

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Criminal Appeal No. D-13 of 2019
Criminal Acquittal Appeal No. D-09 of 2019
Criminal Jail Appeal No. D-07 of 2019 a/w
Criminal Confirmation Case No. D-03 of 2019

Present :

Mr. Justice Naimatullah Phulpoto,
Mr. Justice Zulfiqar Ali Sangi,

The Appellant Muhammad Usman Lakhtio,
 Through Mr. Habibullah G. Ghouri,
 advocate.

The Complainant: Punhal Lakhtio,
 Through Mr. Faiz Muhammad M. Larik,
 advocate,

The State: Through Mr. Aitbar Ali Bullo, D.P.G for the
 State.

Date of hearing: 21-10-2020
Date of Decision: 04 -11-2020

J U D G M E N T

Zulfiqar Ali Sangi, J. Through this common judgment, we would like to dispose of the above cases, viz. Cr. Jail Appeal No. D-07/2019 along with Criminal Confirmation Case No. D-03/2019 and Criminal Appeal No. D-13/2019, filed by the appellant/accused Muhammad Usman Lakhtio against his conviction and Criminal Acquittal Appeal No. D-09/2019, filed by the complainant Punhal Lakhtio against the acquittal of accused, namely, Arbab Lakhtio. All the cases arose out of common judgment dated 23.02.2019, passed by the learned 1st. Additional Sessions Judge, Kambar in Sessions

Case No.114/2011, culminating from Crime No. 04/2011 registered at Police Station Drigh, under Sections 302,148,149 P.P.C.

2. The facts giving rise to above appeals are common. According to the FIR lodged by complainant namely Punhal S/o Mehmood Lakhtio on 03-02-2011, at 1400 hours, are that prior to this incident, there was landed dispute between him and accused Wali Muhammad Lakhtio party. On which, accused Wali Muhammad party used to remain angry with them. On the day of incident he alongwith his brother namely Asghar Ali, aged about 40 years, his brother-in-law namely Niazal @ Muhammad Nawaz Lakhtio, his sister namely Mst. Naaz Khatoon along-with Ghulam Rasool Mirbahar were going to their lands for work purpose. It was 0900 hours, when they reached near the house of Ameer Bux Lakhtio, where they saw that accused Wali Muhammad S/o Faiz Muhammad, Muhammad Usman S/o Wali Muhammad, Faiz Muhammad S/o Wali Muhammad, Ali Muhammad S/o Wali Muhammad, Rajib S/o Arbab, Arbab S/o Rajib, Ashique S/o Sulleman and Ghulam Farooque S/o Mazan, all by caste Lakhtia, alongwith four unknown culprits, all armed with guns, appeared there. Accused Muhammad Usman abused Asghar Ali (brother of the complainant) that as to why, he had insulted them over the matter of land, hence he would not be spared, but would be killed. Saying so, the accused persons namely Muhammad Usman and Faiz Muhammad made straight fires from their respective guns upon Asghar Ali, with intention to commit his murder. Asghar Ali, after receiving firearm injuries fell down while raising cries. Thereafter, the accused persons namely Wali Muhammad and Ghulam Farooque also made straight fires from their guns upon Niazal @ Muhammad Nawaz who having received the fire shots also fell down while crying. Due to fear of weapons, the complainant party did not resist, but they raised hue and cries, which attracted many

co-villagers. On seeing the co-villagers, the accused party went away towards the Southern side by making aerial firing. Thereafter, the complainant party saw that Asghar Ali had sustained injuries on his chest near right nipple, on right leg/thigh and on left hand, while injured Niazal @ Muhammad Nawaz had received injuries on thighs of both legs. The blood was oozing from injuries of Asghar Ali and Niazal @ Muhammad Nawaz and they were unconscious. Thereafter, the complainant alongwith the witnesses took both the injured persons to Taluka Hospital Kamber for their medical treatment, where Asghar Ali succumbed to injuries in their presence. The complainant leaving the witnesses over the dead body of his deceased brother Asghar Ali and after shifting the injured Niazal @ Muhammad Nawaz for his medical treatment to Civil Hospital Larkana went to Police Station Drigh, and lodged the FIR against the accused persons. It was recorded vide crime No.04 of 2011, U/Ss 302, 148, 149 PPC at police station Drigh, District Kamber-Shahdadkot @ Kamber.

