IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Jail Appeal No. S-10 of 2023

Appellant:	Muhammad Irfan Saeed Rajput through Mr. Abdul Salam Shaikh, Advocate.
The State:	Through Mr.Imran Mobeen Khan, Assistant Prosecutor General
Date of hearing:	04.12.2023
Date of judgment:	12.012024

J U D G M E N T

ARBAB ALI HAKRO, J:- Through the instant Criminal Jail Appeal, the Appellant Muhammad Irfan Saeed, son of Muhammad Saeed Rajput, has impugned and called in question the judgment dated 05.01.2023 passed by the IInd Additional Sessions Judge Naushahro Feroze in Sessions Case No.185 of 2020 arising out of Crime No.34 of 2020 under Sections 320, 279 PPC registered at Police Station Bhiria City, whereby he was convicted for offence punishable under section 320 PPC and sentenced to suffer R.I. for 10(ten) years for committing Qatl-i-khata of S.I.P Ashique Tanwri and Muhammad Kashif Yousifzai and to pay 'Diyat' amount of Rs.23,20,202/- to the legal heirs of deceased. He was also convicted under Section 279 PPC and sentenced to suffer one year. All the sentences were ordered to run concurrently. The benefit of Section 382-B, Cr. P.C was extended to the appellant.

2. The unfortunate background to the present appeal is the tragic road accident, which was reported as F.I.R. No.34/2020, lodged by Sub-Inspector Nasreeullah Tanwri at Police Station Bhiria City. The narration of the facts as reported by the complainant in the F.I.R reveals that on 14.04.2020, he, along with S.I.P. Sajjad Hussain Khushk in Govt. vehicle No.IDP-2992 while S.I.P. Ashique Tanwri and J.P.O. Kashif Mallah

in Govt. vehicle No.IDP-3407 departed from the Motorway office Kandiaro for routine patrolling. During patrolling, when on 15.04.2020, they reached near Pir Rato on the National Highway Bypass, Bhiria and noticed a car parked on the roadside. They alighted from their vehicles to help a person in the said car. One Muhammad Kashif S/o Muhammad Ayoub Yousufzai (the deceased), aged about 36/37 years, was standing there. It was 0500 hours when one trailer bearing registration No.LZR-2287, being driven in a rash and negligent manner, came and dashed to S.I.P. Ashique Tanwri, who sustained serious injuries and fell down on the roadside while the trailer overrode Muhammad Kashif Yousifzai, who expired on the spot. The trailer driver fled away in the garden, leaving the trailer. Thereafter, the complainant party shifted deceased Muhammad Kashif and injured S.I.P. Ashique Tanwri to Government Hospital Bhiria and gave information of the incident to Police Station Bhiria. On receiving such information, A.S.I. Abdul Ghafoor Naich of P.S Bhiria reached at the hospital and conducted the necessary formalities. Injured S.I.P. Ashique Tanwri was referred to Nawabshah; hence, the complainant party brought the injured to Nawabshah Hospital for treatment. After that, the complainant party returned to Bhiria, where they came to know that after the postmortem examination, the dead body of the deceased Muhammad Kashif was taken away by his brother, Sabir Yousifzai, for its' funeral and burial ceremony at Karachi. The complainant then appeared at Police Station Bhiria City and lodged an F.I.R. against an unknown trailer driver. Subsequently, injured S.I.P. Ashique Tanwri succumbed to his injuries and died at Nawabshah Hospital.

3. The investigation of the case was entrusted to S.I.P. Ghulam Asghar, who visited the place of occurrence, secured bloodstained earth from there, and examined the offending vehicle, viz., the trailer. On 18.04.2020, complainant S.I.P. Naseerullah recorded his further statement before the Investigation officer wherein he nominated the present appellant as culprit behind the incident and, on completion of usual investigation, final report under section 173 Cr. P.C. was filed

against the appellant before the Court of Law, where he was formally charge sheeted, to which he pleaded not guilty and claimed trial.

4. To establish the charge against the accused, the prosecution examined all 08(eight) witnesses, i.e. complainant S.I.P. Naseeruddin(PW-1), A.S.I.Abdul Ghafoor Naich(PW-2),S.I.P. Sajjad Hussain(PW-3) furnished the ocular account of the occurrence, P.C Rahib Khan(PW-4) cited as mashir of arrest, Dr. Usman Ali (PW-5) provided medical evidence, I/O SIP Ghulam Asghar Shar(PW-6) gave the details of investigation, Tapedar Muhammad Moosa(PW-7) prepared site plan and Nasir Khan Yousifzai(PW-8) brother of deceased Muhammad Kashif.

