that he had not produced departure entry regarding leaving the PS for patrolling and he did not know whether the I.O had not mention in his 161 Cr. P.C statement that SIP Gul Faraz took him and PC Mubeen in Rickshaw to Civil Hospital **and further admitted that he had not produced the medical certificate of treatment of Civil Hospital and PNS Shifa and in his 161 Cr. P.C. statement he had not given features and physical appearance of the culprits and at the M.A Jinnah road there was heavy traffic available all the time and due to rush on the M.A Jinnah road it was not possible to take the vehicle to the opposite side road**.

12. PW-02 SIP Abdul Saeed in his cross-examination has stated that the distance between the PS and place of incident was about half kilometer and he had not went to the place of incident but he directly went to the Civil Hospital and admitted that he had not produced the road certificate of dead body of deceased HC Shamsurrehman and the complainant in his 154 Cr. P.C. statement had not mentioned about the features and physical description of culprits nor mentioned name of any culprits and the FIR was lodged against unknown culprits and admitted that he had only recorded statement of complainant SIP Gul Faraz.

13. PW-03 Waqar Ahmed Soomro, the then Judicial Magistrate, Karachi-South, who conducted the identification parade on 08.04.2015 of the accused Ahsanullah on the application of PI Shahzad.

14. PW-04 Retired SIP Gul Faraz Khan has deposed that on 10.11.2014, he was posted at PS preedey as SIP. His duty timing was from 0800 to 2000 hours. He was sitting with the driver on the front of the Suzuki whereas, three police personals namely HC Shamsur Rehman, HC Sesal Aijaz and PC Mubeen. He got stop two rickshaws from there and boarded the injured PC Mubeen in one rickshaw and HC Sesal Aijaz in another rickshaw and asked the drivers of rickshaw to take them to the hospital. During his cross-examination, **he admitted that he had not produced the entry of his arrival and departure on 10.11.2014 and the Cot officer issued weapons and ammunition under the police rules 1934 and he had not produced the entry through which the weapons and ammunition were handed over to them when they set out for patrolling** and in his statement under section 161 Cr. P.C. 02 SMGs were mentioned as burnt and at that time there was heavy traffic available at M.A Jinnah Road particularly near the place of incident and in the incident except their police mobile no any other vehicle caught fire and in the blast no any other vehicle injured except the police personal and damaged of the police mobile and he was on the front seat of the mobile he had not seen any person who have thrown the explosive on the mobile on rear side and further admitted that the place of incident has been written in the Ex.28/A as Moltiform Service Shop.

15. PW-05 HC Shahzad Ali in his cross-examination has stated that no ammunition issued in his name when he proceeded from the P.S. and except the police mobile no any other vehicle got damaged in the blast and no any other person except the police personal received injuries and death occurred and **admitted that in his statement under section 161**

Cr. P.C duty timings were not mentioned nor he produced the entry number through which he came to his duty and further he had not mentioned about the features, description regarding the mole on the nose of one of the accused and hair up to shoulders and on 08.04.2015 he accompanied with the I.O. in police mobile and he was sitting on the rear seat in police mobile while coming to city Court.

16. PW-06 Sub-Inspector Ghulam Mustafa Arain of Bomb Disposal Unit South has deposed that on 10.11.2014, he was present in his office of Bomb Disposal Unit situated in Artillery Maidan and received information that one explosion has took place near Tibat Center within the jurisdiction of PS Preedy. During his cross-examination he has admitted that when he reached at the place of incident the police mobile was burning and before inspection of the police mobile the concerned mobile officer has not disclosed about ammunitions other Gas Guns and Shells were available in the mobile before the blast and in the clearance certificate and so also in the final report there was no any mentioned that the patrol tank was damaged.

17. PW-07 PC Muhammad Kamran in his cross-examination has stated that Besides him I.O., ASI Umer Sharif, HC Sarwar and 3/4 other police personnel were in the mobile and he did not remember at present the registration number of police mobile and it was not mentioned in his statement under section 161 Cr. P.C that they went to CTD in police mobile.

