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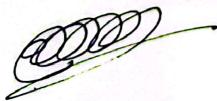
punishable under section 7(a) of Anti Terrorism Act, 1997 and sentenced to suffer imprisonment for life, and ordered to pay fine of Rs.100,000/- (One lac) each and in case of default in payment of fine, they shall suffer imprisonment for a period of one year more.

- (d) Present accused Ghulam Qadir and proclaimed offender Sharbat Umrani and Ashique Chadnio are convicted for an offence punishable under section 7© of Anti-terrorism Act 1997 and sentenced to suffer RI for ten years. They are also ordered to pay fine of Rs.20,000/- each and in case of default in payment of fine, they shall suffer further SI for six months more.

The appellant was extended benefit of section 382-B, Cr.P.C and all the sentences were ordered to run concurrently.

2. The brief facts of the prosecution case are that on 19.3.2012, complainant Javed Ali Shaikh lodged the aforesaid F.I.R, stating therein that he owns hardware and general merchant wholesale shop, which is situated near Al-Mansoor Hotel where he and his brothers Abdul Hafeez, Abdul Waheed and Nizamuddin were present, when three unknown culprits came at 10.45 a.m. on a black colour motorcycle, out of them two entered into the shop, while third was standing on the motorcycle. It is further alleged that they were armed with Pistols and asked for giving them money, on that Abdul Hafeez opened the drawer to take out money, but one of them fired from pistol upon him, which hit him at his left side chest, while other accused made fire at complainant, which hit him on his right foot, and then all three culprits went away on the motorcycles towards Circuit House Road. Abdul Hafeez fell unconscious. Complainant shifted him to casualty, but he succumbed to his injuries at about 11:00 a.m. The complainant left the witness over the dead body and went to Police Station and lodged the FIR.

3. During course of investigation, Police arrested the appellant/ accused on 27.3.2017 and after completion of investigation, the challan was submitted showing the co-accused Sharbat and Ashique as absconders.



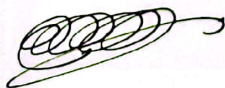
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4. NBWs were issued against the accused Sharbat and Ashique Ali through S.H.O concerned, which were not executed by the Police consequently, proclamation warrant U/S-87 Cr.P.C. was issued against them through S.H.O concerned and also published in three news papers. Then writ of attachment U/S-88, Cr.P.C. was issued against them. Then order U/S 512 Cr.P.C. was passed against them and they were declared as Proclaimed Offenders in this case. Mr. Abdul Rasheed Soomro, Advocate was appointed as Advocate for Proclaimed Offenders.

5. Case papers were supplied to the accused Ghulam Qadir free of cost on proper receipt kept on record at Ex.-1. The oath was taken by the Presiding Officer U/S 16 of Anti Terrorism Act 1997, which was kept on record at Ex.11.

6. Charge was framed against accused Ghulam Qadir at Ex-12, to which he did not plead his guilt and claimed to be tried vide plea kept on record at Ex-12-A.

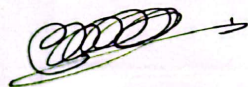
7. The prosecution in order to prove its case examined P.W No.1 LNC-Nazeer Ahmed, Corpse Bearer, at Ex-13, who produced the Police letter at Ex-13-A, receipt at Ex-13-B, P.W.No.2 Dr. Raheem Bux, Medical Officer, at Ex-15, who produced the Police letter for treatment and report of injured Javed Ali at Ex.15-A, Provisional Medical Certificate of injured Javed Ali at Ex.15-B, X-Ray plate No.227 of injured Javed at Ex.15-C, Opinion of Radiologist at Ex.15-D, Final Medical Certificate of injured Javed Ali at Ex.15-E, police letter for conducting post mortem of deceased Abdul Hafeez at Ex.15-F, postmortem report of deceased Abdul Hafeez at Ex.15-G, receipt at Ex.15-H, P.W No 3 Hussain Bux, Tapedar at Ex.17, he produced sketches of place of incident in triplicate at Ex.17-A to 17-C, P.W No.4 Javed Ali, injured/complainant, at Ex.19, who produced the copy of FIR at Ex.19-A. P.W No.5 Abdul Waheed,