3. After completing the usual investigation, the SIO of Police Station Drigh submitted charge sheet of this case against the accused persons, before the learned 02nd J.M Kamber, wherein the accused, namely, Arbab Lakhtio was shown in custody, while the accused persons, namely, Wali Muhammad, Faiz Muhammad, Muhammad Usman, Ali Muhammad, Rajib, Ashique and Ghulam Farooque were shown as absconders. Proceedings under section 87 and 88 Cr.P.C were concluded against absconding accused and they were declared as proclaimed offenders.

4. Learned Sessions Judge Kamber-Shahdadkot at Kamber framed the charge against the accused Arbab Lakhtio on 15-06-2011 to which, he pleaded not guilty and claimed for trial, on 22-08-2011, the complainant Punhal Lakhtio appeared before the trial court and informed that the injured Niazal @ Muhammad Nawaz Lakhtio had

succumbed to injuries at Civil Hospital Larkana. Trial court amended the charge against the accused Arbab Lakhtio to which he again pleaded not guilty and claimed for trial. On 03-10-2011, accused Muhammad Usman Lakhtio was challaned by the SHO of PS Drigh with the supplementary challan before the learned 02nd J.M Kamber, same was received by the learned Sessions Judge Kamber-Shahdadkot at Kamber from the Learned 02nd J.M Kamber. On 14-02-2012, the charge was amended against both the accused persons namely Arbab and Muhammad Usman to which they pleaded not guilty and claimed for trial. On 14-02-2012, accused Ghulam Farooque Lakhtio was challaned by SHO of PS Drigh with supplementary challan to the Court of Learned 02nd J.M Kamber. On 29-02-2012, the supplementary challan of the accused Ghulam Farooque Lakhtio was amalgamated with main case and then case was transferred to the Ist: Additional Session Judge, Kamber for its disposal according to law.

5. On 03-09-2012, trial court supplied the necessary case papers to the accused persons, namely, Muhammad Usman and Ghulam Farooque. On 15-09-2012, trial court again amended the charge against three accused persons namely Arbab, Muhammad Usman and Ghulam Farooque, all by caste Lakhtia to which they pleaded not guilty and claimed for trial.

6. On 10-02-2016, trial court acquitted the accused Ghulam Farooque Lakhtio by way of compromise with the complainant party U/S 345(6) Cr.P.C and remaining accused persons were tried.

7. At the trial, the prosecution examined complainant of this case, namely, Punhal Lakhtio at Ex: 14, who produced the FIR at Ex: 14/a. The PW Mst. Naaz Khatoon was examined at Ex: 15. The Corpse Bearer namely PC Barkat Ali Chandio was examined at Ex: 16, who

produced the receipt of handing over the dead body of deceased namely Asghar Ali Lakhtio to his relative namely Sikander Ali Lakhtio at Ex: 16/a. The mashir namely Sikander Ali Lakhtio was examined at Ex: 17, who produced the memo of inspection of the dead body of deceased Asghar Ali, Danistnama of deceased Asghar Ali, memo of inspection of place of incident and recovery, memo of inspection of injuries of injured Niazal @ Muhammad Nawaz and the memo of arrest, body search and recovery at Ex; 17/a to 17/e respectively. I.O of the case ASI Mashooque Ali Gaibani Chandio was examined at Ex; 18, who produced the original ballistic expert report bearing No. 519/2011 Karachi, dated 16-03-2011 and the chemical examiner report bearing No. 464/2011 Rohri, dated 05-03-2011 at Ex: 18/a & 18/b respectively. The author of FIR of the case ASI Muhammad Arab Haslo was examined at Ex: 19. The Tapedar namely Khair Muhammad Chandio was examined at Ex: 20, who produced the sketch of place of incident at Ex: 20/a. The PW namely Ghulam Rasool Malah was examined at Ex: 21. Thereafter, the Dr. Ali Gohar Chandio was examined at Ex; 23, being a well-conversant with the signature of the late MLO Dr. Muhammad Yaqoob Shaikh, who produced the inquest report of deceased Asghar Ali Lakhtio, post-mortem report of the deceased Asghar Ali Lakhtio and provisional MLC of Niazal @ Muhammad Nawaz Lakhtio at Ex: 23/a to 23/c respectively.

