

**IN THE HIGH COURT OF SINDH CIRCUIT COURT  
HYDERABAD**

**Present:-**

**Mr. Justice Muhammad Iqbal Kalhoro,  
Mr. Justice Amjad Ali Sahito.**

**(Criminal Appeal No.S-388 of 2019)**

**Appellant** : Faizan Ali Farooqui son of Qasim Ali Farooqui, through Mr. Sher Muhammad Laghari, Advocate.

**Complainant** : Muhammad Sadiq son of Shah Muhammad Baqir, through Mr. Bakhtiar Ahmed Panhwar, Advocate.

**Respondent** : The State through Mr. Siraj Ahmed Bijarani, Assistant Prosecutor General, Sindh.

**(Criminal Revision Application No.D-47 of 2019)**

**Applicant** : Muhammad Sadiq son of Shah Muhammad Baqir, through Mr. Bakhtiar Ahmed Panhwar, Advocate.

**Respondent-1** : Faizan Ali Farooqui son of Qasim Ali Farooqui, through Mr. Sher Muhammad Laghari, Advocate.

**The State** : Through Mr. Siraj Ahmed Bijarani, Assistant Prosecutor General, Sindh.

Date of hearing: **05.04.2023.**

Date of decision: **18.04.2023**

**JUDGMENT**

**AMJAD ALI SAHITO, J;** This single judgment shall dispose of the captioned Criminal Appeal filed by the above named appellant Faizan Ali Farooqui against his conviction and sentence while the Criminal Revision Application has also been preferred by the applicant/complainant Muhammad Sadiq for enhancement of sentence of said appellant Faizan Ali Farooqui both are impugning the judgment dated 16.11.2019, passed by learned Model Criminal

Trial Court-I Hyderabad, in Sessions Case No.100 of 2017 (Re. The State. Vs. Faizan Ali Farooqui), emanating from FIR bearing Crime No.197 of 2016, for offence punishable under section 302 PPC, registered with Police Station, A-Section Latifabad Hyderabad, whereby aforesaid appellant Faizan Ali Farouque has been convicted for offence punishable under section 302 (b) PPC and sentenced him to suffer imprisonment for *life* with compensation of Rs.100,000/- to be paid to the legal heirs of deceased and in default whereof, to undergo S.I for six more months, with benefit of Section 382-B Cr.PC.

**2.** The brief facts to the FIR lodged by complainant Muhammad Sadiq Shah are that his sister namely Mst. Ayesha got married with appellant Faizan Ali about four years ago but soon after three years of marriage, the relation between the spouses became strained so occasionally complaints were made by his sister whenever she visited at her parent's house as well through her phone. The complainant further alleges that on 16.11.2016 his sister being an administrator in Leeds College, Autobhan road, Hyderabad came to his house and stated that her husband Faizan used to abuse and beat her so get her khulla from him upon which complainant restrained her by saying that lets have some discussion with appellant Faizan. Subsequently, appellant Faizan picked Ayesha after coming from college from the house of complainant on the pretext that he wants to talk with her. Thereafter, the complainant party tried to contact with Ayesha but could not succeed so also appellant Faizan could be contacted to talk. The complainant also alleges that on 19.11.2016 at about 05:20 p.m. they went to the house of Ayesha, its gate was locked, they remained there for about one hour and continuously was trying to contact them on phone but found no response and returned to home. On the next day morning his mother continuously was calling to Ayesha on telephone but she did not receive the phone, then she called to appellant Faizan who attended the same was weeping and stated to come quickly something has happened. Thereafter, the complainant's brother namely Muhammad Ali

reached the house of Ayesha along with his mother, where they saw that dead body of Ayesha lying on the bed while appellant Faizan was calling to the college of Ayesha. On calling 15 police also reached there. After conducting legal formalities, police sent the dead body to civil hospital through ambulance along with brother of deceased Muhammad Noor-ul-Haq and after got conducting postmortem of dead body the complainant received the same remained busy in funeral ceremony then he appeared to police station and lodged the FIR.

**3.** After completing the investigation of the case, a report in terms of section 173 Cr.P.C. (challan) was submitted by the Investigating Officer against the appellant before the concerned Court of law.