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eyewitnesses, at Ex.20, who produced his 164 Cr.P.C statement at Ex.20-A, P.W No.6 Nizamuddin, eyewitness at Ex.21, who produced his 164 Cr.P.C statement at Ex-21-A, P.W No.7, SIP Hussain Ali, Investigation Officer, at Ex-24, who produced mashirnama of arrest of accused Ghulam Qadir and recovery of charas, pistol and bullets from him at Ex-24-A, P.W No.8, Badaruddin, mashir at Ex-25, who produced the mashirnama of seeing the injuries of injured Javed at Ex-25-A, mashirnama of seeing the dead body of deceased Abdul Hafeez at Ex-25-B, Inquest report at Ex-25-C, mashirnama of place of Vardat at Ex-25-D, P.W ASI Zameer Hussain expired hence, the statement of process server ASI Sajjad Hussain was recorded at Ex.16, who has produced photocopy of Death Certificate Ex.16-A, Photocopy of B.W at Ex.16-B. Statement of ASI Muharram Ali was also recorded regarding the death of SIP Zameer Hussain at Ex.22, who produced summon at Ex.22-A, photocopy of Death Certificate at Ex.22-B. The learned DDPP gave up P.Ws ASI Zameer Hussain and Mr. Rajib Ali, Judicial Magistrate, vide his statement at Ex.18 and 26 respectively. The DDPP for the State then closed the prosecution side vide statement kept on record at Ex.27, he produced letter No.1919 dated 09.04.2012 issued by Senior Superintendent of Police, Larkana, for constituting Joint Investigation Team at Ex.27-A and Chemical report at Ex-27-B.

8. Learned counsel for the appellant contended that appellant has been falsely implicated by the complainant; that the evidence adduced by the prosecution at the trial is not properly assessed and evaluated by the learned trial judge; that the evidence produced at the trial by the prosecution is insufficient to warrant conviction of the appellant; that the trial Judge has not observed the established rules of the appreciation of the evidence in deciding the case; that initially the appellant was not named in the FIR, which was subsequently introduced through 161, Cr.P.C statements of P.Ws Abdul Waheed & Nizamuddin, real brothers of the complainant, recorded on 04.4.2012 i.e. after 15



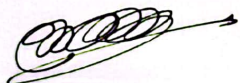
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days of the alleged incident, though the complainant claimed that they were present at the shop of complainant; that no identification parade of the appellant was held; that though the incident allegedly occurred at a public place, yet the prosecution did not examine any independent witness; that there is conflict in between the ocular and the medical evidence; that the complainant and P.Ws, who claimed themselves to be eyewitnesses of the alleged incident, have contradicted each other on material aspects of the case. Lastly, learned Counsel contended that the prosecution failed to establish the charge against the appellant, therefore, the appeal may be allowed and the appellant may be acquitted of the charge.

9. On the other hand learned DPG has supported the impugned judgment and has contended that the contradictions in the evidence of P.Ws have not been specifically pinpointed by the learned Counsel for the appellant; that the P.Ws examined at trial despite lengthy cross-examination stood firm to their stance and sufficient material was brought on record by the prosecution to show that the appellant was fully involved in the murder of deceased. Lastly, he contended that the learned trial Court has rightly convicted the appellant and the appeal is without substance, hence the same may be dismissed.

10. We have given due consideration to the submissions of learned counsel for the appellant as well as DPG and have carefully examined the entire material placed on record. We have also reassessed the prosecution evidence adduced at trial.

