

## **IN THE HIGH COURT OF SINDH AT KARACHI**

PRESENT:

**Mr. Justice Mohammad Karim Khan Agha**  
**Mr. Justice Amjad Ali Bohio**

### **Spl. Criminal A .T. Appeal Nos.127 and 128 of 2022**

Appellant : Rehmatullah son of Ajab Khan  
Through Mr.Muhammad Sahib Buner,  
Advocate.

Respondent : The State through Mr. Muhammad  
IqbalAwan, Additional Prosecutor  
General, Sindh.

Date of Hearing : 30.08.2023

Date of Judgment : 14.09.2023

## **J U D G M E N T**

**AMJAD ALI BOHIO, J**:-Appellant Rehmatullah s/oAjab Khan, along with co-accused Muhammad Jameel alias Ari s/oHazratGul, and Abbas alias Mohiuddins/o Ilyas has faced trial before the learned Judge of Anti-Terrorism Court No. V, Karachi in Special Case No. A-59/2013, arising out of Crime No. 141 of 2013 registered at PS Sohrab Goth, Karachi under sections 302, 324, and 34 of the Pakistan Penal Code (PPC) read with Section 7 of the Anti-Terrorism Act, 1997. Besides this case, he also faced trial in separate case under section 13-E of the Arms Ordinance.Following such trial, the appellant was convicted and sentenced vide impugned judgment dated: 31-05-2022, as detailed below:

- “i) Convicted and sentenced to imprisonment for life under section 7(h) of the ATA, 1997 read with section 302(b) PPC. He is directed to pay a sum of Rs.100,000/- (one lac) to the legal heirs of each deceased persons as compensation under section 544-A Cr. P.C. and in default whereof, he shall undergo simple imprisonment for further six months and compensation shall be recoverable as arrears of land revenue.*
- ii) Convicted under section 25 of SAA, 2013 to suffer R.I. for ten (10) years and fine of Rs.50,000/- and in case of*

*default whereof, he will have to undergo R.I. for six months more.”*

2. Appellant therefore being aggrieved and dissatisfied by the aforementioned judgment has filed the instant appeal against his conviction and sentences as mentioned above.

3. Brief facts of the prosecution's case are that Complainant/SI Abdul Rasheed Tanoli lodged this FIR on 03-03-2013 at 2315 hours stating therein that he along with patrol officer Shamim Ahmed and other officials were on duty from 1800 hours to 0200 hours and at about 2000 hours, they were checking the vehicles at Super Highway checkpoint opposite to Burraq Petrol Pump near Daewoo Terminal when three unidentified culprits riding a 125cc motorcycle duly armed with 9 mm and TT Pistols fired upon them at close range, causing them injuries. The complainant sustained injuries on the right side of his stomach below the ribs and on his left wrist who was shifted in private vehicles to Abbasi Shaheed Hospital where he received medical treatment and other injured officials were shifted to Jinnah Hospital where SI Shamim Ahmed, HC Mohsin Ali, and Cashier Allah Bux had succumbed to their injuries.

4. After registration of the case, Inspector/Investigation Officer Muslim Tunio conducted the investigation. He inspected the crime scene, wherefrom he seized four empties of 9mm pistol, six empties of TT Pistol and two bullets (projectiles) and sealed them at the spot. He then recorded statements of witnesses (PWs) under section 161 of the Criminal Procedure Code and collected postmortem reports of deceased persons. He also delivered the dead bodies to their respective families. During the investigation appellant Rehmatullah arrested in Crime Nos. 126/2013, 127/2013 and 128/2013 at PS Sachal Karachi was interrogated by IO Muslim Tunio who during such interrogation admitted about his involvement in the commission of above offence. Consequently, he led the police party, under the supervision of I.O to his residence located at House No. 12, Street No. 18, Jamali Goth, Scheme No. 33, Karachi, where he voluntarily produced a 9mm pistol with a magazine containing two live bullets for which memo was prepared and the weapon was found to be unlicensed, as such separate case bearing Crime 169 of 2013 under section 13 (e) of the Arms Ordinance was also registered against the appellant. Thereafter appellant was also identified by complainant of the case during

identification parade held before the Judicial Magistrate on 19.03.2013. Co-accused Jameel alias Ari who was already under arrest in Crime Nos. 193 and 194 of 2013 at PS Sohrab Goth, Karachi also admitted about his involvement in this case during interrogation by IO and further he implicated other accused Jan Muhammad alias Allah Dad, Khayalo alias Kareem, Rehmatullah, Abbas alias Mohiuddin, Gul Muhammad alias Akber, and Ghani. It also came to light that accused Khayalo alias Kareem had died.

