

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT HYDERABAD**

Before:

Mr. Justice Mohammad Karim Khan Agha

Cr. Appeal No.S-170 of 2015.

Abdul Qayoom and another

Versus

The State

Appellants : Abdul Qayoom and another	Through Mr. Nandan A. Kella, Advocate
Respondent : The State	Through Mr. Shahid Ahmed Shaikh, A.P.G.
Complainant : Natho	Through Mr. Wali Muhammad Jamari, Advocate
Date of hearing :	26.04.2017.
Date of judgment	27.04.2017

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J.- Appellants Abdul Qayoom and Daleel were tried by learned Additional Sessions Judge, Tando Muhammad Khan, in Sessions Case No.616 of 2011, arising out of Crime No.89 of 2011, registered at Police Station Bulri Shah Karim, under sections 322 and 201 PPC. Accused / appellants were found guilty by judgment dated 21.11.2015 (the impugned judgment) and were convicted and sentenced u/s 302 PPC to suffer rigorous imprisonment for 10 years and to pay fine of Rs.100,000/- each as compensation to be paid to the legal heirs of deceased minor, in case of default in payment of fine the accused / appellants shall undergo R. I. for 01 year. The benefit of section 382-B Cr.P.C. was also extended to the accused / appellants.

2. Briefly, the facts of the prosecution case are that complainant Natho on 12.05.2011 lodged F.I.R. stating therein that "I am hari, about 20 years back we entered into marriage with our uncles as exchange marriage, in which we gave the hand of our sister Mst. Uzoo to Hussain son of Laiq and in exchange the sister of Hussain was

married with my brother Khair Muhammad and thereafter in the year, 1996 Hussain Lund has murdered my brother Abdul Majeed and he was sentenced and presently he is confined in jail and my sister Mst. Uzoo was residing in her brothers-in-law's house namely Abdul Qayoom and Dalel. On 18.04.2011 I was available in my house, where Juman son of Mubarak Lund and Alam son of Adam Lund disclosed that we and Abdul Qayoom are residing adjacent and at night we were available and at 09.00'clock there was hue and cries of the lady from the house of Abdul Qayoom, upon which they went running and saw that Abdul Qayoom was duly armed with Bamboo and he was beating your sister Mst. Uzoo and Dalel was holding her from her hairs and both of them were beating her and the lady was giving the name of Almighty Allah that don't beat her but the accused persons told that we will kill you and we raised hakals but they told us don't come nearer as such they did not go nearer and the lady had died. On hearing such facts, I proceeded to Police Station Bulri Shah Karim, where I gave such kind of information and at that time S.H.O Nand Lal Maheshwari reached at the place of wardat and took the dead body at RHC Bulri Shah Karim, where postmortem was conducted and the parts taken out from the body, were dispatched to chemical analyzer Karachi and after receiving the chemical report the WMO has issued final postmortem report, which reveals that Mst. Uzoo has died due to torture and fear as such today I have come at P.S and make the complaint that accused Abdul Qayoom and Dalel have tortured my sister Mst. Uzoo aged about 33/34 years and due to torture, she has died and the accused have suppressed the crime and have spread the news that Mst. Uzoo has taken the poison and has committed suicide, investigation be made.

3. After completing the usual investigation, police submitted the challan against above named accused.

4. Formal charge against the accused was framed by trial court. Accused pleaded not guilty and claimed to be tried.

5. In order to substantiate its case the prosecution examined 08 prosecution witnesses (PW's) and thereafter prosecution closed its side vide statement dated 17.10.2015 at Ex.12.

6. Thereafter, statements of accused / appellants under Section 342 Cr.P.C. were recorded vide Exs.14 and 15, wherein they denied the prosecution case claiming their innocence stating that they have



been falsely implicated in this case as the complainant wanted to usurp their agricultural land and on account of enmity. They however, did not examine themselves on oath nor led any evidence in their defence.

7. The learned trial court after hearing the learned counsel for the parties and on the assessment of the entire evidence convicted and sentenced the accused / appellants as stated in the impugned judgment.