18. PW-08 SIP Abdul Razzak in his cross-examination has admitted that he had not produced any such entry of coming to his duty at PS on 09.06.2015 and in the memo as Ex.36/A it was not mentioned that in which vehicle they proceeded to CTD Civil Line on 09.06.2015 and

further admitted that in the memo Ex.36/A particular date of incident was not mentioned but month was mentioned and the pointation of place of incident made after 5 days of the arrest and as per the time mentioned in Ex.36/B the time i.e. 1545 hours was very busy hours of business and at the place of pointation there was rush of traffic and admitted that Inspector Shahzad has not taken any person from the public as mashir in memo Ex 36/B and **in the Ex.36/B as well as in 161 Cr.P.C. statement it was mentioned that hand grenade was thrown.**

19. PW-09 MLO Nisar Ali Shah, who has examined injured Aijaz son of Sodagar, Mubeen and one dead body of one person Shamsur Rehman son of Muhammad Malik and found following injuries:-

01. Multi blast lacerated wounds of varying sizes over left lower leg. Skin deep. I reserved the injury for want of X-ray left lower leg. Injuries found fresh and weapon used blast material. I prepared the MLC No.5227/2014 which I produce at Ex.38/A and say, it is same, correct and bears my signature. I examined the second injured namely Mubeen and found the following injuries on his body.

1. Multiple blast wound of varying sizes over right chest with blood clots.
2. Multiple blast wounds of varying sizes over right pubic and pelvic area with bleeding. I reserved the injuries for want of X-ray, chest and pelvic. Since he seriously injured and was being given treatment by the CMO, he has expired within 5/10 minutes. I issued ML No. 5228/2014 in which in the last I have made note that he has expired at about 2010 hours.

He conducted postmortem of Shamsur Rehman and found following surfaces injuries.

1. All external tissues were burnt. Leaving no identity.
2. Loops of intestine protruded out ward with burns.
3. External genitals burnt with full damages of testes.
4. Both lower legs found in pugilistic position with local layers of burnt tissues.

5. Right foot bunt and separated from the legs.
6. Right side ribs found fractured due to burns.
7. Tongue is burnt and protruded out ward. Note. At the end there is no need to take tissues for DNA as body is identified already.

Internal Examination

No need to open the body as it is completely burnt up to all the bones of right thorax and feet damaged.

Opinion.

From external examination I am of opinion that death caused by complete damage of vital visceras as a result of hundred as a result of hundred percent fire burns by a cracker blast.

All the injuries found ante mortem and death occurred spontaneously and time between the death and postmortem was about 01/02 hours. I prepared the postmortem report on the same day and time which I produce at Ex.38/D. I also produce cause of death certificate of both the deceased namely Mubeen and Shamsur-Rehman at Ex.38/E and Ex.38/F.

During his cross-examination he admitted that he had not found any cracker material in the body of deceased Shamsur-Rehman and could not say whether burnt injuries on the body of deceased Shamsur-Rehman were not due to blast of the cracker. At the time of examination of Mubeen before his death he had not found any cracker material from the injuries and at the time of examination of injured Aijaz he had not found any cracker material on the wearing cloths of the injured.

20. It has come on record through testimony of PW-06 SIP Ghulam Mustafa Arain, (Bomb Disposal Unit) that he did not find any proof of any planted IED (Improvise Explosive Device) hand grenade or any cracker and minutely examined the back side of the mobile and he found tear gas croton with two SMGs with loaded gun with tear gas with 90% burnt and the back side of the mobile was also burnt **and according to his**

opinion the burning took place due to throwing of low explosive chemical material/Aatishgeer Maada which is usually a mixture of phosphorous powder, aluminum powder and patrol and if that mixture is given some air or some heat or friction the it can explode.