5. Subsequently, the investigation was transferred to Police Inspector Muhammad Hussain Chandio, who arrested accused Abbas alias Mohiuddin on 19.04.2013. He also recorded statements of further PWs. Upon concluding the investigation, IO submitted the report under Section 173 Cr.P.C. In this report, accused Ghani S/o unknown, Jan Muhammad alias Allah Dad S/o unknown, and Gul Muhammad alias Akbar S/o unknown were shown as absconders, while the appellant Rehmatullah along with co-accused Jameel alias Ari and Abbas alias Mohiuddin, were indicated as being in custody.

6. The trial court subsequently framed charges against all three accused in custody on 21.11.2013. In response thereto they pleaded not guilty and opted for a trial of the case.

7. To substantiate its case, the prosecution examined Complainant SIP Abdul Rasheed (PW-1), Judicial Magistrate Naveed Asghar (PW-2) and Senior MLO JPMC Jagdesh Kumar (PW-3). Subsequently, on 30.03.2018, the trial court amalgamated the cases arising from Crime Nos. 141/2013 and 169/2013 and amended charge was framed on 18.05.2018, to which, the accused persons pleaded not guilty, opting for a trial.

8. Following this development, the prosecution examined witnesses including SIP Imtiaz Ali (PW-1), SIP Abdullah (PW-2), SIP Rab Nawaz (PW-3), Complainant SIP Abdul Rasheed (PW-4), ASI Shah Rehman (PW-5), HC Nazeer Hussain (PW-6), MLO Dr. Dileep Khatri (PW-7), Magistrate Naveed Asghar (PW-8), Retired Inspector/I.O Muhammad Noman (PW-9), Dr. Jagdesh Kumar (PW-10), Inspector/I.O Muhammad Aslam (PW-11), P.I of P.S AVLK Muhammad Muslim (PW-12), and Retired Inspector/I.O Muhammad Hussain Chandio (PW-13). Thereafter, the prosecution concluded its case by closing their side.

9. On conclusion of prosecution evidence, the appellant was given the opportunity to respond to the charges under Section 342 Cr.P.C. In his statement, he denied the allegations against him and asserted that he had been falsely implicated. However, he did not testify on oath or produce any evidence in his defense.

10. After considering the arguments of the learned counsel for both parties and evaluating the evidence presented, the learned Judge of Anti terrorism Court No. V delivered judgment finding the appellant guilty of charges and thereby convicted and sentenced him as mentioned above whereas co-accused Jameel alias Ari and Abbas alias Mohiuddin were acquitted. Consequently, the appellant has filed this appeal against his conviction.

11. The evidence produced before the trial court has been extensively mentioned in the impugned judgment, rendered by the trial court. Therefore, to avoid redundancy and unnecessary repetition, the same will not be reproduced here.

12. The learned counsel representing the appellant has raised several contentions. Firstly, it is contended that the trial court failed to scrutinize the evidence judiciously resulting in misreading of evidence. It is further argued that the appellant was not initially named in the FIR and after his arrest by the police of P.S. Sachal, he was subsequently transferred in custody to P.S. Sohrab Goth police. The appellant was already detained in connection with Crime Nos. 126, 127, and 128 of 2013 on 06.03.2013. Later, he was allegedly implicated in the above-mentioned offense in Crime No. 141/2023, suggesting malicious intent. It is claimed that the identification parade was conducted without adhering to the required procedures recommended by the Superior Courts. Additionally, it is asserted that the trial court failed to consider the source of light during the incident. Despite the complainant's statement that it was dark at the time, the court did not adequately examine the source of illumination that enabled the complainant to identify the appellant during the occurrence and the subsequent identification parade. The appellant's counsel further argued that the appellant was implicated in Crime No. 140/2013, registered on 03.03.2013 at 1620 hours, involving him for causing firearm injuries to two children during a marriage ceremony at 1345 hours on same day whereas the instant incident also took place

