

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl.Jail Appeal No. D – 221 of 2019.

Special Anti-Terrorism Jail Appeal No.D-73 of 2022

Date	Order with signature of Judge
	Before: Mr. Justice Naimatullah Phulpoto, J <u>Mr. Justice Amjad Ali Bohio, J</u>
Appellants	: 1) Ali Gohar Mugheri, through Mr. Aachar Khan Gabole, Advocate in Criminal Jail Appeal No.D-221 of 2019. 2) Zahid Sargani, through Mr. Iftikhar Ali Arain, Advocate in Special Anti-Terrorism Jail Appeal No.D-73 of 2022.
Complainant	: Ali Nawaz @ Ali Raza in person.
Respondents	: The State through Syed Sardar Ali Shah Rizvi, Additional Prosecutor General
Date of hearing:	11 th July, 2023

JUDGMENT

AMJAD ALI BOHIO, J:- This single judgment will suffice to dispose of the aforesaid Crl. Appeal, No. D – 221/2019, filed by appellant Ali Gohar Mugheri, who assailed the judgment dated 08.10.2019 passed in Special Case No. 08/2019 and Special Anti-Terrorism Jail Appeal No. D-73/2022, filed by appellant Zahid Sargani, who assailed the judgment dated 07.05.2022 passed in Special Case No.22/2021 by learned Judge, Anti-Terrorism Court, Naushehro Feroze, arising out of Crime No. 09/2017 of P.S, Lakha Road (District Naushahro Feroze), under sections 302, 452, 114, 337-H-ii, 504, and 149 PPC r/w section

7 of the Anti-Terrorism Act, 1997, whereby they were convicted and sentenced as under:

A- Appellant/accused Ali Gohar has been convicted as under:

(i). Appellant Ali Gohar Mugheri has been convicted for offence punishable u/s 302(b) PPC and sentenced to suffer Imprisonment for Life as ta'zir and pay compensation of Rs.200,000/- u/s 544-A Cr.P.C. In case of failure to pay compensation accused shall suffer S.I for one year more.

(ii). Appellant Ali Gohar Mugheri has also been convicted u/s 7(1)(a) of Anti-terrorism Act, 1997, sentenced to suffer R.I for imprisonment for life and to pay fine of Rs.100,000/-, in case of failure to pay fine, he shall suffer S.I for one year more.

(iii). Appellant Ali Gohar has been convicted for offence punishable u/s 365-A PPC and sentenced to suffer Imprisonment for Life and forfeiture of whole property.

(iv). Appellant Ali Gohar has also been convicted u/s 7(1)(e) of Anti-Terrorism Act, 1997, sentenced to suffer R.I for imprisonment for life and to pay fine of Rs.100,000/-, in case of failure to pay fine, he shall suffer S.I for one year more.

B- Appellant/accused Zahid Hussain has been convicted as under:-

(1). For the offence punishable u/s 302 (b) r/w section 149 PPC as Ta'zir and sentenced to R.I Imprisonment for life.

(2). For the offence punishable u/s 7(1)(a) of Anti-Terrorism Act, 1997 and sentenced to R.I Imprisonment for life and to pay fine of Rs.1,00,000/- In case of default in payment of fine, he shall suffer S.I for six months more.

All the sentences awarded to both the appellants/accused were ordered to run concurrently with benefit of Section 382-B, Cr.P.C.

2. The prosecution case is that nephew of the complainant Ali Nawaz Mugheri, namely Azhar Ali had contracted a love marriage with Mst. Ameena Jakhrani, the daughter of the accused Ghulam Shabeer Jakhrani about 8/10 months prior to lodging of FIR. Such love marriage had caused annoyance to Ghulam Shabeer and others,

