

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Jail Appeal No.448 of 2022

Pauper Appellants : through Mr. Muhammad Hanif
Nasir and Asghar Noorani, Advocate

Complainant
Ali Muhammad : Absent

State : through Mr. Zahoor Shah,
Addl. Prosecutor General, Sindh

Dates of hearing : 08.03.2023

Date of Judgment : 08.03.2023

JUDGMENT

MUHAMMAD SALEEM JESSAR. I- By means of instant Criminal Jail Appeal the appellants have assailed the Judgment dated 05.07.2022 passed by learned Additional Sessions Judge-I/Model Criminal Trial Court, Thatta in Sessions Case No. 254 of 2019, being outcome of FIR No. 22 of 2019 under Sections 302, 201, read with Section 34 PPC registered at P.S. Garho, whereby appellants were convicted under section 302(b) PPC as Tazir and were sentenced to undergo rigorous imprisonment for life and to pay Rs. 1,00,000/- (Rupees One Lac only) each as compensation to the legal heirs of deceased. Such compensation shall be recoverable as arrears of land revenue and in case of default in payment thereof, the appellants were ordered to suffer SI for 6 months each. However, benefit under Section 382-B Cr. P.C. was extended to them.

2. Brief facts, relevant for the disposal of instant Cr. Appeal, are that complainant Ali Muhammad lodged F.I.R, on 28.06.2022 at about 1730 hours alleging therein that he is a farmer. His son namely, Miandad aged about 24 years had friendship with Nasir S/o Ismail Lashari and Asghar S/o Lal Muhammad Mallah. On 22.06.2019 complainant, Wahid Bux @

Papu S/o Haji Chaglo Lashari and complainant's son Miandad were standing alongside the house; in the meantime, aforesaid accused persons came there and asked his son to accompany them in connection with some work and within their sight they all went towards south side. He further alleged that despite passing of whole night his son did not return and thereafter two days more had passed but his son did not come back, therefore, the complainant got worried. He further stated that on 25.06.2019 his relative namely, Muhammad Munir S/o Habibullah Lashari came at his house at night time and told that on 22.06.2019, when he was coming towards his village from Garho on his motorcycle and when at 2200 hours he reached at link road culvert at Banana Orchard, he saw on the headlight of motorcycle that accused namely Nasir Lashari and Asghar Mallah were throttling Miandad by laying him down, whereupon he stopped and within his sight both the accused committed murder of Miandad by throttling. Then, they threw his dead body inside link road culvert and concealed him, and they threatened Munir that if he would disclose the incident to anyone then he would also be killed like Miandad, therefore he did not disclose the incident to anyone. According to complainant, said Munir showed his willingness to accompany them in order to show them the dead body of Mian Dad. Then, the complainant along with Wahid Bux Papu Lashari, Ayoub S/o Ali Ghanwar Lashari and Munir Lashari came at link road culvert/morri where Munir showed them the dead body of Miandad which was hidden inside the culvert. After that, they gave such information to area police, whereupon police arrived at the scene of offence. After completing necessary legal formalities, the dead body was shifted to hospital for conducting postmortem and after postmortem the same was handed over to them for funeral. Complainant further stated that after burial of dead body, he appeared at police station for lodging report that aforesaid accused persons in connivance with each other, for unknown reasons, had murdered his innocent son Miandad by throttling him and had hidden his dead body by throwing it in the culvert in order to conceal his dead body and aims to cause disappearance of evidence of the offence.

3. Thereafter, during the course of the investigation, on the pointation of mashirs Wahid Bux and Ayoub the accused were got arrested on

29.06.2019 and such mashirnama was prepared in presence of said mashirs. After usual investigation challan was submitted in the concerned Court.

4. A formal charge was framed against the appellants vide Ex.04 to which they pleaded not guilty and claimed to be tried vide their Pleas Ex.05 and 06 respectively.