8. Trial Court recorded statements of accused under section 342 Cr.P.C wherein they denied the prosecution allegations, claimed their false implication in the case by stating that police had managed the chemical report and the PWs were interested witnesses and have falsely deposed against them. However, they did not opt to record their statements on oath so also did not opt to led defence evidence to disprove their case.

9. After assessment of evidence, learned trial court has passed the above impugned judgment. Being aggrieved by the said judgment, the appellant Muhammad Usman Lakhtio has preferred the criminal appeal and criminal jail appeal, while the complainant Punhal Lakhtio has also filed the criminal acquittal appeal against the acquittal of accused Arbab Lakhtio so also the reference for confirmation of death sentence was made by the trial court.

10. Since the Cr. Jail Appeal No.D-07 of 2019 along with Confirmation Case No.03 of 2019, Cr. Appeal No. D-13 of 2019 and Cr. Acquittal Appeal No.D-09 of 2019, against conviction and sentence, arise out of same crime/incident and require the same appreciation of evidence, therefore, this single judgment shall dispose of the same.

11. Learned counsel for the appellant has contended that witnesses were interested and closely related with the deceased and on inimical terms with the accused, evidence of the witnesses who were on inimical terms could not be relied upon for awarding capital punishment; that the incident had occurred during the day time but no independent person of the locality was examined by the prosecution. It is further contended that the incident had taken place inside the house of Ameer Bux, even Ameer Bux has also not been cited as witness; that in the statement of accused U/S 342 Cr.P.C, question regarding medical evidence, regarding report of the chemical examiner and motive were not put to accused; that ocular evidence required corroborative evidence in the case which was lacking in the present case; that no crime weapon was recovered from the accused; that version given by PW Ghulam Rasool is

contradictory with version given by the complainant and Mst. Nazan; that the prosecution has failed to prove the motive through independent evidence. Lastly he contended that if this court come to the conclusion that the prosecution has proved its case against the appellant then he prayed for alternate sentence of life imprisonment by converting the death into the life imprisonment.

12. On the contrary, Mr. Faiz Muhammad M. Larik, advocate for the complainant in Cr. Appeal No. D-13/2019 and for the appellant in Cr. Acq. Appeal No. D-09/2019 has contended that the prosecution had proved its case against the appellant beyond a reasonable doubt; that independent witness was also examined; that no major contradiction has been pointed out by the defence counsel; that there is sufficient evidence against the acquitted accused but the same was not properly appreciated by the trial court; that no case for lesser punishment is made out and appellant was rightly convicted and sentence for death penalty; that appeal of the appellant Muhammad Usman may be dismissed and the appeal against acquittal may be allowed and acquitted accused may be convicted and sentenced.

13. Learned D.P.G has supported the arguments of the learned counsel for the complainant and further submitted that prosecution has proved the case against the appellant Muhammad Usman but the prosecution has failed to prove the motive; Learned DPG further submitted that in absence of the motive capital punishment of death cannot be awarded and submitted that the death sentence of the appellant may be converted into the life imprisonment.

14. We have heard learned counsel for the parties and gone through the material available on the record with their able assistance.