on the same day at 1950 hours. Consequently, it is contended that it is improbable that the appellant might have committed both offenses within the same police station's jurisdiction within such a short time frame. Moreover, discrepancies in the identification parade procedure were highlighted, as evidenced by the Magistrate and IO's statements, particularly when the complainant himself admitted that the features of the culprits were not mentioned in his statement recorded under Section 154 Cr.P.C. The appellant's counsel further contended that crucial witnesses, notably the guards of the petrol pump who were allegedly involved in aerial firing in retaliation, as disclosed by the complainant during his testimony, were not associated or called upon by the Investigating Officer during the course of the investigation. These independent witnesses were not approached to testify in the case, thereby withholding important evidence, which is asserted to be in violation of Article 129(g) of the Qanoon-e-Shahadat Order, 1984. Finally, the appellant's counsel prayed that the appeal to be allowed and the appellant be acquitted. In support of these contentions, reference was made to several legal precedents, including the cases of Siraj-ul-Haq and another v. The State (2008 SCMR 302), Muhammad Imran v. The State (2009 P.Cr.L.J. 997), Muhammad Aftab Siddiqui v. SHO Shah Faisal Colony Police Station (2006 MLD 320), Abdul Sattar and another v. The State (1981 SCMR 678), and Lal Pasand v. The State (PLD 1981 Supreme Court 142).

13. On the contrary, the learned Additional Prosecutor General has supported the impugned judgment. He contends that the appellant was accurately identified by Complainant SIP Abdul Rasheed in the presence of a Judicial Magistrate. During this identification, the complainant testified that the appellant had fired directly at him, resulting in a gunshot wound on the right side of his abdomen and left hand. Additionally, the evidence related to the recovery of the weapon was substantiated by the testimony of the recovery witness and the complainant in Crime No. 169/2013. Therefore, the impugned judgment, in his view, does not warrant any intervention, and the appeal should be dismissed.

14. We have carefully considered the arguments presented by the learned counsel for both parties, meticulously reviewed the entire body of evidence, which has been extensively presented by the appellant's

counsel, and have taken into account the relevant legal precedents cited by the appellant's counsel.

15. Starting with the medical evidence produced by prosecution, Dr. Dileep Khatri (PW-07) who conducted autopsy on the dead body of Mohsin Ali (deceased) vide postmortem report Exh.32/A observed the following injuries:

“External Injuries

1. Punctured fire arm wound 0.5 C.M. in Diameter left side chest at 5<sup>th</sup> and 4<sup>th</sup> intercostal space of chest margin inverted no blackening was not present (Wound of entry).
2. Punctured fire arm wound 1 CM in Diameter in left side chest postural on the same level.

Wound of exit

1. Both injuries mentioned was ante-mortem in nature.
2. On internal Examination chest thoracic Cavity was full of blood. On exploring the wound heart was found punctured and tear through and through due to bullet injury. The injury to heart is sufficient to cause the death of person in ordinary course of life otherwise no mark of evidence noted on head and neck.”

16. Whereas, Dr. Jagdish Kumar (PW-10) conducted autopsy on the dead bodies of Allah Bux and S.I. Shamim Ahmed (deceased). He testified the postmortem report of Allah Bux at Exh.10/A and observed the following injuries:

SURFACE INJURIES

1. Fire arm wound 0.5 cm in diameter on right occipital region inverted margins, wound of entry.  
Fire arm wound 0.8 cm in diameter on left temporary region, everted margins, wound of exit. Brain matter oozing.

Dr. Jagdish Kumar (PW-10) also conducted autopsy on the dead bodies of S.I. Shamim Ahmed (deceased). He testified the postmortem report of Allah Bux at Exh.10/A and observed the following injuries:

Surface Injuries:

1. Fire arm wound 0.5 cm in diameter left chest on 4<sup>th</sup>intercostal space near nipple inverted margins, wound of entry.  
Fire arm wound 0.8 cm in diameter on left chest posteriorly scapular region averted margins, wound of exit.
2. Fire arm wound 0.5 cm on left abdomen anteriorly inverted margins, wound of entry.  
Fire arm wound 0.8 cm in diameter on left abdomen everted margins posteriorly averted margins, wound of exit.
3. Fire arm wound 0.5 cm diameter on left lower abdomen anteriorly, inverted margins, wound of entry.

17. According to medical officers, all injuries were identified as ante-mortem, indicating that they occurred before death and were caused by firearm weapons. The cause of death in all cases was attributed to cardiorespiratory failure, shock, and hemorrhage resulting from firearm injuries, ultimately leading to their demise. The estimated time that elapsed between sustaining these injuries and the time of death ranged from two to six hours. Consequently, it has been determined that all three deceased individuals met their demise due to unnatural causes.