5. In order, to prove its case, prosecution examined PW-1 Complainant Ali Muhammad Lashari at Exh.07, who produced receipt for receiving the dead body as Ex.7/A and FIR of the instant crime as Ex.7/B; PW-2 Muneer Ahmed Lashari, alleged eye witness of the occurrence, was examined at Ex.08; PW-3 witness/mashir Wahid Bux Lashari was examined at Exh.09, who produced memo of inspection of dead body of deceased Mina Dad Lashari as Ex.9/A, memo for seizing last worn clothes of deceased as Ex.9/B, memo for inspection of the place of incident as Ex.9/C, memo for arrest of both the accused as Ex.9/D and memo for recovery of shirt of deceased as Ex.9/E; PW-4 Muhammad Aslam Soomro, Tapedar of the beat, was examined at Ex.10, who produced police letter for preparing sketch as Ex.10/A and sketch of the place of incident as Ex.10/B; PW-5 Chief Medical Officer posted at Shaikh Zaid Medical Center (Taluka Hospital) Mirpur Sakro, Dr. Mohan Lal Sonaro, who conducted postmortem of the dead body of the deceased, was examined at Ex. 11, who produced police letter No.372 dated 25.06.2019 for conducting postmortem examination of deceased and report as Ex. 11/A, lash chakas form as Ex. 11/B, postmortem examination report of deceased Miandad Lashari as Ex.11/C and receipt for handing over the dead body to ASI Muhammad Safar after postmortem as Ex. 11/D; PW-6 Investigating Officer of the case, ASI Muhammad Saffar Dawach was examined at Ex.12, who produced certified true copy off departure entry No. 15 of station diary as Ex.12/A, Danishtnama as Ex.12/B, certified true copy of arrival entry No.17 as Ex. 12/C, certified true copy of entry No.13 of station dairy as Ex. 12/D, another certified true copy of entry No.7 and 9 (in one leaf) as Ex.12/E, certified true copy of entry No.06 of station diary as Ex.12/F, office copy of letter addressed to Mukhtiarkar for site inspection as Ex. 12/G, office copy of application addressed to concerned Magistrate as Ex.12/H, certified true copy of departure entry No.06 for interrogation of accused as Ex. 12/I, another certified true copy of arrival entry No. 10 as

Ex. 12/J, office copy of notice served upon accused as Ex.12/K, office copy of notice sent to witnesses as Ex.12/L, office copy of letter addressed to chemical examiner through PC Ali Asghar as Ex.12/M, application addressed to concerned Magistrate as Ex.12/N, chemical examiner's report No.8687 dated 18.07.2019 as Ex.12/O and photograph of dead body at Ex.12/P. Thereafter, learned DDPP, appearing for the State, closed prosecution side vide statement Ex.13.

6. Both accused in their statements recorded under Section 342 Cr. P.C. Ex.14 and 15 respectively denied the allegations levelled against them by prosecution and professed innocence. Accused Nasir Lashari stated that he is innocent and has been falsely implicated in the case at the instance of Wadero Haji Abdul Rasheed Lashari, who is also a close relative of PW Muneer and complainant. Accused Asghar Mallah stated that he is also innocent and has been falsely implicated in the case by the compliant party. Both accused prayed for justice; however, neither they got examined themselves on Oath, as provided under Section 340(2) Cr. PC, nor produced any witness in their defense.

7. After formulating points for determination, recording evidence of the prosecution witnesses and hearing counsel for the parties, trial Court vide impugned judgment convicted and sentenced the appellants, as stated above. Against said judgment the appellants have preferred instant appeal.

8. I have heard the arguments advanced by learned counsel for the appellants and learned APG appearing for the State and have perused the material available on the record.