15. We have scanned the entire evidence produced by the prosecution before the trial court minutely.

16. P.W-1. Punhal (complainant) was examined who deposed that on the day of incident viz. 3.2.2011, he along with his brother Asghar Ali (deceased), his sister Mst. Nazan Khatoon and her husband namely Niazal alias Muhammad Nawaz (deceased) and Ghulam Rasool alias Kamal Khan were going to their land when they reached near the house of Amir Bux, it was about 09.00 am, they saw that accused Wali Muhammad son of Faiz Muhammad, Muhammad Usman son of Wali Muhammad, Faiz Muhammad son of Wali Muhammad, Ali Muhammad son of Wali Muhammad, Rajib son of Arbab and Arbab son of Rajib, Ashique son of Sulman, Ghulam Farooque son of Mazno along with four unidentified accused duly armed with guns came there. He further deposed that accused Muhammad Usman (appellant) abused his brother Asghar Ali by stating that why he had insulted them over the matter of land, hence he would not be spared, saying so accused Muhammad Usman made straight fire from his gun upon his brother Asghar Ali with intention to commit his murder and accused Faiz Muhammad also made straight fire from his gun upon his brother Asghar Ali with intention to commit his murder. He deposed that accused Wali Muhammad and Ghulam Farooque made straight fires upon his brother-in-law namely Niazal alias Muhammad Nawaz with intention to kill him, who also fallen down. He deposed that they found his brother Asghar Ali having fire arm injuries on his chest near right nipple, right leg/

thigh and on left hand while Niazal @ Muhammad Nawaz received fire arm injuries on thighs of both legs. Both the injured were taken to Taluka Hospital Kamber by them, where Asghar Ali succumbed to injuries, therefore, while leaving dead body of Asgahr Ali, he sent injured Niazal alias Muhammad Nawaz to Civil Hospital Larkana for medical treatment and then came at Police Station where FIR was registered and subsequently Niazal alias Muhammad Nawaz died away during his medical treatment at Civil Hospital Larkana. He was cross examined at length but we could not find any material which create dent in the case of prosecution. However, we noted that a suicidal question was put to witness during cross examination to which he replied that ***“accused Muhammad Usman made straight firing from his gun upon my deceased brother Asgahr Ali at the distance of 10/15 paces”***.

17. Mst. Naaz Khatoon, **(Eye Witness)** was examined as PW-2, she deposed that on 03-02-2011 she, her husband Niazal @ Muhammad Nawaz, her brother Asghar Ali and complainant Muhammad Punhal and Ghulam Rasool Meerbahar were going to their lands for the purpose of working, it was 09:00 AM when they reached near the house of Ameer Bux they saw accused Wali Muhammad S/o Faiz Muhammad, Muhammad Usman S/o Wali Muhammad, Faiz Muhammad S/o Wali Muhammad. Ali Muhammad S/o Wali Muhammad and Rajib S/o Arbab, Arbab S/o Rajib, Ashique S/o Sulleman, Ghulam Farooque S/o Mazno and four unknown culprits All armed with guns came there. She further deposed that accuse Usman abused her brother Asgar Ali by stating that he insulted them on the dispute of land he will not be spared then accused

Muhammad Usman and Faiz Muhammad made straight fires from their guns upon her brother Asghar Ali which hit him and fell down on the ground, accused Wali Muhammad and Ghulam Farooque also made straight fires upon her husband Niazal @ Muhammad Nawaz with intention to commit his murder who also fell down. She deposed that Asghar Ali received injuries on his chest near right nipple, thigh of his right leg and on left hand, while her husband received fire arm injuries on thighs of his both legs both injured were taken to hospital Asghar Ali was died in Taluka hospital Kamber whereas her husband died in Civil Hospital Larkana. She was also cross examined by defence counsel but he could not succeed to create any dent in her evidence.