8. The facts of this case as well as evidence produced by both the parties before the trial Court find an elaborate mention in the judgment passed by the trial Court therefore the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

9. Learned counsel for the appellants contended that the only eye witness was not confidence inspiring, reliable or trustworthy and as such his evidence should be discarded; in particular his conduct did not appeal to reason as he failed to intervene when he saw his aunt being beaten and killed by the appellants; that the incident allegedly took place at 9pm however there was no evidence that there was any light available for the eye witness to see the murder of the deceased; that the FIR was registered after an inordinate delay of 21 days by the complainant; that a day after the incident when the complainant made an NC of the incident at the relevant PS he did not mention the names of Juma as an eye witness and instead mentioned that Rasool Bux Lund informed him that the deceased had been poisoned; the medical evidence did not support the case of the prosecution and that the appellants had been falsely implicated in this case due to enmity and in order to usurp their lands and for all the above reasons the prosecution had failed to prove its case against the appellants beyond a reasonable doubt and as such their appeal should be allowed and the appellants should be acquitted.

10. In support of his contentions, learned counsel for appellants has relied upon the cases of **Muhammad Riaz and 2 others v. The State and another** (2013 PCr.LJ 1122), **Zafar v. The State** (2015 PCr.LJ 424), **Riaz Hussain v. The State** (2013 PCr.LJ 1428), **Sami Ullah and others v. The State and others** (2015 PCr.LJ 416), **Mst. Shazia Parveen v. The State** (2014 SCMR 1197), **Sajjad Ahmed v. The State and 3 others** (2015 PCr.LJ 585), **Ishtiaq Masih alias Bobi v. The State** (2015 PCr.LJ 797), **Shahbaz v. The State** (2008 YLR 487), **Zafar**

Iqbal alias Zafri and another v. The State (2015 PCr.LJ 285), **Tariq Aziz v. The State** (2011 YLR 1844), **Tazeem Akhtar v. The State** (2002 YLR 768), **Muhammad Wasif Khan and others v. The State and others** (2011 PCr.LJ 470) and **Muhammad Rafique v. The State** (2014 SCMR 1698).

11. Learned A.P.G. while supporting the impugned judgment has contended that the prosecution had proved its case beyond a reasonable doubt through ocular evidence which had been duly corroborated by the medical evidence; that the appellants could be convicted on the testimony of eye witness Juma alone as his evidence was reliable and confidence inspiring; that there was a mistake in the original NC as the complainant was illiterate; that all the prosecution evidence is corroborative and there are no major contradictions in the same and thus for all the above reasons the impugned judgment should be upheld and the appeal dismissed.

12. In support of his contention, learned APG has relied upon the cases of **Muhammad Ehsan v. The State** (2006 SCMR 1857), **Naik Muhammad alias Naika and another v. The State** (2007 SCMR 1639), **Anwar Shamim and another v. The State** (2010 SCMR 1791), **Arif v. The State and 2 others** (PLD 2006 Peshawar 5), **The State through Muhammad Afzal and others v. Waheed Iqbal and others** (2005 PCr.LJ 1384).

13. Learned counsel for the complainant adopted the arguments of the APG and relied upon the cases of **The State v. Haider Zaidi and 2 others** (2001 SCMR 1919) and **Dildar Hussain v. Muhammad Afzaal alias Chala and 3 others** (PLD 2004 Supreme Court 663).

14. I have considered the arguments of learned counsel, perused the record and the case law cited by them at the bar.

15. It would seem to me that the key issues in this case are how the deceased died i.e her cause of death and whether the appellants were responsible for her death bearing in mind that the prosecution has to prove its case based on the evidence lead against the appellants at trial beyond a reasonable doubt and that any benefit of the doubt must go to the appellants.

16. It is well settled law that an accused may be convicted based on the testimony of one eye witness alone provided that the evidence of such a witness is **unimpeachable and confidence-inspiring and**



corroborated by medical evidence. Reference in this respect can be made to the case of **Muhammad Ehsan v. The State** (2006 SCMR 1857)

17. I however do **not** find the sole eye witness PW 2's evidence to be either unimpeachable, credible, trust worthy or confidence inspiring for the following reasons when such reasons are read as a whole especially when the other prosecution evidence is also considered:

(a) That the complainant is his maternal uncle and his family have enmity with the appellants and may well be interested in falsely implicating the appellants.

(b) He lives about $\frac{1}{2}$ an acre away from the house (PW 7 Ali Ahmed) where the deceased was killed yet he was able to hear her cries.