11. Complainant Javed Ali in his examination-in-chief deposed that on the day of incident i.e. 19.3.2012 he and his brother Abdul Hafeez were available at their shop of General merchant and wholesale near Al-Mansoor Hotel, Larkana, where at about 10.45 a.m. three armed persons came at the shop on a black colour motorcycle; one persons was sitting on motorcycle, while two



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persons entered the shop, whom he identified to be Sharbat Umrani and Ashique Chandio, while third accused was Ghulam Qadir Umrani, who was sitting on motorcycle. He deposed that accused Sharbat fired at Abdul Hafeez, while accused Ashique Chandio fired upon him (complainant). He further deposed that his brother Nizamuddin and Abdul Waheed were also sitting near him in the shop. Then accused Ghulam Qadir fired shots in air, whereafter all the accused persons fled away. He also deposed that his brother Abdul Hafeez expired at 11.00 a.m. at Casualty Hospital, Larkana.

12. In cross-examination complainant admitted that he did not note down the registration number of the motorcycle of accused. He further stated that he knew the accused prior to incident because they were local (being resident of Larkana City). He further admitted he had not given the names of accused in his FIR and had disclosed their names subsequently. He also admitted that the place of vardat is a busy road and thickly populated area and there are so many shops and hotels surrounding the place of vardat. He admitted that he had not mentioned in the FIR name of any independent person out of 25/30 persons who had arrived at the scene of incident at the relevant time. He also admitted that he did not mention the features and identification marks of any unidentified culprits. He stated that PWs Abdul Waheed and Nizamuddin being his brothers were with him all along from the incident for whole the day till funeral and burial ceremonies. He stated that PWs Abdul Waheed and Nizamuddin disclosed the names of culprits to him after burial of dead body on same day. He also admitted that he and P.Ws Abdul Waheed and Nizamuddin did not disclose the names of accused to police on the day of incident. He further stated in the cross-examination that he and P.Ws Abdul Waheed and Nizamuddin had gone to P.S Civil Line, Larkana on 28.3.2012, at 11.00 a.m., when they disclosed the names of culprits to the police officer, whose name he did not remember. At another place in cross-examination, he stated that he and P.Ws Abdul Waheed and

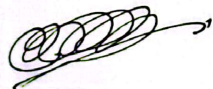


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Nizamuddin saw the accused in police custody at P.S Civil Line, Larkana on 28.3.2012, at about 12.00 noontime. He stated that no identification parade of accused Ghulam Qadir was held through him and PWs before the Magistrate. Complainant admitted in cross-examination that he had not mentioned in the FIR that the person who was sitting on motorcycle had made aerial firing and he also admitted that he had made improvement in respect of aerial firing attributed to third culprit who was sitting on motorcycle.

13. On the other hand, P.W Abdul Waheed deposed that on the day of incident he, complainant Javed Ahmed and their brothers Nizamuddin and Abdul Hafeez were sitting at their shop, when at 10.45 a.m. three accused having pistols came there on motorcycle. He identified them to be Sharbat Umrani and Ashique Chandio, who entered in their shop, while third accused was Ghulam Qadir Umrani, who was standing outside the shop having pistol in his hand with motorcycle. Accused Sharbat Umrani fired at Abdul Hafeez, while accused Ashique Chandio fired at complainant, who received injuries. Then all the accused while firing decamped. They brought both the injured at Casualty Hospital, Larkana, where doctors provided treatment to complainant and Abdul Hafeez, but Abdul Hafeez could not survive. He deposed that he gave his detailed statement to SHO PS Civil Line, Larkana on 28.3.2012.

14. In cross-examination PW Abdul Waheed stated that the accused are resident of Larkana city, therefore, he knew them by name and castes. He admitted that on spot he could not identify the accused but subsequently he recollected their names. He also stated that the customers of the shop were also available there to purchase the articles. He also stated that he and P.Ws Nizamuddin had accompanied the complainant to police station on the day of incident, where they remained for half an hour. He further stated that the police enquired from them about the incident and recorded their statement and they



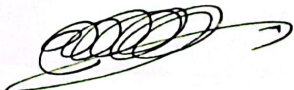
disclosed to police about the incident but the names of culprits were not disclosed by them to police. He also admitted that he saw the accused on 29.3.2012 in police lockup. He admitted in cross-examination that police showed the accused to them and asked them to identify him and they identified him. He stated that the police had not arranged any identification parade of accused before Magistrate.