9. Learned counsel for pauper appellants submitted that the offence is unseen and entire episode of the prosecution case is based upon hearsay evidence communicated by PW-2 Munir Ahmed. He next submitted that at the time of departure of deceased with appellants, father of deceased had not inquired from them as to where they intended to go, even on the following morning they did not take any notice or made any effort to enquire from the accused regarding whereabouts of the deceased. Such apathy on the part of complainant shows that neither the deceased had accompanied the appellants as alleged, nor the accused had come to take the deceased with them. He further submitted that PW-2 Munir Ahmed,

though allegedly saw the appellants while strangulating the deceased, remained mum for a noticeable period and after three days he disclosed the fact about alleged incident to the complainant, then police was informed. He next submitted that dead body was not secured upon the pointation of appellants nor they led police party to the place of incident. He next submitted that the place where dead body was allegedly lying belongs to one Mushtaq Lashari, land owner; however, neither he was examined by the police, nor was examined as a witness or mashir in the proceedings. He next submitted that no specific motive has been alleged by the prosecution against the appellants which persuaded them to take the life of an innocent person. He next submitted that no rope or any other cloth is shown to have been recovered from the appellants or at their pointation. Learned counsel further submitted that FIR is delayed by about six days for which no plausible explanation has been furnished by the prosecution. He further submitted that mere statement of PWs that appellants had allegedly killed the deceased by strangulating him with their hands, is no ground for convicting them for committing such a heinous offence, more particularly when no DNA has been conducted whether the appellants had allegedly strangulated the deceased with their hands or otherwise. According to learned counsel, prosecution has failed to establish its charge against the appellants beyond shadow of reasonable doubt. Mr. Noonari lastly added that appellants were lastly seen by the father of deceased from a distance of 550 feet at 08 hours of the night, which is impossible. In support of his contentions, learned counsel placed reliance upon the cases (i) MUHAMMAD NADEEM Versus The STATE (2013 P.Cr.L.J 701), (ii) RUSTAM Versus The STATE (2013 YLR 2600), (iii) MURAD ALI Versus The STATE (2020 P.Cr.L.J Note 196), (iv) HUNAR SHAH alias ANAR SHAH Versus KHAN ZAD GUL (2014 YLR 1180), (v) AZMAT ALI Versus THE STATE (2012 YLR 1152), (vi) MUHAMMAD YAMIN ELLAHI Versus The STATE (2014 YLR 548), (vii) MUHAMMAD YOUNAS Versus THE STATE (2003 YLR 3017) & (viii) Mian FAZLI RAHIM Versus THE STATE (PLD 1961 (W.P) Pesharwar 137).

10. On the other hand, learned Additional P.G, Sindh, appearing for the State, opposed the appeal on the ground that appellants were seen by PW-2 Munir Ahmed while strangulating the deceased, therefore, appellants

have rightly been convicted by the trial Court; hence, jail appeal filed by the appellants merits no consideration and prays for its dismissal.

11. In instant case, most important evidence is that of PW Munir Ahmed. According to prosecution, the incident was witnessed by this witness and it was he who allegedly informed the complainant party about the murder of deceased after three days of the incident. From perusal of his evidence it appears that he has deposed that on 22.06.2019 he had gone to Garho City and thereafter when he was coming back from Garho and was proceeding towards his village on the motorcycle, while he reached at the Garden of Banana of Mushtaq Lashari at about 10:00 pm in the night he saw in the headlight of motorcycle that the accused Nasir Lashari and Asghar Mallah were strangulating deceased Mian Dad in said Garden of Banana. He further deposed that on seeing him both the accused threatened him not to disclose such fact to anyone, otherwise, he would meet the same fate. Thereafter, both the accused killed Mian Dad by strangulating him with their hands and then they threw his dead body in the Mori of link road. He further deposed that due to fear he went directly to his village and remained silent and did not disclose such fact to anyone. According to him, it was on 25.06.2019 that he came to the village of deceased Mian Dad and then he narrated such fact to the father of deceased i.e. complainant Ali Mohammad, PW Wahid Bux and Ayoob and thereafter on his pointation dead body of the deceased was taken out from the Mori (culvert).