(c) After hearing the her cries he was still able to reach the house where the deceased was killed after covering at least $\frac{1}{2}$ an acre and be in time to witness the deceased being beaten and killed by the appellants in his presence.

(d) That despite the time being 9pm he was able to clearly witness the beating and killings despite there being no evidence of any available light and the house where he witnessed the beatings and murder being surrounded by a hedge. He could also allegedly hear what the appellants were saying to the victim from outside the house. With regard to a lack of light reference may be made to the cases of **Mst. Shazia Parveen v. The State** (2014 SCMR 1197), **Sajjad Ahmed v. The State and 3 others** (2015 PCr.LJ 585), **Muhammad Riaz and 2 others v. The State and another** (2013 PCr.LJ 1122) and **Sami Ullah and others v. The State and others** (2015 PCr.LJ 416)

(e) In his S.161 statement which was put to him he stated that he heard the hue and cries on 18-04-2011 when the incident occurred on 17-4-2011 which is a glaring contradiction.

(f) In cross examination he also states that the appellants inflicted lathi blows on the entire body of the deceased however as per the medical evidence the deceased received 3 bruise injuries and most importantly none of which caused the death of the deceased as per the medical evidence.

(g) allegedly he was accompanied by another eye witness PW Aalam who also saw the murder however this most important witness who



would have corroborated him was not called by the prosecution despite being named in the challon as a witness. It may well be that such witness would not have supported the version of PW Juman especially as he lived 4/5 KM from his house and he disclosed for the first time during cross examination that PW Aalam was staying over night as his guest.

(h) **More significantly** in my view there are certain aspects of the unnatural conduct/actions of eye witness PW Juman after witnessing the incident (if in fact he did witness the incident which in my view seems highly doubtful based on the evidence) which do not seem to appeal to reason. Firstly the deceased was his aunt and according to his evidence he heard her crying out, heard the appellants say they were going to kill her, saw her being beaten by a lathi (which cannot be equated to such a dangerous weapon to himself such as a fire arm) and was with Alam yet neither he nor Alam made any attempt to intervene to stop the beating and murder of his aunt. Secondly, having witnessed the brutal murder of his aunt he made no effort to immediately report this most serious of incidents to the police. According to him he went home, told his mother of the incident and then went to bed and slept soundly before going to the house of the victims brother in the morning where he related the events of the previous night to him. It is not understandable in my view why Juman did not register the FIR immediately (if in fact he was an eye witness) especially as the PS was only about 10 KM's away connected by a pacca road as per PW 5 Nand Lal). According to his cross examination he told his mother about the incident i.e the murder of her sister but his mother did not react at all and did not even go and see the deceased's body despite them living close by. His mother was also not called as a prosecution witness to corroborate this aspect of his evidence. In my view none of the above conduct appeals to a reasonable man. As was recently held by the Hon'ble Supreme Court in the case of **Muhammad Asif v. The State** (2017 S C M R 486) which found as under in respect of such incidents at Para's 7 and 10.

"Para 7.....This lady was aged about 50/51 years, while her husband was 70 years of age and when the two eye-witnesses not produced at the trial namely Iftikhar and Tajammal, were close friends of the deceased then why she being an aged lady and her husband, who was at the advanced age of his life followed them. If they were apprehending something abnormal, they would have conveniently told the above two friends of the deceased that being late dark night time, it was not advisable to

take the deceased outside. **No convincing and plausible reason has been advanced as to why they both followed the deceased and his two friends and what was the object behind it. The conduct of both these alleged eye-witnesses runs counter to normal human behaviour and habit in the given circumstances and in the absence of plausible explanation, no prudent mind would believe such fantastic story which appears to be the hand-Art of the local police because in a night occurrence of this nature, remaining un-witnessed, the police imprudently indulges in such like tactics to mislead the court of law and justice.** (bold added)

8. -----

9. -----

10. **We fail to understand that in the presence of the two close friends accompanying the deceased and parents, how such tragedy with a son could happen without any intervention on their part to come to rescue of the deceased when they were not far away as shown in the site plan.** (bold added)