**4.** The Learned trial Court framed the charge against the accused, to which he pleaded not guilty and claimed to be tried. To substantiate trial, the prosecution examined P.W-1, complainant Muhammad Sadique at Exh.6, who produced FIR, and his further statement at Exh.6/A & Exh.6/B; P.W-2 witness Muhammad Noor-ul-Haq at Exh.7, who produced mashirnama of inspection of dead body, danistnama, receipt of collecting dead body of deceased, mashirnama of receiving clothes of deceased, mashirnama of place of incident and mashirnama of arrest at Exh.7/A to Exh.7/F respectively; P.W-3 witness Muhammad Ali at Exh.8; P.W-4 witness Mst. Asia at Exh.10, who produced SMS record at Exh.10/A & Exh.10/B respectively; P.W-5 Dr. Khalida at Exh.13, who produced letter for conducting the post-mortem, lash chakas form, provisional postmortem report, letter addressed to chemical examiner its report and final postmortem report at Exh.13/A to Exh.13/F respectively; P.W-6 Muhammad Shahid at Exh.14, who produced inquest report, photographs, letter to edhi ambulance, letter in respect of conducting postmortem report, extract of entries No.7 and 11, entry No.25 of Malkhana Register No.19, entries No.37 & 39, letter addressed to Mukhtiarkar, letter addressed to chemical examiner for sending the clothes for

chemical examiner, letter addressed to SSP Hyderabad for CDR and receiving thereof at Exh. 14/A to Exh. 14/K, respectively; P.W-7 witness Zain-ul-Abdin at Exh.15, who produced sketch at Exh.15/A; P.W-8 witness Muhammad Aijaz at Ex.16; P.W-9 Muhammad Yasir at Exh.17; P.W-10 SIP Zahid Siraj at Exh.18 who produced mashirnama of recovery at Exh.18/A and P.W-11 Abdul Razzaque at Exh.19, who produced letter to DIG, copy of letter of SSP Hyderabad, copy of receiving case papers, extract of entry No.21, attested copy of letter of JM-V, Hyderabad, questionnaire form at Exh.19/A to Exh.19/F respectively. Thereafter learned DDPP for the State closed the side of the prosecution evidence vide his statement at Exh.20.

**5.** Statement of appellant was recorded under section 342 Cr.P.C. by the trial Court, in which he denied the allegation of prosecution and claimed his innocence. He examined himself on oath in terms of Section 340 (2) Cr.P.C however counsel for appellant filed statement stating therein that his defence witness namely Shahzad Rasool earlier wanted to depose in favour of appellant later on withdrawn himself from giving evidence on the pressure of complainant party.

**6.** The learned trial Court after hearing the arguments of learned counsel for the respective parties and appraisal of evidence convicted the appellant as stated above. The sentence awarded to the appellant has been impugned by him before this Court by way of filing the instant criminal appeal. However, complainant of this case has also preferred criminal revision application seeking therein enhancement of sentence of the appellant.

**7.** The learned counsel for the appellant mainly contended that the appellant is innocent and has falsely been implicated in the murder case; that it is an unseen incident and based on circumstantial evidence the appellant has been convicted; that the complainant and police have implicated the present appellant in this case on the presumption and assumption; that though the name of the appellant finds a place

in the FIR but no strong circumstantial evidence was available on record to connect him with the commission of the offence; that no incriminating articles were recovered from the appellant; that FIR is delayed about 24 hours though the police station was situated at the distance of two kilometres away from place of incident; that no independent person has been shown as a witness to believe that the appellant has committed the offence. Lastly, he contended that the prosecution has miserably failed to prove its case against the appellant and thus, according to him, the appellant is entitled to his acquittal.