12. Minute scrutiny of his evidence coupled with contradictions made by him viz.a.viz other prosecution witnesses, shows that the conduct of this witness does not seem to be satisfactory. It is an admitted fact that he remained mum for three days and thereafter he disclosed the fact regarding alleged incident to complainant party. In his examination in chief he deposed, *"I saw that both the two accused persons Nasir Lahari and Asghar Mallah were strangulating Mian Dad in said garden of Banana of Mushtaque Lashari..."*, however in his cross examination he does not say about the garden, instead he speaks about the Mori admitted, *"I found accused Nasir and Asghar standing on the Mori (small bridge) and found that they were strangulating the deceased"* It is also very strange as to how both the accused were simultaneously strangulating the

deceased, as claimed by this witness, because practically it is not possible that two persons could do such act at the same time.

13. It is also to be noted that in his examination in chief he deposed that in the headlight of motorcycle he witnessed the alleged incident however, practically it does not seem to be believable, because when he was driving motorcycle on the road the headlight must have been flashed straightly towards his front side on the road, in such an eventuality as to how he witnessed the incident which allegedly took place in the garden of banana which was situated on the side of the road in darkness of the night. It is also to be noted that while committing such heinous offence the accused / culprits would try to commit the same in a hidden place like beneath bushes or under the shade of trees etc. and not at such a place which could be visible even to passersby. In this view of the matter, the fact of witnessing the incident while driving the motorcycle on the road, as claimed by PW Munir Ahmed, appears to be highly doubtful. It is also to be noted that PW ASI Saffar, Investigating Officer, in his evidence has categorically deposed that he had produced PW Munir before the concerned Magistrate for recording his 164 Cr. P.C. statement but this witness declined to get recorded such statement. This also reflects adversely on his conduct and credibility.

14. Apart from above, there are also material contradictions in the evidence of the prosecution witnesses which put severe dents in the prosecution case.

15. Complainant Ali Muhammad in his evidence deposed that PW Munir had told him that when he was coming on his motorcycle from Garho City and was going towards his village and when at about 10:00 pm in the night he reached the Mori of link road near the Banana Garden of Mushtaq Lashari, he witnessed the alleged incident and therefore, **he stopped** the motorcycle; however, PW Munir in his deposition did not say that **he stopped** the motorcycle but according to him, **accused signaled him to stop the motorcycle**.

16. Again, according to the complainant, when PW Munir apprised him the fact of alleged incident, he (complainant) informed the police; however,

such fact is contradicted by PW Munir who has deposed that **it was PW Wahid Bux who had informed the police** and not the complainant.

17. Furthermore, Complainant in his examination in chief deposed, *"The accused were there for about 10 minutes. They had called deceased Mian Dad from a little distance. They were about 400 to 500 feet away. In response to their call, my deceased son Mian Dad went to them. I do not know the detail of conversation between the accused and deceased Mian Dad. All of them including the deceased then went away towards South"*. From this it appears that the accused while taking away the deceased, did not meet the complainant party however, such fact is contradicted by PW Wahid Bux who has deposed, *"At the time the accused took the deceased with them, the complainant, PW Ayoub and myself were available outside residence of the complainant. Both accused Nasir and Asghar came to the place where we were standing and took the deceased with them after exchanging greeting with us"* From above, it also seems that according to the complainant, he does not know the details of conversation taken place between the accused and deceased whereas, PW Wahid Bux deposed, *"The accused had a brief conversation with the deceased in our presence and they had just asked him to accompany them for a chat"*

18. Apart from above, the complainant in his cross examination deposed, *"I had informed the police station on 22.06.2019"* however, after a while in the same cross examination he belied himself by admitting, *"We informed the police only after coming to know of death of the deceased and not prior to that"*. It also appears that although the complainant in his examination in chief did not say a single word that when the deceased did not return to home, he made any inquiry from the parents of the accused persons about the deceased; however, in his cross examination, he improved his statement by saying, *"The next morning after 22.06.2019 I went to house of Ismail, father of accused Nasir and asked him about whereabouts of the said accused as my son was also missing"*. Besides, the complainant in his evidence deposed that they reached the place of incident **in the company of police** which fact has been belied by PW Wahid Bux who has categorically deposed that **after reaching the place of incident they made a phone call to police**. Besides, the complainant himself belied his above statement by admitting in his cross examination, *"We went there on foot whereas the police officials went in their police*

mobile". Furthermore, the complainant deposed, *"I lodged the FIR on 26.09.2019"* which statement is belied by the contents of the FIR itself which shows that the FIR was lodged on **28.06.2019**.