21. Record further shows that incident took place on 10.11.2014, whereas, identification parade was held on 08.04.2015. PW-10 Inspector Shahzad Ali Khan has himself admitted that accused was arrested on 21.03.2015 but identification parade was held after long delay on 08.04.2015. There is nothing on record that P.Ws had seen accused clearly for sufficient time at the place of incident. We have no hesitation to hold that identification parade through PWs was legally laconic and identification of accused was unsafe for maintaining conviction. Moreover, identification parade was not held in accordance with the guidelines contained in the Police Rules, 1934. Reliance has been placed upon the case reported as **Hakeem and others vs. The State (2017 SCMR 1546)**, wherein the Honourable Supreme Court has held as under:

> *"The Rule 26.32(1)(d) inter alia require "the suspects shall be placed among other persons similarly dressed and of the same religion and social status, in the proportion of 8 or 9 such persons to one suspect. Each witness shall then be brought up separately to attempt his identification. Care shall be taken that the remaining witnesses are " still kept out of sight and hearing and that no opportunity is permitted for communications to pass between witnesses who have been called up and those who have not." PW-5, Imdad Ali, Assistant Mukhtiarkar, Mirpursakro, in whose presence the identification parade was conducted, has stated in his deposition that he arranged 22 dummies. He deposed "the accused persons namely Ghulam Mustafa, Bodo, Noor Mohammad, Khuda Bux, Usman, Hakim and Imdad were mixed up in the row with damies (sic) according to their choice and thereafter the complainant Wali Muhammad and PWs Jan Mohammad and Abdullah picked them up from the row." So in-fact seven accused were lined up with dummies for identification. Furthermore, during the identification parade, no specific role played in the incident was assigned to any particular accused. This Court in the case of Azhar Mehmood v. State (2017 SCMR 135) has held that in an identification parade, if the accused were identified without reference to any role played by*

them in the incident, the same is of no evidentiary value. A quote from the judgment of Azhar Mehmood's case is as follows:-

> *"We have gone through the statements made by the supervising Magistrates, i.e. PW5 and PW10 as well as the proceedings of the test identification parades and have straightaway noticed that in the said parades the present appellants had not been identified with reference to any role played by them in the incident in issue. It has consistently been held by this Court that such a test identification parade is legally laconic and is of no evidentiary value and a reference in this respect may be made to the cases of Khadim Hussain v. The State (1985 SCMR 721), Ghulam Rasul and 3 others v. The State (1988 SCMR 557), Asghar Ali alias Sabah and others v. The State and others (1992 SCMR 2088), Mehmood Ahmad and 3 others v. The State and another (1995 SCMR 127), Siraj-ul-Haq and another v. The State (2008 SCMR 302), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Shafqat Mehmood and others v. The State (2011 SCMR 537), Sabir Ali alias Fauji v. The State (2011 SCMR 563) and Muhammad Fayyaz v. The State (2012 SCMR 522)"*

It is settled law that identification parade, to inspire confidence, must be held at the earliest possible opportunity after the occurrence, since memories fade and visions get blurred with the passage of time. Thus, an identification test, where an unexplained and unreasonably long period has intervened between occurrence and identification proceedings, should be viewed with suspicion. Moreover, it is imperative to ensure that, after their arrest, the suspects are put to identification tests as early as possible and such suspects should preferably, not be remanded to police custody in the first instance and should be kept in judicial custody till the identification proceedings are held. This will avoid the possibility of overzealous investigation officers showing the suspects to the witnesses while they are in police custody. Even when these accused persons are, of necessity, to be taken to Courts for remand etc. Identification evidence has been eloquently and elaborately discussed in the judgment dated 20.02.2019 passed by the Honourable Supreme Court in the case of Mian Sohail Ahmed and Others Vs. The State (Criminal Appeals Nos.306-L, 307-L and 308-L of 2012).