**8.** Conversely, learned A.P.G. Sindh assisted by counsel for complainant while supporting the impugned judgment has argued that the prosecution has successfully proved its case against the appellant beyond any shadow of reasonable doubt; that the appellant used to abuse and maltreat his wife deceased Mst. Aysha and she made complaints to her house and was lastly seen in the company of deceased in his house; that appellant alleged to have brutally killed an innocent lady in his house and then very smartly and cleverly manner tried to convert such brutal murder into suicide, hence he is very dangerous and harmful to society; that complainant and PWs have fully implicated the appellant in their evidence for murdering his wife and their evidence could not be shattered during cross-examination; that ocular account gets support from circumstantial evidence; that no one was present in the house except appellant and deceased, which suggest that the appellant after preplanning committed murder of the deceased; that appellant could not establish their presence at his Colgate factory in between the days when offence alleged to have been committed through convincing evidence, particularly through documentary evidence. They lastly prayed for dismissal of the instant appeal.

**9.** We have heard the learned counsel for the parties and have perused the available on record with their able assistance.

**10.** Though generally, it (Circumstantial evidence) is considered as a weak type of evidence, yet, such weakness alone is no ground to record an acquittal rather administration of justice for such like situation, requires more care and caution from the Courts while appreciating the evidence. In such like cases, the criterion to see whether circumstantial evidence can hold a conviction or to depend purely on a single principle which stood reiterated in the case of **‘AZEEM KHAN and another v. MUJAHID KHAN and others’ (2016 SCMR 274)** as under:-

***“31. As discussed earlier, the entire case of the prosecution is based on circumstantial evidence. The principal of law, consistently laid down by this Court is that different pieces of such evidence has to make on chain, an unbroken one where one end of it touches the dead body and the other the neck of the accused. In case of any missing link in the chain, the whole chain is broken and no conviction can be recorded in crimes entailing capital punishment.”***

**11.** It would be quite in line with the settled principle of law that if all pieces make an unbroken chain, proving the guilt, the capital sentence can well be awarded. The present case is involving capital punishment and the entire evidence is based upon circumstantial evidence, recovery of pieces of Dupatta, medical evidence as well as the evidence of the complainant and other prosecution witnesses.

**12.** The case of the prosecution is that prior to this incident about four years ago deceased Mst. Ayesha contracted a love marriage with appellant Faizan Ali. The deceased Mst. Ayesha was serving in leads College Auto Bhan Hyderabad as Coordinator whereas appellant Faizan Ali was working in Colgate Company. Both were residing in a single room. As per complainant and his family members’ evidence that on 16.11.2016 her sister Mst. Ayesha came at the house of their sister Mst. Asia where she called all family members and

informed them about the relationship between her and appellant Faizan Ali had become strained, as such, she could not reside with him as his wife and she decided to obtain Khulla. The motive set-up in the incident was that the family members advised deceased not to go back to her husband's house and file a Suit for Khulla but she expressed that she will go back and on coming Saturday viz.19.11.2016 she will call the complainant party to decide the matter finally. On next day viz. 20.11.2016 a younger brother of the complainant called appellant Faizan Ali from cellphone of his mother at about 08:45 a.m. when appellant Faizan Ali replied that something happened at his home and asked to reach there. Ali the brother of the complainant rushed towards house of the deceased Mst. Ayesha was followed by his mother where aforesaid Ali saw the dead body of his sister Mst. Ayesha lying on bed and appellant Faizan Ali was sitting towards footsteps of the bed. On inquiry, appellant Faizan Ali disclosed to P.W-3 Muhammad Ali that Mst. Ayesha committed suicide. Such information was conveyed to the police. Police after completing all the formalities shifted the dead body to LUMH Hyderabad for its post-mortem.

**13.** Now the question before us is only whether Mst. Ayesha has committed suicide (Suicidal Hanging) or was homicidal hanging.

**14.** In many cases hanging is the most common suicide method. When a person is found hanged, however, one always has to consider that the alleged suicide scene possibly cover up a homicide. In such cases, hanging may have been the actual method of killing or the victim may have been harmed by a different method and was subsequently hanged. Death by hanging may be suicidal or homicidal. General external appearance, local external neck finding, neck autopsy and neck histological changes play a major role in difference between types of hanging. In suicidal hanging, when a dead body is suspended, the rope/Duputta is usually tied first around the neck and next around the beam/grill. (In the instant case the

dead body was hanging on the ceiling roof iron bar). If the ceiling roof iron bar is examined in such an event, there may be evidence that the rope/Dupatta has moved from below to upwards due to the body being hauled up, rather than vice versa, which is the usual finding in genuine suicidal hanging. Fibres from the rope/Dupatta on fingernails and hands of the victim may be found in true suicidal hanging. (Modi's Medical Jurisprudence)