19. The complainant further admitted in his cross examination, *"A Roomal (men's headscarf) was tied around his neck"*. This statement is contrary to the entire prosecution case as neither any other prosecution witness has made such statement as they all have deposed that the accused had strangled the deceased **by means of their hands**, nor such statement of the complainant is consistent with the medical evidence or the statement of I.O. as he has nowhere stated that any such *Roomal* was secured during investigation of the case.

20. In reply to a suggestion, although the compliant deposed, *"It is incorrect to suggest that I lodged the FIR at the instance of PW Munir."*, however in the same breath he admitted, *"Voluntarily states I lodged the FIR in consultation with all my relatives and well-wishers"* In view of such admission i.e. consultation with others, false implication of the accused cannot be ruled out particularly in view of the fact that there is also inordinate and unexplained delay of at least three days in lodging the FIR.

21. According to PW Wahid Bux, **police** took out the dead body of the deceased from the mori however, such fact is contradicted by other witnesses, inasmuch as, the complainant in his evidence deposed, *"We took the dead body of my son Mian Dad and thereafter police took the dead body to the hospital....."* Likewise, PW ASI Saffar, IO of the case, in his cross examination admitted, *"Relatives of the deceased namely PWs Shahmeer, the co-mashir to memo for dead body, father of the deceased and some other relatives took out the dead body from the drain"*.

22. There is also contradiction between the prosecution witnesses on the point of time when PW Muneer met complainant party on 25.6.2019 and informed them about the alleged incident. According to complainant, *"About death of the deceased, I was informed by PW Munir when I was home. At that time PW Ayoub and PW Wahid Bux were with me. It was about 7:15 p.m. at that time"* whereas, PW Wahid Bux deposed, *"PW Munir had come to the complainant around 5:30 p.m. to inform him about*

the dead". Besides, this, according to complainant, at the time when PW Munir apprised them of the alleged incident, PW Ayoub and PW Wahid Bux were present with him and besides these two persons complainant does not speak about any other person, whereas, contrary to this, PW Wahid Bux claims, "*Besides the complainant and myself, PWs Shahmir, Ayoub, Shohban and few others were present*".

23. It is apparent that above contradictions have put severe dents in the prosecution case and in such a situation, the evidence of sole alleged eye-witness P.W. Munir has become seriously doubtful.

24. There is also delay in lodging of FIR. According to the complainant, the deceased had gone along with the accused on 22.06.2019 and then he did not return to home and ultimately on 25.06.2019 his dead body was taken out of the Mori/drain on the pointation of P.W. Munir. In normal course, when the deceased did not return to home, then at least on the next day FIR should have been lodged but very strangely, as per his own admission, the complainant waited for the whole night but the deceased not come back to home, then he also did not return for two days more till P.W. Munir informed the complainant party on 25.06.2019 about his witnessing the commission of offence by the accused. During all this period the complainant remained mum and did not enquire from anybody, thus there occurred a delay of five days in lodging of FIR. However, if such period is counted from the day when the dead body was taken out from the Mori on 25.06.2019 and P.W. Munir had categorically alleged that he had seen the accused while strangulating the deceased, even then the FIR was got registered after a delay of about three days. It is also noteworthy that the complainant was not all alone but, in fact, there were also other persons like P.W. Wahid Bux, P.W. Munir and other relatives of the deceased out of whom any one, particularly P.W. Wahid Bux or P.W. Munir who were present at the time when the dead body was taken out from the Mori, could have lodged the FIR. Needless to emphasize that due to inordinate and unexplained delay in lodging the FIR, the possibility of consultation and deliberation for implication of the accused cannot be ruled out and in instant case, the complainant has himself categorically admitted such fact by deposing, "*I lodged the FIR in consultation with all my relatives and well-wishers*"

25. On the point of delay in lodging FIR, the Hon'ble Supreme Court in the case of *Ayub Masih v. The State* (PLD 2002 SC 1048) held as under:-