(i) According to eye witness Juman the appellants murdered his aunt with a lathi however the appellants made no effort to hide or conceal the lathi which according to him was the murder weapon and left it at the scene of the crime. Likewise the appellants made no efforts to dispose of the body of the deceased which presumably the appellants would have known on a post mortem would have shown that the deceased was beaten to death with a weapon such as a lathi which when found was not even blood stained. Neither was there any blood stains found at the house which ought to have been expected after a severe beating and pulling of hair which lead to the death of the deceased. In my view again such behaviour/conduct of the appellant's action does not appeal to reason. Again as was held in the case of **Muhammad Asif** (Supra) at Para 17

"17. It is, normal practice and conduct of culprits that when they select night time for commission of such crime, their first anxiety is to cancel their identity so that they may go scot-free unidentified and in that course they try their level best to conceal or destroy each piece of evidence incriminating in nature which, might be used against them in the future thus, human faculty of prudence would not accept the present story rather, after committing crime with the dagger, the appellant could throw it away anywhere in any field, water canals, well or other place and no circumstances would have chosen to preserve it in his own shop if believed so because that was susceptible to recovery by the police."



18. Thus, having found the evidence of the sole eye witness PW 2 Juman to be neither unimpeachable, credible, trust worthy nor confidence inspiring I now turn to examine the other available evidence.

19. PW 1 was Jano @ Natho who is the complainant in this case. He admits that there is enmity between the appellants and himself. He is not an eye witness and according to the original version of events he was informed by Rasool Bux on 18-04-2011 at his house that his sister had expired at the appellant's house after drinking poison. On receiving this information he went to PS Bulri Shah Kareem and registered a NC which is reproduced as under for ease of reference.

Note	Arrival 10-27	At this time we Insp./S.H.O Nand Lal Maheshwari came from Quarter in the office of P.S and became busy in official work.
No.6	<u>Note</u> Entry of departure	At this time appeared one Natho son of Mooso by caste Lund r/o village Haji Sawan Lund near Manikwa-Forwa Road, Taluka Bulri Shah Karim who disclosed that his sister Mst. Uzoo who was married with my maternal uncle's son namely Hussain son of Laiq Lund about 17/18 years ago. In year 1996, Hussain party murdered my brother Abdul Majeed, thereafter are not in agreement. He was sentenced in my brother's murder case and is presently confined in Jail. Whereas my sister Mst. Uzoo, who is residing with brothers of her husband Abdul Qayoom and others. Today in the morning when I was in my house Rasool Bux Lund and Rustam Lund informed me about my sister Mst. Uzoo. He was informed by her husband's brother Abdul Qayoom party that my sister has expired due to drinking of poison. On this news I am now appearing at the P.S that I have doubt that my sister might have been killed. The such information was entered



		and I S.H.O- Nandalal Maheshwari along with staff and official vehicle No.SP 6952 and along with WHC departed for the SITE. ---Not legible--- is with us. ASI ---not legible---at the Police Station.
		<div style="display: flex; justify-content: space-between;"> <div> Sd/- in English S.H.O Nand Lal (bold added) </div> <div> LTI Natho s/o Mooso Lund </div> </div>

20. This NC does **not** mention the names of Juma and Alam coming to his house and nor does it mention that his sister was beaten to death. Rather it says that his sister died of poisoning.

21. According to the complainant this error was made because he was an illiterate man and was not able to read the NC. However the NC was recorded by SHO Nand Lal who was also the first IO of the case and appeared as PW 5 and in his evidence confirmed that the NC recorded exactly what was narrated to him by the complainant. PW 5 Nand Lal was not contradicted on this point. Furthermore, no evidence has been brought on record that there was any enmity between SHO Nand Lal and the complainant or any other police officer associated with this case for there to be any reason for them to not to accurately record the complainants NC. In fact the version of the complainant and in his evidence and in his NC recorded the day after the incident are so different that there can be no case of any inaccuracy. The only explanation for the difference is that the NC was deliberately and malefide recorded by Nand Lal to show a completely different story and there is no evidence that this was the case or Nand Lal had any reason to do so. This, raises further doubt on PW 2 Juman the alleged eye witness that he went to see PW 1 the complainant and narrated to him the events of the earlier night since his (Juman's) version is completely different to the NC. Juman and Alam are **not** mentioned in the NC and there is no allegation of the complainant's sister being beaten to death. Instead the NC referred to his sister being poisoned. In fact if PW 2 Juman had narrated the story of the beating to death of the complainants sister to the complainant then why did the complainant not record an FIR to this effect? This is not



understandable. According to PW 5 (Nand Lal the initial IO) in his evidence this was because the complainant only had **suspensions** of the murder of his sister but even at that time the complainant did not disclose to him (PW 5 Nand Lal) that the appellants had caused lathi blows to his sister. Despite being illiterate this was something which the complainant could have easily orally told Nand Lal the initial IO but quite incredibly it appears that he failed to do so.