**15.** In case of **Homicidal hanging**. In the book of HWV Cox Medical Jurisprudence and Toxicology, it is written that in the case of Manual Strangulation/homicidal hanging (Seventh Edition) that: *“Most of the foregoing description applies equally to manual strangulation as to strangulation by a ligature, but there are certain important variations. External appearances are vital. In place of the ligature mark described earlier, the neck will almost invariably show abrasions and bruises caused by the fingers of the assailant and again sometimes of the victim, where attempts at removing the compression have been made. When the throat is gripped by a hand, the typical type of skin lesion is a small disc-shaped bruise and finger-nail scratches. The classical bruises are of the size of a small coin, but naturally can be of any size or shape, especially where several bruises lie adjacent or overlie each other. They are most commonly seen in manual strangulation under the angles of the jaw on either side where the maximum pressure is exerted. However, due to movements of the hands around the neck and the movement caused by the frequent struggles of the victim, the bruising can spread anywhere in the region between manubrium and chin, extending back to beneath the ears. However, the common sites are under the angles of the jaw and on the lateral sides of the larynx. Finger-nail scratches may be present anywhere on the neck, but again commonly in the same site as the bruises. There may be vertical scratches from the finger-nails of the victim, but it is usually impossible to identify which scratches have been made by which person. In the past, especially in some old textbooks, much over-interpretation of neck bruises has been made. Though it is true that where a right-handed assailant seizes a victim from the front, there is more likely to be more bruising on the left side of the neck than on the right, this is so commonly untrue as to be quite unreliable. Theoretically, the single thumb should leave a solitary*



*bruise on the right side of the neck and the other fingers multiple bruises on the left side, but due to the shifting of the grip and the sometimes the frantic struggles of the victim, bruises may present in a completely haphazard manner. It is unsafe to be dogmatic about the 'handedness' of an assailant though where there is a marked difference in the number of bruises on each side-especially where there is only one on one side and three or four on the other-then the possibility of correct interpretation is greater, though never absolute. It is also virtually impossible to tell whether an assailant seized the victim from front or behind, as nothing in the bruising differentiates the two. The internal appearances are basically similar to strangulation with a ligature, but due to the pincer-like effect of throttling fingers, the possibility of a fractured hyoid and especially thyroid cornua, is greater and also impact upon the large blood vessels in the neck may be more likely. Strangulation by ligature tends to be a constant pressure in one place (though there are exceptions) but the fingers of a strangler usually move about the neck and a shifting grip may suddenly impinge upon the carotid vessels causing sudden death. Thus there may be a period of partial 'asphyxia' terminated suddenly by the onset of cardiac arrest. In many other cases, pressure on vital structures may cause death at an early stage before there is any time for the so-called classical signs of asphyxia to develop. Internally, the laryngeal horns are more likely to be fractured than with a ligature, as stated above. There will be bruising in the subcutaneous tissues and muscles corresponding to the external bruises, though this might be very superficial. The autopsy is conducted in the same way as for the strangulation by a ligature and in both types of cases, it may be necessary to remove a piece of skin around the neck for preservation as an exhibit in later criminal proceedings. This can usually be done without too much disfigurement of the body, as the skin may be moved up from the upper chest region to allow stitching to cover the removed area. The inward compression fractures occurs in hyoid bone in case of throttling where the main force is an inward compression acting on the hyoid bone. The fingers squeeze the greater horns towards each other so that the bone is fractured and posterior fragments is displaced inwards. The periosteum is turned on the outer side of the bone. At times, at the joint between greater horn and the body similar fracture may be seen.*

**16.** From perusal of the evidence of P.W-5 Dr. Khalida it appears that the post-mortem started at 11:30 a.m. and ended at about 01:00 p.m. The duration between death and injuries was instantaneously. Rigor mortis fully developed and duration between death and post-mortem was eight to twelve hours. As per post-mortem, she has found as under:

*“Condition of cloths. brown blakish colour of shirt and black purple, yellow (check style) nighty trouser.*