leading to threats being issued. On the night of 17.02.2017 at 0030 hours, the complainant's elder brother, deceased Peerano Jurio alias Makhan, sister-in-law Mst. Farzana, his wife Mst. Tasleem, and nephew Hubdar were sleeping in their house when they awakened on barking of dogs. They saw accused Ghulam Shabeer, Muneer, Fida Hussain, Makhno all by caste Jakhrani, Qaiser, Ali Gohar both by caste Mugheri carrying Kalashnikovs, Zahid Sargani with a pistol, and three unidentified culprits with open faces, who were armed with shotguns and could be identified if seen again. Accused Ghulam Shabeer, while using abusive language, inquired about Azhar Ali Mugheri, who had allegedly kidnapped his daughter, Mst. Ameena, and married her. He demanded to hand over the custody of his daughter. Peerano alias Peeran Jurio responded that his nephew did not reside with them and his daughter was not with them. Despite that, the accused, on show of weapons, captured Mst. Farzana and attempted to take her away. At this point, Peerano Jurio intervened, and accused Ghulam Shabeer, Fida Hussain, Makhno, and Muneer fired upon him, causing him to fall down near the door. The accused dragged Mst. Farzana about 15 paces towards western side in the wheat crop of Peerano Jurio's brother. There, accused Ali Gohar, using a Klashinkov (K.K), and accused Zahid, with a pistol, fired upon her. During this incident, the unidentified culprits threatened the witnesses by firing shots in the air to create terror, causing them to remain quiet. During the course of these events, P.W Dhani Bux arrived at the scene and found both Mst. Farzana and Peerano Jurio dead due to receiving of fire shot injuries. They were later taken to RHC Mehrab Pur for postmortem and burial. Subsequently, the complainant went to the Police Station and lodged the above-mentioned report.

3. The police after usual investigation submitted report under section 173 Cr.P.C., by showing all accused as absconders except accused Mumtaz Gondal. The trial Court issued NBWs and after completing legal formalities declared accused Ghulam Shabbir, Munir, Fida Hussain, Makhno all by caste Jakhrani, Faiz, Ali Gohar both by caste Mugheri and Zahid Hussain Sargani as proclaimed offenders vide order dated 24.05.2018.

4. In Special Case No. 32/2017, was tried against accused Mumtaz, son of Muhammad Nawaz Gondal, wherein after recording of evidence, the trial Court acquitted accused Mumtaz Gondal vide judgment dated 05-01-2019.

5. Thereafter, supplementary challan after arrest of absconding accused Ali Gohar Mugheri was submitted on 19.03.2019 and the trial Court while accepting the same assigned special case No.08 of 2019 for his trial. A formal charge was framed on 12.04.2019 at Exh.3, to which he opted to contest and pleaded not guilty vide Exh.4.

6. At trial against accused Ali Gohar, the prosecution examined thirteen (13) witnesses and thereafter Assistant Prosecutor General (APG) closed the prosecution's side on 13-09-2019 (Ex.19).

7. Accused, Ali Gohar, denied all the allegations levelled against him when his statement was recorded under Section 342 of the Criminal Procedure Code (Cr.P.C). He claimed to be innocent. Neither he examined himself on oath as provided under Section 340(2), Cr.P.C., in disproof of the prosecution allegations nor led any evidence in his defense. The trial Court after hearing vide judgment dated 08.10.2019 found the appellant Ali Gohar guilty, convicted and sentenced him, as mentioned above. Hence, this appeal.

8. Thereafter, supplementary challan after arrest of absconding accused Zahid Hussain was submitted on 19-03-2021. A formal charge was framed against accused Zahid Hussain on 08-04-2021 (Ex.3), to which he pleaded not guilty and claimed for trial (Ex.4).

9. The prosecution presented its case by examining ten (10) witnesses and thereafter the prosecution closed its side of evidence on 19-05-2021 (Ex.16).

10. In his statement recorded under Section 342 Cr.P.C., accused Zahid Hussain, denied the allegations leveled against him and claimed himself to be innocent. He did not examine himself under the provision of Section 340(2) Cr.P.C. However, he examined DW-1 Bahadur Ali Abro as his defense witness (Ex.18) and thereby his defense side of evidence vide statement dated 30-10-2021 (Ex. 19).