"The unexplained delay in lodging the F.I.R. coupled with the presence of the elders of the area at the time of recording of F.I.R. leads to the inescapable conclusion that the F.I.R. was recorded after consultation and deliberation. The possibility of fabrication of a story and false implication thus cannot be excluded altogether. Unexplained inordinate delay in lodging the F.I.R. is an intriguing circumstance which tarnishes the authenticity of the F.I.R., casts a cloud of doubt on the entire prosecution case and is to be taken into consideration while evaluating the prosecution evidence. It is true that unexplained delay in lodging the F.I.R. is not fatal by itself and is immaterial when the prosecution evidence is strong enough to sustain conviction but it becomes significant where the prosecution evidence and other circumstances of the case tend to tilt the balance in favour of the accused."

26. In the case of *Sabir Hussain V. The State* (2022 YLR 173), it was held as under:

*"9. The complainant has knowledge about missing of the deceased on 13.07.2019, but despite that, the complainant did not lodge the report, and he lodged the report on 16.07.2019 at 10:30 a.m. Nothing came on record about lodgment of the report of missing of the deceased by the complainant in Levies Thana. It has also come on record that the dead body of the deceased was recovered from the water bank of the Madrasa on 16.07.2019 at 6:30 a.m., and the FIR was lodged on the same date at 10:30 a.m., with a delay of four hours from the recovery of dead body of the deceased. The lodgment of the FIR with delay by the complainant create reasonable doubt in the prosecution case. Reliance in this behalf is placed in the case of *Mehmood Ahmed and 3 others v. The State and another* (1995 SCMR 127)."*

27. Another significant point in instant case is that no motive, at all, has been disclosed by the complainant party for committing such heinous murder of the deceased by the accused. Nothing has been brought on the record by the prosecution to show as to what persuaded the accused to cause death of the deceased in such a brutal manner.

28. In this connection reference may be made to the case of *Shewaiz Rasool alias Shabi Vs. The State* reported in **2019 SCMR 1448**, wherein Honorable Supreme Court acquitted the accused on consideration of various grounds including **lack of motive**.

29. In another case reported as ***MUHAMMAD DIN and others Vs. The STATE and others*** (2018 YLR 580 [Lahore]) , Division Bench of Lahore High Court held as under:

"Even in such a situation, the Court is still required to go through the prosecution case and if comes across any feature which goes on to establish the existence of some doubt regarding the missing of an essential constituent ingredient of the crime like in the cases of Qatl-i-amd the requisite intention and knowledge or the lack of motive, its benefit ought to be extended to accused. It needs no

mention that the entitlement of an accused to the benefits arising out of above work out is not a matter of grace but as of right."

30. So far as alleged last seen evidence of the complainant and P.W. Wahid Bux is concerned, suffice it to observe that it was an unseen incident. Although P.W. Munir has claimed to have witnessed the incident, however in view of above elaborated discussion it is clear that his evidence cannot be termed as unimpeachable evidence which is the requirement of law for convicting an accused. In this view of the matter, conviction cannot be maintained merely on the basis of such last seen evidence. In this connection, reference may be made to the case of *MURAD ALI Vs. The State* reported in 2020 P.Cr.L.J. Notes 196 [Sindh (Hyderabad Bench)], wherein a Division Bench of this Court held as under:

"No doubt in this case an innocent person has lost his life but who committed his murder is to be determined and this fact is still under suspicious. The case of complainant entirely rests upon the last seen evidence and without recovery of any weapon from the appellant it cannot be said that deceased had received firearm injuries at the hands of accused/appellant as no one had seen the incident and the evidence of complainant and P.Ws in absence of any direct evidence cannot be relied upon."

31. It is also worthwhile to point out at this stage that in instant case the incident had allegedly taken place at the land / Garden of Mushtaq Lashari however, neither he was produced as a witness nor even he was made as mashir of the place of incident or etc. although in such a situation he was a material witness.