*On General examination*

*A young lady, pupils dilated and fixed lying straight on mortuary table with bluish colouration of both hands and feets and nails, dried saliva seen at the right angle of mouth. Multiple petechial heamorrhages seen on both lower legs. Lips bluish in colour.*

*Surface wounds and injuries:-*

*Ligature mark deeply grooved parchment like dark bluish black colour just above the thyroid cartilage running over the left lateral side of neck obliquely just behind the left ear at mastoid process and on right side running obtickly on front of the neck just below the angle of mandible and absent with pale colour over the right side of neck. All the injuries are ante-mortem.*

*INTERNAL EXAMINATION.*

*Head intact.*

*Neck On reflecting the skin of neck clotted blood seen at and below the ligature mark and thyroid cartilage and hyoid bone seen intact.*

*THORAX On opening the thoracic cavity rib cage seen intact. Heart and lungs seen intact and congested.*

*ABDOMEN On opening the abdominal cavity, all viscera and organs seen intact and congested. Full of stomach piece of intestine liver and kidney preserved for chemical analysis.*

*LOCO MOTOR SYSTEM Intact.*

*REMARKS / SPECIAL COMMENTS: The deceased was brought from jurisdiction of P.S. A-Section Latifabad, Hyderabad with history of found expired with construction of neck lying on bed, brought by SIP Pir Shahid Abbasi for postmortem examination.”*

**17.** Admittedly, there were no abrasions and bruises caused by fingers of the assailant and the deceased and there

was no movement of the hands around the neck and there were no frequent struggles of the victim. Further when the body is found in suspended position, not only suicidal hanging has to be considered but also an accident or homicide. It is still a challenge for investigating officer, forensic experts to prove homicidal assault when suspended body is found. In the instant case, the findings collected at the scene and during autopsy seemed to be consistent with the assumption of suicide. As per medico-legal certificate, the bruises have not appeared over the body like manubrium and chin extending back to the beneath area. No fingernail scratches are present on the neck and other parts of the body to show that the deceased had struggled to save her life. The prosecution alleged that the deceased was murdered by strangulation whereas the accused pleaded death was the result of suicide committed by the deceased. In the case of **Lal Khan V. The state (2006 SCMR 1846)** the Hon'ble Supreme Court of Pakistan has held that;

*“The hanging is most common form of suicide whereas homicidal hanging is rare which may occur in very unusual circumstances and in the medical jurisprudence, no definite opinion can be given on the basis of Ligature mark around the neck whether death was homicidal or suicidal. The causation of an injury found on the person of deceased, may be either homicidal or suicidal and in that the prosecution is under heavy burden to prove that the death was homicide and not suicide”*

**(underline by us)**

**18.** As per the medico-legal certificate, the duration between death and post-mortem was about eight to twelve hours. The complainant party claims that they had contacted the appellant through a phone call at about 08:45 a.m. which means the death of the deceased occurred between 01:00 a.m. to 02:00 a.m. night time. The prosecution examined P.W-6/ ExNo.14 Sub-Inspector Muhammad Shahid who in his examination-in-chief deposed that he has examined the dead body of the deceased and found half of a dupatta of brown-

colour with embroidery around the neck of the dead body and on removing it ligature marks were found around the neck. He took and preserved said dupatta which was in two pieces. This also confirms the contention of the appellant's counsel that when he entered the house saw the body of the deceased in hanging condition and thereafter he removed the dead body on the sofa-cum-bed. We have also seen the pictures available in the R&Ps which confirm that the pair of chappals is also lying along with the feet of the deceased. Furthermore, the appellant claimed that at the time of incident, he was present on his duty. His version was also confirmed by the P.W-8 Muhammad Yasir. In his deposition, he deposed that he knew appellant Faizan Ali, who was serving as operator with him in the same section. Their duty hours were rotated one after the other. His duty hours started from 07:00 a.m. in the morning till 07:00 p.m. in the evening while those of appellant Faizan Ali was from 07:00 p.m. to 07:00 a.m. of the following day. On 19.11.2016 after completing his duty as he came out from the factory premises he saw appellant Faizan who got-in and on the next morning as he went on duty, he after completing his duty came out and he has explained that in the factory every operator after completing his timing of duty would check out and his successor waiting outside would then get inside. His evidence finds support from the evidence of P.W-10 Inspector/S.H.O Abdul Razzaque who in his evidence deposed that he was posted as S.H.O of Police Station Cantt Hyderabad vide order dated 11.01.2017 DIG Police Hyderabad formed a Committee comprising of ASP Sarfaraz Virk, DSP City Aijaz Bhatti and himself being S.H.O of Police Station Cantt for re-investigation of the case of the present crime. On 14.01.2017 he along-with ASP Sarfaraz and DSP Aijaz Bhatti inspected the place of incident and after completing all formalities went to the office of the appellant and he met with Administrator Officer (col) ® Hassan Khoso and requested him to provide muster roll but he declined to provide him with its copy or CC.TV videos/photographs on the ground that if the Court directs him he would provide it. Further, the