18. P.W- Ghulam Rasool (**eye witness**) was also examined who deposed that on 3.2.2011, he left his house and was going towards northern side when he reached at outer gate of house of accused Ameer Bux where he heard noise in street and saw that accused Usman, Wali Muhammad, Ali Muhammad, Faiz Muhammad armed with guns were standing there and accused Muhammad Usman and Faiz Muhammad fired from their guns upon Asghar Ali over the dispute of land, whereas; accused Wali Muhammad and Ali Muhammad fired from their guns upon Niazal alias Muhammad Nawaz then both fallen down on the ground and accused went away towards southern side. He was cross examined, but we could not find any substance favourable to the appellant.

19. P.W- Sikandar Ali (**Mashir**) was examined by the prosecution who deposed that on 3.2.2011 he along with co-mashir Shahan had gone to civil hospital Kamber in order to see the dead body of Asghar

Ali wherein ASI Mashooque Ali Ghaibani Chandio, of police Station Drigh came there and inspected dead body of Asghar in their presence and prepared such memo of inspection of dead body and inquest report which they had signed. He further deposed that on the same day at 1600 hours same ASI inspected the place of incident in their presence and secured the blood stained earth and five red colour cartridges of 12 bore in their presence and sealed the same at the spot separately and prepared such memo in their presence which they had signed. He further deposed that on the same date at 1830 hours same ASI inspected injuries of injured Niazal alias Muhammad Nawaz at civil hospital Larkana in their presence and prepared such memo which they have signed. He deposed that on 25.2.2011 at 1330 hours ASI Mashooque Ali arrested accused Arbab from his otaq, in their presence and secured one unlicensed SBBL gun of 12 bore and three live cartridges of red color of 12 bore from the possession of accused which were sealed by the police at the spot in their presence and memo of arrest and recovery was prepared which they have signed. This witness was also cross examined by the defence counsel but we do not find any contradiction in his evidence.

20. P.W.PC Barkat Ali Chandio, was examined, he was corpse bearer and deposed that on 3.2.2011, he was posted as P.C in investigation branch of Police Station Drigh, on the same day ASI Mashooque Ali handed over him the dead body of Asghar Ali son of Muhammad Lakhtio for Postmortem. After postmortem he handed over the dead body to Sikander Ali and obtained such receipt from him. This witness was not cross examined by the defence though chance was given. Another witness Khair Muhammad was examined who was Tapedar of the beat and prepared sketch of the place of

incident. He was also not cross examined though chance was given to defence.

21. P.W. Dr. Ali Gohar was examined who deposed that on 3.2.2011 the Medical Legal Officer of this case was Dr. Muhammad Yaqoob Shaikh, who remained his senior medical officer at Taluka hospital Kamber, since he died due to natural death therefore being well conversant with his signature he deposed that postmortem reports of deceased Ali Asghar and MLC of injured Niazal alias Muhammad Nawaz issued by late Dr. Muhammad Yaqoob Shaikh and lash chakas form was issued by the police. He further deposed that the late MLO Dr Muhammad Yaqoob Shaikh opined that the death of deceased Ali Asghar Lakhtio was occurred due to intra-thoracic, hemorrhage and shock, due to Injury No.01. Injury No.01 was sufficient to cause death in ordinary course of life individually. According to him all the injuries were caused by Firearm and were ante mortem in nature.

22. P.W ASI Mashooque Ali (**Investigation officer**) was examined who deposed that on 3.2.2011, he was posted as ASI at PS Drigh in investigation branch (IB), on the same day he received FIR bearing Crime No.4 of 2011, of Police Station Drigh from ASI Muhammad Arab for investigation purpose. He deposed that on the same day he along with complainant Muhammad Punhal went to the Civil Hospital Kamber, where dead body of deceased Asghar was lying, he inspected the same and prepared such memo as well inquest report in presence of mashirs namely Sikander and Shahan. He further deposed that he along with complainant came at place of incident and inspected the same in presence of same mashirs where form he

collected the blood stained earth and five empty cartridges of 12 bore of red colour which he sealed at spot and prepared such memo and also at 1830 hours he inspected injuries of injured Niazal alias Niaz Muhammad at Civil Hospital Larkana in presence of same mashirs and prepared such memo. He further deposed that he recorded statement under section 161 Cr.PC of the witnesses and on 25.2.2011, he arrested accused Arbab from his Otaq and secured one unlicensed SBBL gun of 12 bore and three live cartridges of 12 bore of red color from his possession and prepared such memo in presence of all the mashirs. He also produced ballistic experts report dated 16.3.2011 and chemical examination report dated 5.3.2011 and further deposed that after completing the usual investigation he submitted the challan. This witness was cross examined but we could not found any material defect in his evidence.