22. Furthermore, PW-01 ASI Ceesal Khan admitted that since it was night time they have not seen the culprits who have thrown the cracker on the police mobile and he had not produced departure entry regarding leaving the PS for patrolling and further admitted that he had not produced the medical certificate of treatment of Civil Hospital and PNS Shifa and in his 161 Cr. P.C. statement he had not given features and physical appearance of the culprits and at the M.A. Jinnah road there was heavy traffic available all the time and due to rush on the M.A Jinnah road it was not possible to take the vehicle to the opposite side road, whereas, PW-04 admitted that he had not produced the entry of his arrival and departure on 10.11.2014 and the Cot officer issued weapons and ammunition under the police rules 1934 and he had not produced the entry through which the weapons and ammunition were handed over to them when they set out for patrolling and in his statement under section 161 Cr. P.C. 02 SMGs were mentioned as burnt and at that time there was heavy traffic available at M.A. Jinnah Road. PW-05 HC Shehzad Ali also furnished contradictory testimony by saying that ammunition has not been issued in his name when he proceeded from the P.S. and except the police mobile no any other vehicle got damaged in the blast and he had not mentioned the features, description regarding the mole on the nose of one of the accused and hair up to shoulders. PW-08 SIP Abdul Razzak has also admitted that there was rush of traffic when the occurrence took place but surprisingly nobody and/or any public vehicle has received any scratch/injury during the blast except police officials which resulted death of two police officials and the official police mobile was totally destroyed. It is the case of the prosecution that four unknown persons came on two motorcycles, thrown one cracker bomb on mobile and ran away but the evidence of PW-09 MLO Nisar Ali Shah does not support the version of prosecution who has clearly stated that he had not found any cracker

material in the body of deceased Shamsur-Rehman and could not say whether burnt injuries on the body of deceased Shamsur-Rehman were not due to blast of the cracker. At the time of examination of Mubeen before his death he had not found any cracker material from the injuries and at the time of examination of injured Aijaz he had not found any cracker material on the wearing cloths of the injured.

23. It has come on record that accused Ahsanullah has been acquitted alongwith other co-accused by this Court in Crime Nos. 64, 65 and 66 of 2015, vide judgment dated 21.04.2017, passed in Special Criminal Anti-Terrorism Appeals No. 10, 21 to 24, 28 and 29 of 2016 and prosecution had not filed any appeal against acquittal of accused as such his acquittal has attained finality in those cases. Accused has also stated in his statement under section 342 Cr. P.C. that he has been acquitted in those cases but the learned trial Court failed to consider the defence theory. Besides, as stated above, the prosecution evidence is pregnant with doubts and according to golden principle of benefit of doubt; one substantial doubt would be enough for acquittal of the accused. The rule of benefit of doubt is essentially a rule of prudence, which cannot be ignored while dispensing justice in accordance with law. Conviction must be based on unimpeachable evidence and certainty of guilt and any doubt arising in the prosecution case, must be resolved in favour of the accused. The above prosecution evidence shows glaring contradictions/ ambiguity. This fact has totally been ignored by the learned trial Court while passing the impugned judgment.

24. According to the defence plea, the appellant Ahsanullah was picked up by the CTD/CIA Police from his shop on 16.03.2015, whereas, appellant Saad Aziz was picked up from his home in the night in between 17/18.05.2015 and thereafter falsely implicated them in this case but such plea has been disbelieved by the trial Court without assigning any

reason. No doubt, police officials as citizen are as good witnesses in Court proceedings as any other person yet, some amount of care is needed when they are the only eye witnesses in a case. It is not on account of an inherent defect in their testimony, but due to the possibility that an individual police official in mistaken zeal to see that the person he believes to be a culprit is convicted, might blur line between duty and propriety. It is settled law that in the exercise of appreciation of evidence it is necessary as prerequisite, to see whether witness in question is not such an overzealous witness. It is very unfortunate that the learned trial Court ignored the defence plea without assigning the sound reasons.

25. Prosecution failed to prove that appellant assaulted or used criminal force to police officials to deter from discharge of their duty. Appellant had been convicted under section 324, PPC was without any evidence. From the prosecution evidence available on record, offence had no nexus with the object of Anti-Terrorism Act, 1997 as contemplated under sections 6 and 7 of the Anti-Terrorism Act, 1997. Therefore, evidence available on record makes it clear that encounter had not taken place. Above stated circumstances created doubt about the very commencement of the encounter.