11. Later on, the trial court received order dated 16-11-2021 passed by this Court in Crl. Revision Application No.D-29/2021, for further cross-examination of the prosecution witnesses. Accordingly, complainant Ali Nawaz Mogheri was recalled and cross-examined by counsel for the accused on 21-12-2021. Thereafter, remaining PWs were recalled and cross-examined by the counsel for the accused on 12-01-2022. Then, the prosecution closed its side of evidence vide statement dated 12-01-2022 (Ex. 20).

12. Accordingly, statement under Section 342 Cr.P.C of accused Zahid was recorded on 31-01-2022 (Ex. 21), wherein, he denied the allegations made against him and declined to examine himself under Section 340(2) Cr.P.C. However, he examined DW-1 Bahadur Ali (Ex. 22) and DW-2 Muhammad Ali (Ex.23) on 11-02-2022 and closed the side of evidence vide statement Ex. 24.

13. Subsequently, after hearing the arguments from both the prosecution and the defense, the trial court found Zahid Hussain Sargani guilty of the charges brought against him. Consequently, he was convicted and awarded sentence, as mentioned above. Hence, this appeal.

14. We have heard learned counsel for the appellants, Deputy P.G for the State and perused the available record with their able assistance minutely. We have also thoroughly re-examined the evidence.

15. Learned counsel for appellant/accused Ali Gohar contended that according to prosecution case appellant Ali Gohar caused firearm injuries by means of Kalashnikov to Mst. Farzana and she was done to death in the wheat crop. There was no electricity light in the wheat crop. According to prosecution case, complainant and eyewitnesses were present in the house, when Mst. Farzana was dragged into the wheat crop and it was un-witnessed incident. Mr. Gabole argues that empties of Kalashnikov were not recovered by the I/O from the wheat crop and during investigation Kalashnikov was also not recovered from accused Ali Gohar. Motive was against accused Ghulam Shabbir Jakhrani, who is still absconder. Learned counsel further submits that further statement of the complainant was also recorded during investigation. In FIR complainant has implicated Ali Gohar, but in his further statement he has exonerated him. Second I/O in his cross examination has admitted that he has recorded further statement of complainant, in which he has exonerated appellant Ali Gohar. The trial Court in the judgment against appellant Ali Gohar has opined that Mst. Tasleem Mugheri has fully supported the case of prosecution, but did not identify the accused in the Court. Trial Court in the judgment mentioned that appellant Ali Gohar Mugheri was armed with Kalashnikov, but she did

not identify accused Ali Gohar in the Court, then how her evidence was believed by the trial Court. Appellant Ali Gohar in his statement u/s 342 Cr.P.C claims his false implication in this case. Complainant appeared before the Court and submitted that he had not implicated appellant Ali Gohar before the trial Court.

16. Learned counsel for appellant/accused Zahid Sargani submits that role of appellant Zahid Sargani is identical to the appellant Ali Gohar Mugheri and only the difference is that in the FIR it is mentioned that appellant Zahid fired from his pistol at Mst. Farzana in the wheat crop. The empties of pistol were recovered by the I/O from the place of incident/wheat crop. Appellant Zahid was arrested on 18-03-2021, but pistol was not recovered from him. According to learned counsel for appellant Zahid, complainant Ali Nawaz in his evidence at page No. 270 of the paper book has deposed that accused Ali Gohar and Zahid fired upon Mst. Farzana and killed her. Other accused persons also fired upon them for creating harassment and went away. There was no direct motive against appellant Zahid. Co-accused Mumtaz Gondal has been acquitted by the trial Court on same set of evidence vide judgment dated 05-01-2019. Appellant Zahid in his statement u/s 342 Cr.P.C has raised plea that he has been involved in this case due to family dispute and he examined DWs in his defence to substantiate his plea.