18. Whole story revolves behind the complainant. It is undisputed that on March 3, 2013, at 19:50 hours, three unidentified individuals discharged firearms at the complainant's party while they were checking vehicles at place of incident. In his First Information Report, the complainant mentioned that the accused were identifiable, yet he did not specify any available source of light at the scene of the incident. Importantly, the complainant had not seen the accused prior to the incident, and he did not provide any physical descriptions or identifying features of the accused in either the FIR or his statement. The incident occurred at 7:45 pm in March, during darkness, a fact acknowledged by the complainant. Despite this, he asserted in the FIR that the accused were identifiable. It is well-established legal principle that when the FIR and Section 161 of the Criminal Procedure Code do not contain descriptions of the accused's

features, the accused cannot be incriminated solely basing their involvement on identification parade.

19. The prosecution's case relied primarily on the complainant's testimony. However, this testimony lacked credibility as during his evidence, the complainant failed to recognize co-accused Jamil alias Ari and Abbas alias Mohiuddin. Moreover, he admitted during cross-examination that the incident occurred in darkness and completed within moments. Nonetheless, in the same darkness, the complainant claimed to have identified the appellant during an identification test parade conducted before the Magistrate. As a result, the prosecution's case is marred by significant infirmities, material and glaring discrepancies and apparent attempts at dishonest improvements. These factors cast doubt on the credibility of the complainant's testimony and as such, no explicit reliance can be placed upon it as reliable evidence. The aforementioned infirmities; material and glaring discrepancies; dishonest and deliberate improvements to strengthen the prosecution case during the trial in the statement of complainant qua the contents of the FIR, rendered the credibility of the complainant doubtful and thereby his evidence is unreliable and no reliance can be placed upon his evidence. Reliance in this context is placed on the case of Akhtar Ali and others v. The State (2008 SCMR 6), wherein the Hon'ble Supreme Court of Pakistan has held that:--

*"It is also a settled maxim when a witness improves his version to strengthen the prosecution case, his improved statement subsequently made cannot be relied upon as the witness had improved his statement dishonestly, therefore, his credibility becomes doubtful on the well known principle of criminal jurisprudence that improvements once found deliberate and dishonest cast serious doubt on the veracity of such witness. See Hadi Bakhsh's case PLD 1963 Kar. 805."*

In the case of Muhammad Ilyas v. The State (1997 SCMR 25), the Hon'ble Supreme Court of Pakistan has held that:--

*"It is well-settled principle of law that where evidence creates doubt about the truthfulness of prosecution story, benefit of such a doubt had to be given to the accused without any reservation. In the result, there is no alternative but to acquit the appellant by giving him benefit of doubt".*



20. In evaluating the evidence of the complainant Sub-Inspector Abdul Rasheed, we have noted significant inconsistencies that cast doubt on the reliability of his testimony. In his First Information Report, he initially stated that three unidentified culprits, riding on a motorcycle, approached the scene and opened fire from close range, resulting in firearm injuries. He also asserted that the culprits were identifiable. However, during his subsequent testimony, the complainant provided a different account. He claimed that only two of the culprits alighted from the motorcycle and fired straight shots. He further deposed that the incident occurred in darkness and completed within a brief span of time. Crucially, the complainant neither mentioned the source of any available light at the scene nor provided any physical descriptions or identifying features of the culprits in the FIR or his testimony. Given that it was nighttime and the complainant admitted that it was dark night and the incident occurred rapidly, the subsequent identification parade loses its credibility and is therefore dismissed for the reason that only one glimpse at such dark time cannot remain in one's mind sufficient to identify the accused.

21. Moreover, the complainant's failure to mention the *hulia* (description) of any of the accused individuals at the time of FIR and his inability to delineate the role of the appellant during the incident in the identification parade conducted before the Magistrate, raises significant concerns. It is essential to emphasize that the appellant had not been previously seen by the complainant. Therefore, it is worth noting that the Hon'ble apex Court has consistently held that such evidence should be approached with caution, as errors and misidentifications are plausible. In light of these discrepancies and the absence of credible evidence, the reliability of the complainant's testimony regarding the identification and role of the accused individuals remains in question. In the case of *Javed Khan v. The State* (2017 SCMR 524), it was held as under:

*“The Complainant (PW-5) had not mentioned any features of the assailants either in the FIR or in his statement recorded under section 161, Cr.P.C. therefore there was no benchmark against which to test whether the appellants, who he had identified after over a year of the crime, and who he had fleetingly seen, were in fact the actual culprits. Neither of the two Magistrates had certified that in the identification proceedings the other persons, amongst whom the appellants were placed, were of similar age, height, built and colouring. The main object of identification proceedings is to enable a witness to properly*

*identify a person involved in a crime and to exclude the possibility of a witness simply confirming a faint recollection or impression, that is, of an old, young, tall, short, fat, thin, dark or fair suspect. There is yet another aspect to the matter of identification of the culprits of this case. The Complainant had named three other persons who could recognize the assailants, but he did not mention Subedar Mehmood Ahmad Khan (PW-6) as one of them. Nonetheless Subedar Mehmood Ahmad Khan came forward to identify the appellants. Significantly, none of the three persons mentioned by the Complainant participated in the identification proceedings and two were not even produced as witnesses by the Prosecution. During the identification proceedings both the appellants had informed the Magistrates who were conducting the identification proceedings, and before the identification proceedings commenced, that they had earlier been shown to the witnesses. The Magistrates recorded this objection of the appellants in their reports but surprisingly did not attend to it, which can only be categorized as a serious lapse on their part. Therefore, for all these reasons reliance cannot be placed upon the report of the identification proceedings in which the appellants were identified.”*

22. During the examination-in-chief, the complainant, while exonerating the other two accused, made conflicting statements. He stated that one of the accused, namely Jamil, appeared to be same, but for the other accused, he could not definitively confirm their identity due to the darkness and nighttime conditions. This raises a perplexing question: if the complainant was unable to recognize the other two accused because of the darkness then how could he confidently identify the appellant in a similar environment? In light of this inconsistency, the defense counsel's argument regarding the possible false implication of the appellant gains credibility. The prosecution failed to refute the fact that First Information Report in Crime No. 140/2013 was lodged by one Amanullah, pertaining to an incident of firing during a marriage ceremony on the same day, March 3, 2013, at 13:45 hours. In that FIR, the appellant Rehmatullah was named as a suspect, and it was registered on the same day at 16:20 hours within the jurisdiction of the same P.S. Sohrab Goth. It strains credulity to suggest that the accused, after allegedly committing an offense in Crime No. 140/2013, could have swiftly perpetrated the crime under consideration against police officials shortly thereafter. The complainant's evidence, lacking corroboration, becomes questionable in a case involving the capital punishment without detailed descriptions of the accused's features, physiques, and complexions. The complainant refrained from accusing the co-accused primarily on the grounds that, due to the nighttime and darkness, he

could not definitively identify them. Yet, he claims to have identified the appellant under identical conditions. This inconsistency suggests potential malfeasance on the part of the complainant and his sole testimony cannot be deemed sufficient for reliance, particularly when independent witnesses, who, according to the complainant's own account, were present at the scene, played a role in firing shots in retaliation, allowing the accused to escape. Yet these witnesses were not produced for recording of their evidence.

23. Notably, the guards of the petrol pump were not listed as witnesses in the FIR, and the investigating officer (I.O) did not make any efforts to associate them in the case. This omission raises suspicions, and it is conceivable that, within the scope of Article 129(g) of the Qanun-e-Shahadat Order, 1984, the I.O's actions could imply that the introduction of these guards as witnesses might not have supported the prosecution's narrative. Furthermore, even the unidentified individuals mentioned by the complainant, who allegedly transported the injured victims, were not examined as witnesses. In these circumstances it is quite risky to believe the sole contention of complainant for warranting the conviction upon appellant. In support of these observations, reference is made to the case of Muhammad Raees v. the State and another (2023 P. Cr. L.J. 532) wherein it was held as under:

*"It is noteworthy that at one point Aksar Bibi complainant (PW6) stated that she along with her daughter and husband went to the place of occurrence for grazing cattle and at the other point, she stated that they had gone to their fields to harvest peanut crop by engaging a tractor blade. Similarly, Talib Hussain (PW7) also claimed to have witnessed the tragedy by chance while stating that he was grazing his cattle there. In this way, both the alleged eye-witnesses were nothing but chance witnesses, which aspect of the case prompts this Court not to place any reliance on them. Guidance in this respect can be sought from the case of "Nadeem alias Nanha Billa Sher v. The State" (2010 SCMR 949). Besides it is established from the statement of Aksar Bibi complainant (PW6) that Ikram, who was the owner of tractor engaged for harvesting peanut crop, was present at the spot at the time of occurrence, but he was never cited as an eye-witness of the case. In this way the prosecution has withheld the best available evidence, which inclines this Court to draw an inference within the meanings of Article 129(g) of Qanun-e-Shahadat Order, 1984 that had the above said Ikram been produced before the learned trial court, he would not have supported the story incorporated in crime report (Ex.PC) otherwise there was no plausible reason to let off such an important piece of evidence. Guidance has been sought from the cases of "Riaz Ahmad v. The State" (2010 SCMR 846) and*

*"Khalid alias Khalidi and 2 others v. The State" (2012 SCMR 327), wherein a similar view has been discussed by the Hon'ble Supreme Court of Pakistan."*

24. Furthermore examining the credibility of the complainant, it becomes increasingly questionable whether he was indeed present at the time and place of the incident. The FIR and the complainant's testimony allege that he sustained firearm injuries to his right and left ribs of his abdomen, as well as his little finger on the left hand. However, a meticulous review of the evidence presented by the prosecution reveals a critical omission—the absence of any memo or record of the inspection of these firearm injuries by the investigating officer (I.O.). Furthermore, throughout the entire trial, the prosecution failed to produce any medical record or evidence pertaining to these alleged injuries. Consequently, the question arises: was the complainant truly present at the scene of the incident? The absence of documentation or medical evidence related to the purported injuries seriously undermines the prosecution's case. Even more concerning is the fact that neither of the medical officers involved, namely Dr. Jagdesh Kumar and Dr. Dileep Khatri, provided testimony regarding whether SIP Abdul Rasheed, the complainant, was ever referred for medical treatment and examination in connection with the injuries he claimed to have sustained, which clearly establishes that the waste evidence has been withheld and thereby negative presumption comes on record in terms of Article 129(g) of Qanun-e-Shahadat Order, 1984 as held in the case of Nasir Mehmood and others Versus The State and others (2019 P.Cr.L.J. Note 3). This glaring absence of crucial evidence deals a severe blow to the prosecution's case. The occurrence took place at 1950 hours at night, and by such time the darkness during this season must have completely covered the entire area with their being no evidence of any source of light. The reliance in this regard is placed upon the case of Suleman and another v. The State (2022 P. Cr. L.J. 1623) wherein it is held as under:

*"The occurrence took place at 12 O'clock at night, and by such time, the darkness completely prevailed. The above witnesses neither in the report nor in their court statement uttered a single word about the source of light in which they identified the accused persons. The site place Exh.P/7-C is also silent about the availability of any source of light at the spot. PW-7 Abid Ali SI, who conducted an investigation of the case, during the investigation he did not take any article into possession as to prove that sufficient light was present at the time and place of occurrence for the witnesses to make a positive identity of the assailant. The prosecution failed to establish the fact that such*

*availability of light of source and in the absence of their ability to do so we cannot presume the existence of such a light source. We are firm in our view to hold that identification of the assailants at such darkness was impossible what to speak of identifying firing a particular person hitting the deceased. This sole ground is sufficient for discarding the testimony of the PW-2 and PW-3 that they are not truthful witnesses. Reliance is placed on the case of Gulfam, and another v. The State 2017 SCMR 1189, wherein the august Supreme Court of Pakistan observed as under:-*

*“Courts below had incorrectly presumed that as the occurrence had taken place at a medical store, therefore, some electric light must be available at the spot.”*

25. Moreover, the complainant also admitted during his cross-examination that the features of the culprits are not mentioned in his statement recorded under section 154 Cr. P.C. by the police. To the above reply, the counsel for appellant questioned the responsibility of the complainant as to why he did not take care for the same as he replied as under:

*“It is correct to suggest that I did not care to reduce into writing the features of the accused persons to police and without such care I put my signature on it.”*

26. In sum, the prosecution's failure to substantiate the complainant's presence at the time of the incident and the absence of essential medical documentation and testimony raise significant doubts about the veracity of the charges.