26. It appears that the Investigation Officer to conduct fair investigation in this case has failed, as no independent person of locality was examined in order to ascertain the truth beyond any reasonable doubts. The above stated circumstances in our view created serious doubts about the very occurrence of the encounter. The standard of the proof in such a case should have been far higher as compared to any other criminal case when according to the prosecution it was a case of police encounter is day time. It was desirable that it should have been investigated by some other agency. Such dictum has been laid down by

the Honourable Supreme Court in the case of **Zeeshan alias Shani versus The State (2012 SCMR 428)**. Relevant portion is reproduced as under:-

> "11. The standard of proof in this case should have been far higher as compared to any other criminal case when according to the prosecution it was a case of police encounter. It was, thus, desirable and even imperative that it should have been investigated by some other agency. Police, in this case, could not have been investigators of their own cause. Such investigation which is woefully lacking independent character cannot be made basis for conviction in a charge involving capital sentence, that too when it is riddled with many lacunas and loopholes listed above, quite apart from the afterthoughts and improvements. It would not be in accord of safe administration of justice to maintain the conviction and sentence of the appellant in the circumstances of the case. We, therefore, by extending the benefit of doubt allow this appeal, set aside the conviction and sentence awarded and acquit the appellant of the charges. He be set free forthwith if not required in any other case."

27. Admittedly, arrival and departure entries have not been produced by the prosecution. We are unable to rely upon the evidence of the prosecution witnesses without independent corroboration which is lacking in this case. Investigation officer had also failed to conduct the fair investigation in this case as no independent person of locality was examined in order to ascertain truth. Non-production of the arrival and departure entries of police station also cut the roots of the prosecution case.

28. In criminal cases the burden of proving its case lies on the prosecution and the prosecution is duty bound to prove the case against the accused through reliable evidence, direct or circumstantial and that too beyond reasonable doubt. Besides this, it is a settled principle of law, that if there is an element of doubt as to guilt of an accused, the benefit of that 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. In presence of such lacunas in the prosecution case we are of the considered view that the conclusion drawn and reasons advanced by learned trial Court do not show fair evaluation of evidence, which is not in accordance with the settled principles in criminal cases, therefore, impugned judgment is a result of erroneous and unreasonable lines of reasoning and merits interference by this Court to erase the effect of miscarriage of justice.

29. It is also well-settled principle by now that one there appears a single doubt as to the presence to discard his testimony as a whole. A reference may be made to case titled ***Mst. Rukhsana Begum and others v. Sajjad and others*** **(2017 SCMR 596)**, wherein it has been held as under:-

> *"A single doubt reasonably showing that a witness/witnesses' presence on the crime spot was doubtful when a tragedy takes place would be sufficient to discard his/their testimony as a whole. This principle may be pressed into service in cases such witness/witnesses are seriously inimical or appears to be a chance witness because judicial mind would remain disturbed about the truthfulness of the testimony of such witnesses provided in a murder case, is a fundamental principle of our criminal justice system."*

30. After careful reappraisal of the evidence discussed above, we are entertaining no amount of doubt that the prosecution has failed to bring home guilt to the accused as the evidence furnished at the trial is full of factual, legal defects and is bereft of legal worth/judicial efficacy. Therefore, no reliance can be placed on the same.

31. Needless to mention that while giving the benefit of doubt to an accused, it is not necessary that there should be countless 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 ***Tariq Pervez v. The State (1995 SCMR 1345)***, ***Ghulam Qadir and 2 others v. The State (2008 SCMR 1221)***, ***Muhammad Akram v. The State (2009 SCMR 230)*** and ***Muhammad Zaman v. The State (2014 SCMR 749)***.

32. From the above discussion, it is evident that the investigation and inquiry carried out is neither satisfactory nor free from *malice* and the appellants' implication in this case is not free from doubts. They thus could not be left at the mercy of Police. The review of the impugned judgment shows that essential aspects of the case have slipped from the sight of the learned trial Court which are sufficient to create shadow of doubt in the prosecution story.

33. For the above stated reasons, we reach to an irresistible conclusion that prosecution has utterly failed to prove its case against the appellants and trial court failed to appreciate the evidence according to settled principles of law. False implication of the appellants could not be ruled out. Resultantly, this appeal is allowed and conviction and sentence recorded by the trial Court vide judgment dated 29.09.2018 are set aside and appellants are acquitted of the charges. Appellants shall be released forthwith if not required in some other custody case.

34. These are the reasons for our short order dated 17.11.2020.

JUDGE

JUDGE

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