5. After closure of the prosecution evidence, statement of the accused was recorded under section 342 Cr. P.C., wherein he denied the prosecution allegations and professed his innocence. He, however, declined to be examined on oath under section 340 (2) Cr. P.C. or to produce evidence in defence. At the conclusion of trial, the trial Court, on evaluation of the material and hearing counsel for the parties, convicted and sentenced the appellant vide impugned judgment, as discussed above, hence, the present appeal by the appellant.

6. The learned counsel for the appellant contended that the prosecution had failed to prove the charge under Section 320 PPC against the Appellant beyond reasonable doubt. The trial Court had not appraised the evidence properly, which had caused a serious miscarriage of justice. He argued that firstly, the case was registered against an unknown person, and there was not an iota of evidence which could show that it was the appellant who was driving the trailer which killed S.I.P. Ashique and Muhammad Kashif and that the trailer was being driven rashly and negligently. Lastly, he submitted that prosecution evidence is suffering from material contradictions and discrepancies, creating serious doubts about the guilt of the appellant, the benefit of which may be extended to the appellant, and he may be acquitted of the charge. In support of his contentions, he relied upon the case law reported as 2012 MLD 611, 2018 PCrLJ 914, 2022 PCrLJ 138 Note 90, 2014 MLD 337, 2021

PCrLJ 504, 2008 YLR 1092, 2016 PCrLJ 220, 2021 SCMR 873, 1995 SCMR 1345, 2021 PCr.LJ 576 and 2018 SCMR 344.

7. Conversely, Learned Assistant Prosecution General contended that the appellant rashly and negligently drove the trailer and killed two persons, which was duly proved at the trial. The prosecution witnesses had no enmity or ill will against the appellant to falsely implicate him in this case. He prayed that instant appeal be dismissed, and conviction and sentence awarded to the appellant be upheld.

8. I have heard the learned counsel for the appellant and the learned A.P.G. and have also examined the record. A perusal of the record reveals that in the instant pathetic episode, an unfortunate accident took place on 15.04.2020 at about 0500 hours on the main National Highway Bypass, wherein two people lost their lives. It is the case of the prosecution that on 14.04.2020, complainant S.I.P. Naseeruddin (PW-1), along with S.I.P. Sajjad Hussain (PW-03), S.I.P. Ashique Tanwri (the deceased) and J.P.O. Kashi Mallah departed from the Motorway office in their official vehicles for routine patrolling. During patrolling, when 15.04.2020 they reached near Pir Rato on the National Highway Bypass, they noticed a car parked on the roadside. They alighted from their vehicles with the help of the person in the said car, who disclosed his name as Kashif Ali S/o Muhammad Ayoub Zai (the deceased). Meanwhile, a trailer bearing No.LZR-2287, driven by an unknown person, was coming from Kandiaro towards Naushahro Feroze and hit S.I.P. Ashique Ali, who sustained serious injuries, while the trailer overrode Muhammad Kashif, who expired on the spot. The trailer driver fled away in the garden, leaving the trailer. Injured S.I.P. Ashique Ali and deceased Muhammad Kashif were brought to the hospital, where S.I.P. Ashique Ali, during treatment, succumbed to his injuries after three days. The First Information Report was initially chalked out against an unknown trailer driver. Later on, complainant S.I.P. Naseerullah recorded his subsequent statement on 18.04.2020, three days of the initial report, before the Investigating Officer under section 162 Cr.P.C

wherein he stated that trailer driver namely Muhammad Irfan Saeed while driving trailer bearing No.LZR-2287 caused the death of Muhammad Kashif and S.I.P. Ashique Ali, However, while making the supplementary statement, the complainant disclosed neither the source of this information nor the circumstances that made him suspect that the appellant was the driver who was driving the offending vehicle on the fateful night. The record is entirely silent as to how the name of the appellant surfaced in this case on what basis he was accused of the commission of the offence. Thus, the involvement of the appellant in the offence in the manner in which the prosecution is lately asserting is not free from doubt. Further, since the appellant was not previously known to the complainant and other eyewitnesses, to exclude the question of any mistaken identification, it was incumbent to hold identification test proceedings before competent Magistrate subsequent to the arrest of the appellant. The record reveals that the appellant was arrested on 30.04.2020 by I/O SIP Ghulam Asghar(PW-6), and as per version of complainant(PW-1) on same date, identification parade of the appellant was conducted at police Station, where the PW-1/-complainant identified the appellant but surprisingly, I/O SIP Ghulam Asghar did not speak a word about it in his deposition at the trial. Even if the version of the complainant(PW-1) is accepted, it is to be noted that the identification parade was not meet according to the guidelines given by the Apex Court time and again. In the case of ***Kanwar Anwaar Ali, Special Judicial Maistrate PLD 2019 Supreme Court 488***, the Supreme Court of Pakistan has given the guidelines in detail as under:

> *"(a) Memories fade and visions get blurred with passage of time. Thus, an identification test, where an unexplained and unreasonably long period has intervened between the occurrence and the identification proceedings, should be viewed with suspicion. Therefore, an identification parade, to inspire confidence, must be held at the earliest possible opportunity after the occurrence;*
> *(b) a test identification, where the possibility of the witness having seen the accused persons after their arrest cannot be ruled out, is worth nothing at all. It is, therefore, imperative to eliminate all such possibilities. It should be ensured that after their arrest, the suspects are put to identification tests as early as*

possible. Such suspects should preferably, not be remanded to police custody in the first instance and should be kept in judicial custody till the identification proceedings are held. This is to avoid the possibility of overzealous I.Os. showing the suspects to the witnesses while they are in police custody. Even when these accused persons are, of necessity, to be taken to Courts for remand, etc., they must be warned to cover their faces if they so choose so that no witness could see them;

(c) identification parades should never be held at police stations;

(d) the Magistrate, supervising the identification proceedings, must verify the period, if any, for which the accused persons have remained in police custody after their arrest and before the test identification and must incorporate this fact in his report about the proceedings;

(e) In order to guard against the possibility of a witness identifying an accused person by chance, the number of persons (dummies) to be intermingled with the accused persons should be as much as possible. But then there is also the need to ensure that the number of such persons is not increased to an extent which could have the effect of confusing the identifying witness. The superior Courts have, through their wisdom and long experience, prescribed that Ordinarily the ratio between the accused persons and the dummies should be 1 to 9 or 10. This ratio must be followed unless there are some special justifiable circumstances warranting a deviation from it;

(f) if there are more accused persons than one who have to be subjected to test identification, then the rule of prudence laid down by the superior Courts is that separate identification parades should ordinarily be held in respect of each accused person;

(g) It must be ensured that before a witness has participated in the identification proceedings, he is stationed at a place from where he cannot observe the proceedings and that after his participation he is lodged at a place from where it is not possible for him to communicate with those who have yet to take their turn. It also has to be ensured that no one who is witnessing the proceedings, such as the members of the jail staff, etc., is able to communicate with the identifying witnesses;

(h) the Magistrate conducting the proceedings must take an intelligent interest in the proceedings and not be just a silent spectator of the same, bearing in mind at all times that the life and liberty of someone depends only upon his vigilance and caution,;

(i) the Magistrate is obliged to prepare a list of all the persons (dummies) who form part of the line-up at the parade along with their parentage, occupation and addresses;

(j) the Magistrate must faithfully record all the objections and statements, if any, made either by the accused persons or by the identifying witnesses before, during or after the proceedings;

(k) where a witness correctly identifies an accused person, the Magistrate must ask the witness about the connection in which the witness has identified that person i.e. as a friend, as a foe or as a culprit of an. offence etc. and then incorporate this statement in his report;

> *(1) and where a witness identifies a person wrongly, the Magistrate must so record in his report and should also state the number of persons wrongly picked by the witness;*
> *(m) the Magistrate is required to record in his report ail the precautions taken by him for a fair conduct of the proceedings*
> *and*
> *(n) The Magistrate has to give a certificate at the end of his report in the form prescribed by C.H. H.C. of Vol. II of Lahore High Court Rules and Orders.*
> *24. The measures above listed should, however, not be taken as exhaustive of the steps which are required to be taken before, during and after the identification proceedings. All these requirements are no doubt mandatory but at the same time they are only illustrative of the precautions which the Courts of law demand before some respect can be shown to the evidence offered through the test identification proceedings."*

9. In view of the referred guideline, the prosecution has not adopted the same in *stricto senso*, and the identification parade conducted in the police lockup has lost its evidentiary value and cannot be relied upon. Apart from this, the prosecution also produced PW-3 SIP Sajjad Hussain as an ocular witness. However, in his evidence before the trial court, he has neither named the appellant nor claimed that the identification of the appellant was ever held before him. Since the appellant was not nominated in the F.I.R., then both the ocular witnesses, i.e. complainant and PW-3, were also required to participate in the identification parade because the identification of an accused before the trial court during the trial has generally been held unsafe by the Apex Court. Reliance is placed on the case of Haider Ali v. State 2016 SCMR 1554 as under;