27. To consider the circumstantial evidence in this regard, the recovery of the weapon from the appellant, it is essential to note that there are several significant contradictions in the evidence. After the appellant's arrest, he purportedly agreed to produce the 9mm pistol allegedly used in the commission of the crime. The memo of recovery, marked as Exh.29/A, is attributed to Mashir HC Nazeer Ahmed, who testified that the accused led them to his vacant house, where he retrieved the pistol from a vacant box located in the courtyard. Remarkably, Inspector Muhammad Muslim, the investigating officer (I.O.), also testified that the appellant directed them to his residence and handed over a 9mm pistol along with two live bullets. However, during cross-examination, the I.O. mentioned the presence of three to four individuals in the appellant's house, including a woman, an elderly man, and a child. Another discrepancy arose between the

accounts of Mashir HC Nazeer Ahmed and the I.O. Mashir who testified that only one pistol was found in the iron box, whereas the I.O. claimed that various articles, including clothing, were scattered around, and the pistol was concealed among the clothes. These contradictions, along with concerns about the compliance with Section 103 of the Criminal Procedure Code (Cr. P.C.), raise doubts about the validity of the recovery. It is worth noting that the case of *Mano v. State* (2022 YLR 396) emphasizes the significance of adhering to legal procedures during searches and recoveries. Moreover, it is essential to highlight that the recovery of the crime weapon can only serve as a supporting piece of evidence and the same cannot pull the evidence in the main case. In this case, the prosecution's failure to establish a clear and convincing ocular account implicating the appellant in the commission of the alleged offense is a notable shortcoming.

28. In summary, the contradictory nature of the recovery evidence, coupled with the absence of a strong ocular account implicating the appellant, leaves substantial doubts regarding the prosecution's case. It is well settled law that in case of doubt, the benefit must be given to the accused as a matter of right and not as a matter of grace because for giving benefit of doubt it was not necessary that there should be numerous circumstances creating doubt, if there is one circumstance creating reasonable doubt in the mind of prudent person, same would be sufficient for acquittal of accused, not as a matter of grace or concession but as a matter of right. Reliance is placed on the cases of *Muhammad Ikram v. The State* (1995 SCMR 1345) and *Haji Qasim Khan v. Qadeer Khan* (2018 YLR 282).

29. It is also golden principle of Islamic Jurisprudence that it is better to acquit ten guilty persons than to convict a single innocent person. In a recent case, titled *Najaf Ali Shah v. The State* (2021 SCMR 736), the apex Court observed as under:

*"9. Mere heinousness of the offence if not proved to the hilt is not a ground to avail the majesty of the Court to do complete justice. This is an established principle of law and equity that it is better that 100 guilty persons should let off but one innocent person should not suffer. As the preeminent English jurist William Blackstone wrote, "Better that then guilty persons escape, than that one innocent suffer." Benjamin Franklin, who was one of the leading figures of early American history, went further arguing "it is better a hundred guilty persons should escape than one innocent person should suffer. All the*

*contradictions noted by the learned High Court are sufficient to cast a shadow of doubt on the prosecution's case, which entitles the petitioner to the right of benefit of the doubt. It is a well settled principle of law that for the accused to be afforded this right of the benefit of the doubt it is not necessary that there should be many circumstances creating uncertainty and if there is only one doubt, the benefit of the same must go to the petitioner. This Court in the case of Mst. Asia Bibi v. The State (PLD 2019 SC 64) while relying on the earlier judgments of this Court has categorically held that "if a single circumstance creates reasonable doubt in a prudent mind about the apprehension of guilt of an accused, then he/she shall be entitled to such benefit not as a matter of grace and concession, but as of right. Reference in this regard may be made to the cases of Tariq Pervaiz v. The State (1998 SCMR 1345) and Ayub Masih v. The State (PLD 2002 SC 1048)." The same view was reiterated in Abdul Jabbar v. State (2010 SCMR 129), when this Court observed that once a single loophole is observed in a case presented by the prosecution, such in the ocular account and medical evidence or presence of eye-witnesses being doubtful, the benefit of such loophole/lacuna in the prosecution's case automatically goes in favour of an accused."*

30. Based on the reasons provided and the doubts raised in the prosecution's case, it is safely concluded that the prosecution has failed to establish the appellant Rehmatullah's guilt beyond a reasonable shadow of doubt. Therefore, in accordance with the principle of giving the benefit of doubt to the accused, we accept his criminal appeal and acquit him of the charge. This conclusion acknowledges the importance of maintaining the presumption of innocence until guilt is proven beyond a reasonable doubt and affirms the appellant's right to a fair trial and justice. The appellant shall be released from jail immediately, unless there is a requirement for his detention in connection with any other case.

JUDGE

JUDGE