17. Learned APG for the State drawn attention of the Court that Mst. Tasleem in her examination-in-chief has stated that accused present in the Court was not same. According learned APG empties of pistol and Kalashnikovs were also recovered. It is written at page No. 281 of the paper book. Learned APG drawn attention of the Court to the cross-examination of complainant in which he stated that out of 04 accused, he has compromised with accused Ghulam Shabbir Jakhrani against whom there was motive for commission of offence. Source of identification was bulb light, but there is no

mention about recovery of the bulb in the mashirnama and same were also not secured by the I/O during investigation. Learned APG admits that source of bulb light in the wheat crop was not available, but stated that accused dragged Mst. Farzana from the house towards wheat crop, but dragging marks were not noticed by the I/O at the time of inspection of the place of incident. Foot marks of the accused were also not found at the place where Mst. Farzana was murdered in the wheat crop.

18. It is case of prosecution that 10 accused persons out of them 07 were identified and 03 unidentified entered in the house of complainant and murdered one Piran Jurio @ Makhan brother of the complainant in the house of complainant, then dragged out Mst. Farzana wife of deceased Piran Jurio @ Makhan sister in law of complainant from the house of complainant. According to the case of the prosecution Mst. Farzana was dragged to the wheat crop where she was done to death by the accused persons by fire shots. The motive was that co-accused Ghulam Shabbir Jakhrani had matrimonial dispute with complainant. The nature of that matrimonial dispute was that daughter of co-accused Ghulam Shabbir Jakhrani had contracted love marriage with nephew of the complainant. The complainant party claimed that they had identified the accused persons on the light of bulbs in the house, but no source of identification has been disclosed in the wheat crop where Mst. Farzana was done to death. There are two deceased persons in this case. Complainant present in the Court and expresses confidence/satisfaction on Additional P.G to proceed the case on his behalf. The incident occurred on 17-02-2017 at 12:30 am (midnight) and on the very next date on 18-02-2014 at 2000 hours the FIR was lodged by the complainant. No explanation has been furnished by the prosecution for such delay. Post mortem of both the deceased

was conducted on the date of incident and completed at 2:00 pm. Police inspected the place of incident on third day of incident. 05 empties of Kalashnikov, 05 empties of pistol and 03 empty cartridges were collected by I/O from the house of complainant and only 03 empty of 30 bore pistol were secured by the I/O from the wheat crop where Mst. Farzana was murdered, but no empty of Kalashnikov was recovered from wheat crop. On second day, after registration of FIR, 161 Cr.P.C statements of the eyewitnesses were recorded. Mr. Gabole submits that before trial of the appellant Ali Gohar, trial of co-accused Mumtaz Gondal, whose name did not transpire in the FIR was held by the trial Court and he was acquitted vide judgment dated 05-01-2019. Appellant/accused Ali Gohar Mugheri was arrested on 18-03-2017 from the top of road of Mirwah, he was empty handed. Kalashnikov was not recovered from him during investigation. During trial, the evidence of complainant Ali Nawaz and Mst. Tasleem was recorded and they did not implicate the appellant Ali Gohar before the trial Court and complainant was declared hostile, despite complainant was declared hostile, the appellant Ali Gohar was convicted by the trial Court vide judgment dated 08-10-2019 and the case of absconding accused persons namely Ghulam Shabbir, Muneer, Fida Hussain Makhno, Faiz, Qaisar and Zahid was kept on dormant file. It is submitted that appellant Zahid Sargani was arrested on 18-03-2021 and there was no recovery from him and he was convicted by the trial Court vide judgment dated 07-05-2022.

19. As per contents of FIR, the alleged incident viz murder of Peeran Jurio and Mst.Farzana took place on 17.02.2017 at 0030 hours (midnight) and the matter was reported on 18.02.2017 at 02000 hours i.e. about 19 hours and 30 minutes after the incident. The distance between the police station and the place of occurrence

is 09/10 Kilometers. No plausible explanation for the aforesaid inordinate delay has been brought on record. Even while appearing before the trial Court the prosecution witnesses did not utter even a single word to explain the delay. Accordingly, we hold that this delay in setting the machinery of law into motion speaks volume against the veracity of prosecution version. Reliance in this regard is placed on the case law titled as "*Mst.Asia Bibi v.The State and others*" (PLD 2019 S.C 64), "*Muhammad Rafique v. The State*" (2014 S C M R 1698), "*Altaf Hussain v. The State*" (2019 S C M R 274).