> *"....The petitioners had not been nominated in the F.IR. and no test identification parade had been held in this case under supervision of a Magistrate so as to positively incriminate the petitioners... Apart from that identification of an accused person before the trial court during the trial has generally been held by this Court to be unsafe and a reference in this respect may be made to the cases of Asghar Ali alias Sabah and others v. The State and others (1992 SCMR 2088), Muhammad Afzal alias Abdullah and another v. State and others (2009 SCMR 436), Nazir Ahmad v. Muhammad lqbal (2011 SCMR 527), Shafqat Mehmood and others v. The State (2011 SCMR 537) and Ghulam Shabbir Ahmed and another y. The State (20!1 SCMR 683).... "*

10. It is also matter of record that the appellant/accused was nominated through supplementary statement of the Complainant. Any statement or further statement of the first informant recorded during the investigation by the police would neither be equated with FJ.R. nor read as part of the same and the value of the supplementary statement, therefore, will be determined keeping in view the principles enunciated by the superior Courts in this behalf. In the case of ***Khalid Javed and another v. The State (2003 SCMR 1419),*** it was held by the Supreme Court that:

> *"While evaluating the case of both the sides it has been laid down that F. I. R. is the document, which is entered into 154, Cr.P.C. book maintained at the police station at the complaint of the informant. It brings the law into motion. The police under section 156, Cr.P.C. start investigation of the case. Any statement or further statement of the first informant recorded during the investigation by police would neither be equated with First Information Report nor read as part of it. Consequently it was held that as the name of appellant does not appear in the F.1.R., resultantly he was acquitted of the charge. The dictum laid down in this case has been followed by a Division Bench of Lahore High Court in the case of Anees-ur-Rehman and another v. The State (PLD 2002 Lahore 110). It may be noted that in this case a distinction has been made by making observation that F.I.R. is a document which is entered into a book maintained at the police station and thumb-marked or signed by the first informant while the supplementary statement is recorded under section 161, Cr.P.C. and is not signed or thumb-marked. So is the position in the instant case as well because F.I.R. Exh. P/O was signed by P.W. Naveed Anwar Naveed as it is evident from the footnote of the F.I.R. Exh.P/O on which he put his signatures whereas he has not signed the supplementary statement Exh.D/B, therefore, its value will be determined keeping in view verdict of the case-law noted hereinabove ".*

11. In the instant case, apart from the question of identification of the appellant as the driver of the trailer, the prosecution was obligated to prove that he was driving it rashly or negligently to constitute an offence under Sections 279, 320 P.P.C which elements are lacking in instant case. For convenience, the same reads as follows:-

> *"Section 279, P.P. C. Rash driving or riding on a public way. Whoever drives any vehicle, or rides, on any public way in a manner' so rash or negligent as to endanger human life or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a*

time which may extend to two years or with fine which may extend to three thousand rupees, or with both."

"Section 320 PPC. Punishment for qatl-i-khata by rash or negligent driving: Whoever commits qatl-i-khata by rash or negligent driving shall, having regard to the facts and circumstances the case, in addition to diyat, be punished with imprisonment of either description for a term which may extend to ten years."

12. In legal terms, "rash or negligent driving" refers to a situation where a person drives a vehicle in a manner that poses a risk to others. This includes driving at excessive speeds, not paying attention to the road, or not following traffic rules. However, simply stating that an accident Occurred due to "rash and negligent driving" is not sufficient to prove the allegations levelled against the appellant. It is a well-settled principle of criminal jurisprudence that the prosecution is duty-bound to prove rash and negligent driving by leading independent and cogent evidence. This could include eyewitness testimonies, CCTV footage, damage to the vehicles involved, skid marks on the road, examination of vehicle through Motor Vehicle Examiner to ascertain its' speed and breaks and so on. Moreover, there is nowhere in evidence that the trailer was being driven, violating the traffic rules, which led to the accident. The burden of proof lies with the prosecution, and they must establish beyond a reasonable doubt that the accused was driving rashly or negligently and that this behaviour directly led to the accident. In this regard, reliance is placed on the case of *Khair Muhammad Shah v. State 2018 PCr.LJ 914,* whereby it has been held as under:

"11. The prosecution is duty bound to establish that appellant was driving the offending vehicle in a rash and negligent manner. The prosecution must prove rash and negligent driving by leading independent and cogent evidence. The rash and negligent driving must be exhibited and proved on record. "

13. The Supreme Court of India also had the occasion to consider the above-mentioned terms in the case of Ravi Kapur v. State of Rajasthan (A.J.R. 2012 SC 2986 = 2013 SCMR 480). It said:

"Rash and negligent driving has to be examined in light of the

facts and circumstances of a given case. It is a fact incapable of

being construed or seen in isolation. It must be examined in light of the attendant circumstances. A person who drives a vehicle on the road is liable to be held responsible for the act as well as for the the result. It nay not be always possible to determine with reference to the speed of a vehicle whether a person was driving rashly and negligently. Both these acts presuppose an abnormal conduct. Even when one is driving a vehicle at a slow speed but recklessly and negligently, it would amount to 'rash and negligent driving'..."

14. Even the site plan produced by PW-7 Tapedar Muhammad Moosa at Exh.10/A is of no avail to the prosecution because it only indicates the place of the incident. It neither shows whether the road had any hard shoulder nor specifies the location of the vehicles of deceased Muhammad Kashif and complainant party. More importantly, the vehicles of the deceased and complainant party have not received a single scratch in the whole incident. Although the site plan is not a substantive piece of evidence but, it carries weight and cannot be brushed aside easily. Reference is made to the case of ***Abdul Sattar v. State (2008 PCr.LJ 869).***

whereby it has been observed as under:

"that site plan is not a substantive piece of evidence, nor it can take away the probative force of reliable eyewitness, whose statement appears to be truthful and natural. But at the same time, site plan is not a piece of waste paper so it cannot be lightly ignored, when no inaccuracy is attributed because the site plan is prepared by draftsman, on pointation of the eyewitnesses, it, therefore is referred to for determining the respective position of the assailant, deceased and the eyewitnesses ...."

15. Rash and negligent driving is a question of fact which must be proved by the prosecution in accordance with law and the settled principles of criminal jurisprudence. In Muzaffar Ali alias Nannah v. The State (1999 MLD 567), the Court held that "rash and negligent driving by the accused must be conclusively established by the prosecution in order OF Osecure conviction against him." Similarly, in another case reported as Gřulam Mustafa v. The State (2004 PCr.I 1869), it was ruled that "independent regarding the aforementioned essential ingredient was a must." In the case in hand the prosecution has failed to bring any

independent evidence on record to prove that the trailer was being driven in a manner which could be termed as rash or negligent.

16. Now, coming to the evidence of the prosecution witness. Admittedly, the entire ocular account is exclusively based upon the evidence of complainant S.I.P. Naseeruddin (PW-1) and S.P. Sajjad Hussain (PW-3), who were said to be eyewitnesses of the incident. PW-1 complainant, in his cross-examination, has admitted that he did not mention the registration number of the car, which was faulted and stopped near the hard shoulder. He admitted that he did not disclose the Hulia of the accused in the FJ.R., although, in his cross-examination, he deposed that the driver, after alighting from the trailer, was coming towards them, and they clearly saw his face on the searchlight of their car. He has admitted that the Investigation officer did not get the identification parade of the accused before any competent learned Magistrate. Besides it, the complainant in his FJ.R. has stated that deceased Muhammad Kashif expired on the spot, whereas in his examination-in-chief, he contradicted his own version and deposed that they took both the injured in their car and proceeded towards R.H.C. Bhiria City and the injured got treatment, but one injured namely Muhammad Kashif due to serious injuries died in hospital. The complainant, in his evidence, deposed that they were on patrolling vide roznamcha entry No.10 at 2200 hours. However, a perusal of said entry (Exh.3/A) shows that they left Motorway office Kandiaro at 2150 hours. Further, the complainant has deposed that after the incident, the driver of the trailer alighted from it and started coming towards them, but after seeing the injured, he ran away, but in the F.I.R., there is no mention of this fact. To a question during cross-examination, PW-1 SIP Naseeruddin deposed that S.I.P. Sajjad Hussain (PW-3) was with him when they proceeded towards PMCH Nawabshah in one car and another car J.P.O. Kashif Ali also with them but contrary to the above, PW-3 SIP Sajjad Hussain deposed that complainant alone brought the injured to PMCH Nawabshah. This is not all. PW-2 SIP Abdul Ghafoor deposed that after

the post-mortem examination, he handed over the dead body of the deceased Muhammad Kashif to his brother Nasir Khan, but in the F.I.R., it is mentioned that one Sabir Yousufzai, the brother of the deceased, took away the dead body.