23. On our reassessment of the evidence the important part of which we have discussed above, we find that the prosecution has proved its case against the appellant for the offences charged beyond a reasonable doubt, the eyewitnesses fully supported the case of prosecution who were the natural witnesses, the evidence of witnesses is fully supported by medical evidence, the identification of appellant at the place of incident by the witnesses was fully established as the appellant and the witnesses were very close relatives to each other and know each other very well and as such the prosecution has proved its case beyond a reasonable doubt against the appellant through trustworthy, reliable, cogent, oral as well as supportive evidence.

24. learned counsel for the appellant pointed out some minor contradictions in the evidence which in our view are not sufficient to discard the evidence of natural witnesses as the same always remain available in every case as no one can give evidence like photograph and the minor contradiction if available in the case such may be ignored, further the evidence of the prosecution witnesses was recorded after laps of time and such minor contradiction are natural due to lapse of such time. Reliance is placed on the case of **Zakir Khan V. The State (1995 SCMR 1793)** wherein honorable Supreme court of Pakistan has held as under:-

“13. The evidence recorded in the case further indicates that all the prosecution witnesses have fully supported each other on all material points. However, emphasis has been laid by Mr. Motiani upon the improvements which can be found by him in their respective statements made before the Court and some minor contradictions in their evidence were also pointed out. A contradiction, unlike an omission, is an inconsistency between the earlier version of a witness and his subsequent version before the Court. The rule is now well established that only material contradictions are to be taken into consideration by the Court while minor discrepancies found in the evidence of witnesses, which generally occur, are to be overlooked. There is also a tendency on the part of witnesses in this country to overstate a fact or to make improvements in their depositions before the Court. But a mere omission by witness to disclose a certain fact to the Investigating Officer would not render his testimony unreliable unless the improvement made by the witness while giving evidence before the Court has sufficient probative force to bring home the guilt to the accused.”

25. It is a well-settled principle of law that a criminal case is to be decided based on the totality of impressions gathered from the circumstances of the case and not on the narrow ground of cross-examination or otherwise of a witness on a particular fact stated by

him. A similar view had been expressed by the Honourable Supreme Court of Pakistan in the case of **State v. Rab Nawaz and another (PLD 1974 SC 87)** wherein Honourable Supreme Court has observed that a criminal case is to be decided based on the totality of circumstances and not based on a single element.

26. As regards to the alleged motive we are of the unanimous view that the prosecution has not proved the motive as setup in the FIR. The complainant stated in the FIR that they have a dispute over land with Wali Muhammad Lakhtia and others on which Wali Muhammad and others were annoyed. He further stated in the FIR that accused Muhammad Usman asked the deceased that deceased insulted on the issue of land, he would not be spared. Complainant in his examination-in-chief deposed the same motive and the trial court relied upon the evidence of complainant and the witnesses which they have deposed in their examination in chief and did not consider the cross examination of the complainant wherein complainant himself admitted by replying that **“The Faisla regarding landed dispute was held at PS Drigh between me and accused persons wherein I took Holy Quran Sharif at PS Drigh at the instance of accused persons”**. From this reply it is very much clear that the dispute in between the parties regarding the land was settled prior to the incident. The complainant and other witness did not state that when and where the deceased insulted the accused or when again the dispute started in between the parties, the same is missing in the instant case. We have carefully examined the evidence of the investigation officer and found that he had not taken any efforts to collect independent evidence about the asserted motive and the same was even not investigated/ interrogated.