20. On the other hand postmortem examination on the dead body of Mst.Farzana and Peeran Jurio alias Makhan was conducted on 17.02.2017 at 11-30 a.m and as per opinion of Dr.Tasleem Masood (P.W-2) and Dr.Bashir Ahmed (P.W-3) the time between the death and postmortem examination was about 10/12 hours. So it was a case of delayed postmortem, which casts serious doubt. Honourably Supreme Court of Pakistan repeatedly held that such inordinate delay is normally occasioned due to incomplete police papers necessary to be handed over to the Medical Officer to conduct the postmortem examination on dead body of the deceased, which happens only when the complainant and police remain busy in consultation and preliminary enquiry regarding the culprits in such cases when the parties are inimical towards each other. In this respect reliance is placed upon the case of "*Sufyan Nawaz and another v. The State and others*" (2020 S C M R 192), "*Irshad Ahmed v. The State*" (2011 S C M R 1190). Similar view was also taken in the case of "*Muhammad Ashraf v. The State*" (2012 S C M R 419) and "*Khalid alias Khalidi and 2 others v The State*" (2012 S C M R 327).

21. The ocular account of the incident in this case has been furnished by Ali Nawaz complainant, P.Ws Mst.Tasleem (wife of the complainant) and Hubdar (nephew of complainant). The occurrence

in this case had taken place in odd hours of the fateful night i.e at 00:30 a.m. in the month of February. The place of occurrence with regard murder of Peeran Jurio was inside the house whereas the appellants committed murder of Mst.Farzana inside the wheat crop at the distance of 60 paces away from the house of complainant where two electric light bulbs, which were allegedly available and provided light at the distance of 60 paces away from the place of occurrence wherefrom the witnesses had seen the appellants while committing the above offence which can hardly be believed as there was distance of 60 paces and no such electric light bulbs allegedly available at the place of occurrence and provided light at the time of occurrence to prove that the accused were seen and identified by the said witnesses but the prosecution failed to establish such fact. Accordingly, in such circumstances the availability of light source cannot be presumed about its existence at the time of occurrence as held in the case of "Zafran Mehmood v The State" (2021 P Cr.L.J 857) as under:-

"The failure of Anwar Javed, S.I. (PW-10), the Investigating Officer to take into possession the electric light bulb allegedly present at the place of occurrence and lighted at the time of occurrence proves that none was available and only an invented and false claim of such and electric light bulb being available was made by the said witnesses. The prosecution failed to establish the fact of such availability of light source and in absence of their ability to do so, we cannot presume the existence of such a light source. The absence of any light source has put the whole prosecution case in dark. Reliance is placed on the case of "Hameed Gul v. Tahir and 2 others" (2006 SCMR 1628) wherein the august Supreme Court of Pakistan observed as under:-

"Next is the identification of the accused on the spot. The torch in the light of which the accused were identified, was produced before the Investigating Officer sixteen days after the occurrence. The one Haid Akbar who produced the same before he Investigating Officer was never produced at the trial and hence there is no satisfactory evidence that the torch produced in the given circumstances was the same, available at the time of

occurrence. It was never found on the spot along with other recoveries though there was no occasion for the injured and the deceased to have carried it along."

Reliance is also placed on the case of "Basar v. Zulfiqar Ali and others" (2010 SCMR 1972) wherein the august Supreme Court of Pakistan observed as under:-

"7. It is also alleged by the prosecution that the witnesses had identified the culprits on torch lights. The complainant and P.Ws. did not produce the torches before the police immediately but the same were produced after 10 days of the incident.

8. Considering all aspects of the case, we are of the view that the prosecution has failed to prove the case against the respondents beyond any reasonable doubt."

Reliance is also placed on the case of "Azhar Mehmood and others v. The State" (2017 SCMR 135) wherein the august Supreme Court of Pakistan observed as under:-

"It has straightaway been noticed by us that the occurrence in this case had taken place after dark and in the FIR no source of light at the spot had been mentioned by the complainant. Although in the site plan of the place of occurrence availability of an electric bulb near the spot had been shown yet no such bulb had been secured by the investigating officer during the investigation of this case."