17. As regards the arrest of the appellant, as per the prosecution's version, the appellant was arrested on the basis of spy information; however, having ample opportunity to associate witnesses from the public, no effort was made to that effect. According to PW-6 SIP Ghulam Asghar (I/O of the case), he asked 02/03 people, but they refused to be the mashir, whereas PW-4 mashir P.C. Rahib Khan belied him and deposed that they did not ask any private person to act as mashir. The said mashir further deposed that they were on patrol when the relative of the deceased came from Kandiaro and met with them at Ayan Petrol Pump, who identified the accused and informed the SIP/1.0. He has further deposed that the relative of the deceased went away after the arrest of accused and I.0. did not ask them to act as mashir. Surprisingly, the deposition of I/0 SIP Ghulam Asghar in this regard is entirely silent. He just deposed that during investigation, he received spy information that the appellant was available at Ayan Petrol Pump National Highway Road, and then he reached there and apprehended him. He has not deposed that the relative of the deceased gave him information about the presence of the appellant. He has also not mentioned the presence of the relative of the deceased at the place of arrest. Even otherwise, it does not appeal to a prudent mind that how relatives of the deceased who were not eyewitnesses. of the actual Occurrence took place on 15.04.2020, but all the way came from Kandiaro, having some knowledge or information that the present appellant was required in the instant case. Therefore, the factum of the appellant's arrest is also shrouded in mystery.

18. It is also matter of record that the Investigating Officer had not taken efforts to record the statement of the owner of the vehicle during the course of investigation about the driver of the vehicle, nor sent

he vehicle for Motor Vehicle Inspection to the concerned Motor Vehicle Inspector authorized by the Government in accordance with the provision of Section 95, of the West Pakistan Motor Vehicle Ordinance, 1965; therefore, it is clear lapse on the part of the Investigating Officer. In such circumstances, the delinquent Investigating Officer rendered him for taking stern action in accordance with law.

19. It is well-settled principle of law that for recording a conviction, strong evidence of unimpeachable character is required. It is the golden principle of criminal justice that the finding of guilt against the accused must not be based on probabilities to be inferred from evidence but must rest surely and firmly on tangible and concrete evidence. Otherwise, the golden rule of benefit of doubt would be reduced to naught. The Courts, by means of proper appraisal of evidence, must be vigilant to dig out the truth of the matter to ensure that no injustice is caused to either party. It is a cardinal principle of the administration of criminal justice that the prosecution is bound to prove its case beyond any shadow of a doubt. If any reasonable doubt arises in the prosecution case, the benefit of the same must be extended to the accused not as a matter of grace or concession but as a matter of right. Likewise, it is also the well-embedded principle of criminal justice that there is no need for so many doubts in the prosecution case; rather, any reasonable doubt arising out of the prosecution evidence, pricking the judicial mind, would be sufficient for the acquittal of the accused.

20. As per the saying of the Holy Prophet (peace be upon him), the mistake of releasing a criminal is better than punishing an innocent person. The same principle was also followed by the Supreme Court of Pakistan in the case of Ayub Masih v. The State (2002 PLD SC 1048), wherein it was observed as under:-

> *‘‘…. It will not be out of place to mention here that this rule occupies a pivotal place in the Islamic Law and is enforced rigorously in view af the saying of the Holy Prophet (p.b.u.i) that the "mistake of Qazi (Judge) in releasing a criminal is better than his. mistake in punishing an innocent. "*

21. In the above case Supreme Court was also pleased to observe as under: -

> *"...The rule of benefit of doubt, which is described as the golden rule, is essentially a rule of prudence which cannot be ignored while dispensing justice in accordance with law. It is based on the maxim, "It is better that ten guilty persons be acquitted rather than one innocent person be convicted"*

22. For what has been discussed above, I am inclined to hold that the prosecution has failed to prove its case against the appellant beyond reasonable doubt. The judgment passed by the trial Court suffers from gross misreading, non-reading of evidence. As such, this criminal appeal is allowed. The conviction and sentence of the appellant are set aside, and he is acquitted of the charge. He is in jail. He shall be released forthwith if not required to be detained in any other case. Copy of the Judgment shall be sent to the concerned SSP for taking action against the delinquent Investigating Officer in accordance with law.

JUDGE

Suleman Khan/PA