15. PW Nizamuddin, who is also real brother of complainant, in his examination-in-chief, gave the same facts, as deposed by the complainant and P.W Abdul Waheed. In cross-examination, he stated that he did not remember whether any customer was present at the shop at the time of incident. He further stated that due to shock the complainant had not given the names of accused in the FIR. He stated that nobody from the surrounding hotels and shops reached at the place of incident. In cross-examination he stated as under:

"I and P.W Abdul Waheed remained in the hospital while my brother Javed Ahmed went to P.S Civil Line, Larkana for report alohng with my sister's husband namely Muhammad Nawaz and Badaruddin Soho. I do not remember the exact time when we left the hospital. I and P.W Abdul Waheed left the hospital leaving the dead body under supervision of other relatives and we went to our house. We reached the house at 12.00 noon time. The complainant along with mashirs Badaruddin and Muhammad Nawaz had taken the dead body from hospital and they also reached the house round about 12.00 noon time.

Our statements were recorded by the police officers in the hospital at that time and we had given the facts and details of the incident of this case. The accused was known to us prior to this incident. The complainant Javed Ali, P.W Abdul Waheed as well as myself were knowing the accused Ghulam Qadir before this incident. I and PW Abdul Waheed had not disclosed the name of accused Ghulam Qadir to the complainant after this incident in the hospital till he left for P.S, for lodging the report, as complainant knowing him personally.

I saw the present accused in police custody after eight/ten days of incident when I had gone there along with complainant Javed Ahmed, it was perhaps evening time. We were informed by the DPO/SSP, Larkana and one police officer from CID that they had arrested



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one culprit who is at P.S Civil Line, Larkana, and they asked us to go there and see and identify him."

16. After going through the evidence of complainant and P.Ws Abdul Waheed and Nizamuddin, we are clear in our mind that their evidence does not appear to be trustworthy and confidence inspiring insofar as case against the present appellant is concerned. All these three witnesses unanimously stated that they were already knowing the accused/appellant prior to this incident. In such a situation independent corroboration was necessary to their evidence, which is lacking in the instant case and their evidence is also based on the afterthoughts and improvements, therefore, the same cannot be made basis for conviction in a charge involving capital punishment. It is not understandable that when the complainant and alleged eyewitnesses Abdul Waheed and Nizamuddin, all real brothers *inter se*, were knowing the appellant prior to incident, why they did not disclose his name at the time of recording FIR. They also admitted that they had seen the appellant in police custody on 28.3.2012. This admission on the part of these alleged eyewitnesses is sufficient to hold that the introduction of the appellant at subsequent stage through their belated statements is engineered and managed with the blessing of police. In such circumstances, the eyewitness account based on the evidence of complainant and P.Ws Abdul Waheed and Nizamuddin was not reliable for holding the appellant guilty of the charge of murder entailing capital punishment of death in normal course.

17. So far medical evidence is concerned, the unnatural death of deceased Abdul Hafeez was neither denied nor challenged by the appellant/accused, therefore, the medical evidence to the extent of death of deceased as a result of firearm injury is admitted. However, so far circumstantial evidence is concerned, the same is not going to improve the case of prosecution against the present appellant, as the appellant was not assigned role of firing at





the deceased or the complainant and the role attributed to him was of mere aerial firing.

18. For giving benefit of doubt to an accused the law is settled that it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right. It is also well-settled principle of law that the doubt must be reasonable and not imaginary or artificial. 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.

19. For the foregoing reasons, we are of the considered view that prosecution completely failed to prove charge against the appellant, beyond any reasonable doubt. As a result, appeal filed by appellant is accepted, impugned judgment is set aside and by giving benefit of doubt to the appellant, he is acquitted of the charge. He shall be released forthwith if not required in any other case.

20. These are the reasons for our short order dated 31.10.2017.


19/12/2017
JUDGE


JUDGE
19.12.2017.