said officer also informed him that appellant Faizan was a temporary employee of the factory and was working in EOCH Department where his duty was to drain-out sewerage water of factory through machines and his duty hours from 07:00 p.m. to 07:00 a.m. of the following day. He called the reliever of appellant Faizan named Yasir and recorded his 161 Cr.P.C statement. The said witness disclosed that on 19.11.2016 at about 07:00 p.m. he handed over the charge of duty to appellant Faizan outside the factory and on the next day morning when he arrived at factory appellant Faizan returned him charge outside the factory however the said officer did not find any evidence in respect of appellant to be on duty on the day incident but he has not produced any documentary evidence to believe that appellant was not present on his duty at the time of incident. In cross-examination, he admitted that he measured the height of hanging place of deceased Mst. Ayesha but he could not remember exact height of the said door.

**19.** The police officer recovered the dupatta in two pieces which confirms that the dead body was in hanging condition and said dupatta was cut in two pieces thereafter it was shifted to sofa-cum-bed. No mark of violence is found on the dead body of the deceased. The learned counsel for the complainant has mainly argued that there are multiple petechial hemorrhages seen on both lower legs however it cannot be confirmed that was the sign of any struggle.

**20.** The prosecution examined the brother and sister of the deceased namely P.W-1 Muhammad Sadique, P.W-2 Muhammad Noor-ul-Haq, P.W-3 Muhammad Ali and P.W-4 Mst. Asia, they are not the eyewitnesses of the incident and they have almost repeated the same story narrated in the FIR. The motive set up by the brother and sister of the deceased/PWs was that there was strained relationships between the appellant and her wife/deceased, as such, he committed the murder but the evidence that comes on record is that the marriage between spouses lasted happily for three years and after that difference

occurred for which deceased used to complain against the appellant to complainant party regarding his abusing and maltreatment. In this regard, the private witnesses/brother and sister failed to produce documentary evidence or SMS, audio or video recording in their evidence to believe that there was a strained relationships between the deceased and appellant. The motive was always a double-edged weapon because a previous strained relationships could be a reason for committing suicide or there was pressure from the family members to get a divorce from the appellant, but it can equally be a reason for the complainant side to falsely implicate the accused in the case. Reliance is placed in the case of **Muhammad Ashraf alias ACCHU V. The State (2019 SCMR 652)**.

**21.** In the instant case, the police officers have not investigated the matter honestly and properly but casually completed all the proceedings of the case. When the Joint Investigation Team visited the factory of the appellant and based on the information given by Col. ® Hassan Khoso that they will provide the evidence in the Court but no action was taken against him. No notice was given to the said officer for noncooperation with the investigation team nor was permission sought from the concerned Magistrate to enter into the premises of the factory to collect the evidence, as such, police failed to collect any tangible evidence to connect the appellant with the commission of the offence as plea taken by appellant that on the day of incident, he was present on his duty and his reliever also confirmed that when he left his charge and handed over to the appellant but the police officers failed to collect any documentary evidence nor they have taken any action against said Administrator. Further, the police officials failed to measure the height of the door and to examine any other article or photographs to believe that there was any sign of struggle of the deceased as the memo of the place of the incident is silent and no sign of struggle has been shown at the place of incident.