32. It may be pointed out that the *shalwar* worn by the deceased was secured by the Investigating Officer on 25.06.2019. However, the same was sent to the chemical examiner for his report on 03.07.2019 i.e. after delay of seven (07) days. The IO has also not said a single word during his evidence that as to where he kept said *shalwar* during the intervening period. In this view of the matter, the report of the chemical examiner seems to have lost its evidentiary value.

33. Apart from this, although the prosecution case is that shirt worn by the deceased was allegedly recovered from the Banana Garden of Mushtaq Lashari at the pointation of the accused; however, the mashir of such recovery namely PW Wahid Bux has admitted in his evidence that his LTI on the memo of recovery of the shirt was obtained at the police station and

not at the place of recovery. This also creates doubt in process of the recovery. This also adversely reflects upon the process of recovery itself.

34. It is also significant to point out that during course of recording the evidence of PW ASI Safar, IO of the case, while cross examining this witness certain irregularity transpired. While replying to a question the witness replied as under:

“The mashir on lash chakas form and danishtnama were Shahmeer and another person whose name I do not recollect. Both of them put their thumb impression on both the above documents. Again says some of them made signature and other put thumb impression. (Note: at the request of learned defence counsel it is noted that danishtnama (Ex.12/B) bear thumb impression of both mashirs whereas lash chakas form does not bear any signature or thumb impression of any witness.)”

This is also injurious to the prosecution case.

35. Apart from this, there is also another irregularity committed by the IO, inasmuch as; in his cross examination he admitted, *“I did produce both the accused before Magistrate for their judicial confession but he did not record the same. Again says, I did not request the Magistrate to record confession of the accused”*

36. Such conduct of the Investigating Officer also damages the prosecution case.

37. It is a well settled principle of law that the prosecution is bound under the law to prove its case against the accused beyond any shadow of reasonable doubt. It has also been held by the Superior Courts that conviction must be based and founded on unimpeachable evidence and certainty of guilt, and any doubt arising in the prosecution case must be resolved in favour of the accused. In instant case, the prosecution does not seem to have proved the allegations against the accused/appellants by producing unimpeachable evidence, thus doubts have been created in the prosecution version. In the case reported as Wazir Mohammad Vs. The State (1992 SCMR 1134) it was held by Honourable Supreme Court as under:

“In the criminal trial whereas it is the duty of the prosecution to prove its case against the accused to the hilt, but no such duty is cast upon the accused, he has only to create doubt in the case of the prosecution.”

38. In another case reported as Shamoon alias Shamma Vs. The State (1995 SCMR 1377) it was held by Honourable Supreme Court as under:

*"The prosecution must prove its case against the accused beyond reasonable doubts **irrespective of any plea raised by the accused in his defence.** Failure of prosecution to prove the case against the accused, entitles the accused to an **acquittal.**"*

39. Needless to emphasize the well settled principle of law that the accused is entitled to be extended benefit of doubt as a matter of right and not as a grace or concession. In present case, there are various admissions in the evidence of the prosecution witnesses which create doubts and put dents in the prosecution case. Even an accused cannot be deprived of benefit of doubt merely because there is only one circumstance which creates doubt in the prosecution story. In the case reported as Tariq Pervaiz vs. The State 1995 SCMR 1345 the Honourable Supreme Court held as under :-

"The concept of benefit of doubt to an accused person is deep-rooted in our country. For giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right.

40. For the forgoing reasons, by a short order dated 08.3.2023 instant Criminal Jail Appeal bearing No. 448 of 2022 was allowed. Consequently, judgment dated 05.07.2022 passed by learned 1st Additional Sessions Judge/MCTC, Thatta in Sessions Case No.254/2019 (re-State versus Nasir and another) arising out of Crime No.22/2019 registered at P.S Garho, under Sections 302, 201 read with Section 34 PPC was set-aside. Resultantly, appellants Nasir son of Ismail Lashari and Asghar son of Lal Muhammad Mallah were acquitted of the charges by extending them benefit of doubt. Appellants were present in custody, therefore, it was ordered that they shall be released forthwith, if their custody was not required in any other case.

JUDGE