27. It has been held by Honourable Supreme Court of Pakistan in many cases that if the prosecution asserts a motive but fails to prove the same then such failure on the part of the prosecution may react against a sentence of death passed against a convict on a capital charge and a reference in this respect may be made to the cases of Ahmad Nawaz v. The State (2011 SCMR 593), Iftikhar Mehmood and another v. Qaiser Iftikhar and others (2011 SCMR 1165), Muhammad Mumtaz v. The State and another (2012 SCMR 267), Muhammad Imran alias Asif v. The State (2013 SCMR 782), Sabir Hussain alias Sabri v. The State (2013 SCMR 1554), Zeeshan Afzal alias Shani and another v. The State and another (2013 SCMR 1602), Naveed alias Needu and others v. The State and others (2014 SCMR 1464), Muhammad Nadeem Waqas and another v. The State (2014 SCMR 1658), Muhammad Asif v. Muhammad Akhtar and others (2016 SCMR 2035) and Qaddan and others v. The State (2017 SCMR 148). In the instant case, we find that in the absence of proof of the asserted motive the real cause of occurrence had remained shrouded in mystery such factor has put us to caution in the matter of the appellant's sentence of death.

28. Thus, based on the particulars facts and circumstances of this case and by relying on the above-cited precedents and the evidence of the prosecution witnesses as discussed above these appeals are dismissed to the extent of the appellant's conviction for the offence under section 302(b), P.P.C. but the same are partly allowed to the extent of his sentence of death which is reduced to imprisonment for life. The order passed by the trial court regarding payment of compensation by the appellant to the heirs of the deceased as well as the order in respect of imprisonment in default of payment of

compensation is, however, maintained. The benefit under section 382-B, Cr.P.C. shall be extended to the appellant. The confirmation reference made by the trial court answered as **negative**.

29. Turning to the Acquittal appeal filed by the complainant against the acquitted accused Arbab Ali Lakhtio we find that the trial court in para No.37 of the judgment had reached to the conclusion which is in favour of the acquitted accused Arbab Ali Lakhtio and the same is reproduced as under:-

“37. On this point, since the case of accused Arbab Ali Lakhtio is concerned, in this regard, the record is perused minutely and carefully. Admittedly, in the FIR as well as in the statements of the PWs U/S 161 Cr.P.C recorded by the police during the investigation, the role of accused Arbab Lakhtio in this case is of mere presence and no specific role of participating in the commission of the present offence has been assigned to him. It is also a matter of record that the evidence of the complainant and both the eye witnesses named above is also silent on any active specific role of the accused Arbab Lakhtio. The evidence available on the record does not show that accused Arbab had physically participated in the present offence. Therefore, this point is answered as not proved.”

30. We have carefully scrutinized the evidence of the prosecution and the findings of the learned trial court in the impugned judgment as reproduced above we found no case for interference in the judgment to this extent mainly for the reasons that no overact has attributed to acquitted accused. Principal of falsus in uno, falsus in omnibus is not applicable to the facts and circumstances of this case. It is well settled by now that the scope of appeal against acquittal is very narrow and there is a double presumption of innocence and that the Courts generally do not interfere with the same unless they find the reasoning in the impugned judgment to be perverse, arbitrary, foolish, artificial, speculative and ridiculous as

was held by the Supreme Court in the cases of **State Versus Abdul Khaliq and others (PLD 2011 SC 554)**. In these circumstances and the evidence discussed above the Cr. Acq. Appeal No. D – 09 of 2019 is dismissed.

31. In the above terms Cr Appeal No. D – 13 of 2019, Conf. Case No. D – 03 of 2019, Cr. Jail Appeal No. D – 07 of 2019 and Cr. Acq. Appeal No. D – 09 of 2019 are disposed of. Confirmation reference No. D- 03 of 2019 is answered in **NEGATIVE**.

JUDGE

JUDGE