**22.** In the case of '**AZEEM KHAN and another v. MUJAHID KHAN and others** supra the Hon'ble Apex Court has held as under:-

*“32. It is also a well embedded principle of law and justice that no one should be construed into a crime on the basis of presumption in the absence of strong evidence of unimpeachable character and legally admissible one. Similarly, mere heinous or gruesome nature of crime shall not detract the Court of law in any manner from the due course to judge and make the appraisal of evidence in a laid down manner and to extend the benefit of reasonable doubt to an accused person being indefeasible and inalienable right of an accused. In getting influence from the nature of the crime and other extraneous consideration might lead the Judges to a patently wrong conclusion. In that event the justice would be casualty.*

*In cases of circumstantial evidence, the Courts are to take extraordinary care and caution before relying on the same. Circumstantial evidence, even if supported by defective or inadequate evidence, cannot be made basis for conviction on a capital charge. More particularly, when there are indications of design in the preparation of a case or introducing any piece of fabricated evidence, the Court should always be mindful to take extraordinary precautions, so that the possibility of it being deliberately misled into false inference and patently wrong conclusion is to be ruled out, therefore hard and fast rules should be applied for carefully and narrowly examining circumstantial evidence in such cases because chances of fabricating such evidence are always there. To justify the inference of guilt of an accused person, the circumstantial evidence must be of a quality to be incompatible with the innocence of the accused. If such circumstantial evidence is not of that standard and quality, it would be highly dangerous to rely upon the same by awarding capital punishment. The better and safe course would be not to rely upon it in securing the ends of justice.”*

**23.** No evidence has been brought on record by the prosecution to connect the appellant with the commission of the offence. According to the standard proof required to convict a person on circumstantial evidence, the circumstances relied upon in support of the conviction must be fully established and the chain of evidence furnished by the circumstances

must be so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused. The circumstances from which the conclusion of the guilt is to be drawn have not only to be fully established but also all the circumstances to establish should be conclusive and consistent only with the hypothesis of the guilt of the accused and should not be capable of being explained by any other hypothesis is except the guilt of the accused and when all the circumstances cumulatively have taken together should lead to the only irresistible conclusion that the accused alone is the perpetrator of the crime, wherein the prosecution has to provide all links in chain an unbroken one where it's one end touches the dead body while the other neck of the accused. In the present case, so many links are missing in the chain and the evidence of prosecution witnesses is not found inspiring confidence and trustworthy for recording a conviction against the appellant.

**24.** The upshot of the above discussion is that the prosecution has miserably failed to bring home the guilt of the appellant beyond reasonable doubt and it is a settled proposition of law that for giving the benefit of doubt to an accused there doesn't need to be many circumstances creating doubts if there is a single circumstance which creates reasonable doubt about the guilt of the accused, then the accused will be entitled to the benefit. In this respect, reliance can be placed upon the case of **MUHAMMAD MANSHA v. THE STATE** reported in **2018 SCMR 772**, wherein the Hon'ble Supreme Court of Pakistan has held that:

***“4. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to be 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 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)."***

**25.** It is a well-settled principle of criminal administration of justice that no conviction can be awarded to an accused until and unless reliable, trustworthy and unimpeachable evidence containing no discrepancy in the prosecution story. By taking the guideline from the case laws cited at **(supra)**, we are of the view that in the present case, the prosecution story is overwhelmed under the thick clouds of doubt and the learned trial Court has not evaluated the evidence in its true perspective and thus arrived at an erroneous conclusion by holding the appellant guilty of the offence. Thus, the instant Criminal Appeal No.D-388 of 2019 is **allowed**. Consequently, the conviction and sentence awarded to the appellant namely Faizan Ali Farooqui son of Qasim Ali Farooqui by learned Model Criminal Trial Court-I, Hyderabad vide impugned judgment dated 16.11.2019 are hereby **set aside**. He is acquitted of the charge by extending the benefit of the doubt. He shall be **released** forthwith, if not required in any other custody case.

**26.** Since the appeal preferred by appellant Faizan Ali Farooque against his conviction and sentence has been allowed, therefore, no case for enhancement of his sentence is made out accordingly Criminal Revision Application D-47 of 2019 is **dismissed** having become infructuous.

**JUDGE**

**JUDGE**