Reliance is also placed on the case of "Arshad Khan v. The State" (2017 SCMR 564) wherein the august Supreme Court of Pakistan observed as under:-

"The occurrence in this case had taken place before Fajar prayers at about 05.00 a.m. and according to the FIR the occurrence in issue had been witnessed by the eye-witness in the light of an electric bulb but during the investigation no such electric bulb had been secured by the investigating officer."

22. Although it has been narrated by the complainant and P.Ws that they saw the appellants on the light of bulb but PWs did not produce bulbs to Investigating Officer. Site plan/sketch Exh.13/A prepared by Tapedar Shuhabuddin reveals that there was no bulb there. The prosecution has failed to establish the fact of such availability of source of light and in absence of their

inability to do so, we cannot presume the existence of such a light. Reliance is also placed on the case law titled as "*Gulfam and another v. The State*" (2017 S C M R 1189) and "*Mst.Arbab Khatoon v.Imam Bux and 3 others*" (2021 M L D 1286).

23. We have observed that appellants Ali Gohar was armed with Kalashnikov and Zahid having pistol and they both have been attributed role of causing fire arm injuries to Mst.Farzana inside wheat crop but as per memo of inspection of place of incident two empties fired from pistol of 30 bore were recovered from the wheat crop and no empty fired from Kalashnikov was found available at the said place, thereby prosecution case against appellant/accused Ali Gohar becomes doubtful. It is significant to point out here that co-accused Mumtaz Gondal was acquitted of the charge by the trial Court while extending the benefit of doubt to him. We have noted that according to the prosecution story Mumtaz Gondal was attributed role of firing indiscriminately upon the complainant party for harassing and create terror as deposed by complainant Ali Nawaz and eye witnesses Mst.Tasleem, but he has been acquitted by the trial Court from the charge vide judgment dated 05.01.2019, whereas according to prosecution story role attributed to appellant Ali Gohar is that he caused fire shots of Kalashnikov on the body of Mst.Farzana but no empty from the place of occurrence fired from Kalashnikov was collected. The evidence produced by the prosecution is highly discrepant and suffers from serious legal infirmities. It is well settled that it is not necessary that there should be many circumstances which create doubt in the prosecution case. Even a single circumstance which creates reasonable doubt in a prudent mind about the guilt of an accused would entitle him to acquittal. In this regard, reliance is placed on the case of *Ahmed Ali and another v. The State* (2023 SCMR 781) which reveals as under:-

“12. Even otherwise, it is well settled that for the purposes of extending the benefit of doubt to an accused, it is not necessary that there be multiple infirmities in the prosecution case or several circumstances creating doubt. A single or slightest doubt, if found reasonable, in the prosecution case would be sufficient to entitle the accused to its benefit, not as a matter of grace and concession but as a matter of right. Reliance in this regard may be placed on the cases reported as Tajamal Hussain v. The State (2022 SCMR 1567), Sajjad Hussain v. The State (2022 SCMR 1540), Abdul Ghafoor v. The State (2022 SCMR 1527 SC), Kashif Ali v. The State (2022 SCMR 1515), Muhammad Ashraf v. The State (2022 SCMR 1328), Khalid Mehmood v. The State (2022 SCMR 1148), Muhammad Sami Ullah v. The State (2022 SCMR 998), Bashir Muhammad Khan v. The State (2022 SCMR 986), The State v. Ahmed Omer Sheikh (2021 SCMR 873), Najaf Ali Shah v. The State (2021 SCMR 736), Muhammad Imran v. The State (2020 SCMR 857), Abdul Jabbar v. The State (2019 SCMR 129), Mst. Asia Bibi v. The State (PLD 2019 SC 64), Hashim Qasim v. The State (2017 SCMR 986), Muhammad Mansha v. The State (2018 SCMR 772), Muhammad Zaman v. The State (2014 SCMR 749 SC), Khalid Mehmood v. The State (2011 SCMR 664), Muhammad Akram v. The State (2009 SCMR 230), Faheem Ahmed Farooqui v. The State (2008 SCMR 1572), Ghulam Qadir v. The State (2008 SCMR 1221) and Tariq Pervaiz v. The State (1995 SCMR 1345).”

24. Moreover, complainant Ali Nawaz and eye witness Mst. Tasleem during their evidence did not implicate appellant Ali Gohar and have deposed that accused Ali Gohar present in Court, is not same but inspite of above evidence the trial Court convicted him. It is trite that once prosecution witnesses are disbelieved in respect of an accused, they cannot be relied upon to convict other accused in the same transaction unless there is strong independent corroboratory evidence against the other accused. Both complainant Ali Nawaz and Mst. Tasleem did not implicate the appellant/accused Ali Gohar and were declared hostile by the prosecution, whereas P.W Hubdar was not examined during trial against accused/appellant Zahid. It is well settled by now that if a set of witnesses is disbelieved to the extent of some accused the same cannot be believed to the extent of remaining accused. In this

regard, reliance is placed upon the case of “Altaf Hussain v. The State” (2019 S C M R 274), relevant portion thereof is reproduced as under:-

"7. There is another aspect of the case. As stated earlier besides the appellant three other persons were also indicted in this case three of whom namely Nisar Ahmed, Muhammad Aslam and Mst. Amiran were acquitted by the learned trial court. PSLA No. 67 of 2013 filed by the complainant against their acquittal was dismissed by the learned appellate court which was not assailed any further either by the complainant or the state and as such their acquittal attained finality. It is well settled by now that if a set of witnesses is disbelieved to the extent of some accused the same cannot be believed to the extent of remaining accused facing the same trial without there being any independent and strong corroboration. Upon scrutiny of the material available on record we have not been able to find any corroboration to maintain conviction and sentence of the appellant on a capital charge."

25. It is pertinent to mention here that both the appellants have been assigned similar role of being armed with weapons committing murder of Mst.Farzana but the complainant and his wife P.W Mst.Tasleem did not implicate one of the accused/appellant namely Ali Gohar and thereby they were declared hostile. Co-accused Mumtaz has been acquitted of the charge on the basis of same evidence, then same evidence cannot be believed to the extent of the appellant for the reason that the law has now been well settled that “*falsus in uno falsus in omnibus*” will be applicable for deciding a criminal case. In this regard dictum has been laid down by the Honourable Supreme Court on the subject in the reported order passed in Criminal Miscellaneous Application No.200 of 2019 in Crl.Appeal No.238-L of 2013, decided on 4th March, 2019, relevant paragraph No.21 whereof is reproduced here under:

"We may observe in the end that a judicial system which permits deliberate falsehood is doomed to fail and a society which tolerates it is destined to self-destruct. Truth

is the foundation of justice and justice is the core and bedrock of a civilized society and, thus, any compromise on truth amounts to a compromise on a society's future as a just, fair and civilized society. Our judicial system has suffered a lot as a consequence of the above mentioned permissible deviation from the truth and it is about time that such a colossal wrong may be rectified in all earnestness. Therefore, in light of the discussion made above, we declare that the rule of falsus in uno, falsus in omnibus shall henceforth be an integral part of our jurisprudence in criminal cases and the same shall be given effect to, followed and applied by all the courts in the country in its letter and spirit. It is also directed that a witness found by a court to have resorted to a deliberated falsehood on a material aspect shall, without any latitude, invariably be proceeded against for committing perjury."

26. On the conclusion it is observed that the implication of the appellants based on a weak source of light; the absence of crucial evidence viz independent corroboration and acquittal of co-accused Mumtaz on same set of evidence held the prosecution case doubtful. As such, the benefit of doubt is extended to the appellant. As a result, prosecution failed to prove the charge against the accused.

27. In view of the above discussion and reasons, while allowing instant appeals, the impugned judgments are set aside and the appellants are acquitted of the charge. These are the reasons for our short order, announced on 11th July, 2023.

JUDGE

JUDGE