22. In the event an FIR was registered by the complainant 25 days after the incident against the appellants for beating his sister to death and 5 days after the receipt of the post mortem report which delay is not explained in the FIR. Such a long delay in filing the FIR is a serious flaw in the prosecutions case especially as such delay has not been adequately explained. Even if it can be said that the complainant was waiting on the final medical report there was still an unexplained delay of 5 days in lodging the FIR. It is well settled law that such a long unexplained delay in lodging the FIR can seriously damage the complainants case or even be fatal to it since the delay gives the complainant, other interested witnesses and the police plenty of time to cook up a false case against the accused. There is a plethora of case law on this point however for the time being reference may be made to the cases of **Muhammad Sharifan Bibi and others v. Muhammad Yasin and others** (2012 SCMR 82), **Iftikhar Hussain and others v. The State** (2004 SCMR 1185), **Muhammad Rafique v. The State** (2014 SCMR 1698), **Zafar Iqbal alias Zafri and another v. The State** (2015 PCr.LJ 285), **Tariq Aziz v. The State** (2011 YLR 1844) and **Shahbaz v. The State** (2008 YLR 487).

23. There is even case law to the effect that no reliance can be placed on an FIR after a preliminary investigation. In this respect reliance is placed on **Tazeem Akhtar v. The State** (2002 YLR 768) and that such a practice opened up the dangers of improving the prosecution case and trying to align it with the medical evidence as and when it became available as appears to be the case in this instant case. In this respect reference is made to the case of **Muhammad Wasif Khan and others v. The State and others** (2011 PCr.LJ 470).

24. In my view little, if any, reliance can be placed on the evidence of the complainant for the reasons discussed above and it appears that he has tried to tailor his case to fit in with the medical evidence as the case developed.



25. With regard to the medical evidence in my view this is highly unreliable and does not appear to support the prosecution case.

26. As per the police Danishnarma dated 18-04-2011 it was opined that the deceased died due to drinking poison and a post mortem was recommended.

27. PW 3 Dr.Zubeda carried out the post mortem and in her evidence she states that the death was caused due to Asphyxia as was informed to her by the police which is contrary to the opinion of the police in the Danishnarma and was denied by the initial IO PW 5 Nand Lal who stated that he never told Dr.Zubeda that the cause of death was Asphyxia. Interestingly in her post mortem notes at 3.30 pm on 18-04-2011 Dr.Zubeda has noted the cause of death as, "asphyxia." And later "reserved (the cause of death) until the report of samples (visera's) from the chemical analyst laboratories." There also appears to be some over writing on the time and date where asphyxia is opined. In my view this contradiction brings the medical evidence and report of Dr.Zubeda in doubt. In any event it appears that asphyxia is more related to strangulation than to being beaten by a lathi.

28. Dr.Zubeda finds 3 bruised injuries but she does not opine whether these are caused by hard substance or sharp cutting weapon. She specifically gave evidence however that,

"It is correct that due to bruises as mentioned in the post mortem report in ordinary course a person cannot die"

29. In my view such a statement would seem to indicate that even if the deceased was beaten by a lathi this was **not** the cause of her death.

30. Dr.Zubeda further states in her evidence as under:

"It is correct that viscera of the deceased were sent for expert opinion as I was not sure about cause of death of deceased. There is no such instrument which can disclose the exact cause of death. It is correct that I was not sure about the cause of death of deceased Mst. Azoo after the postmortem, at the time of handing over the dead body to the police....."

It is correct that there was no rupture of blood vessels in the body of deceased. It is correct that there was no clot in the dead body of deceased".

31. The chemical report for poisoning came back negative.



32. However in her final Post Mortem report dated 07-05-2011 (5 days later the complainant filed the FIR) Dr.Zubeda finds the cause of death as under,

“Cardio pulmonary arrest due to fear of the signs of violence”

33. In my view, although I am not a medical expert, I find it difficult to understand as to how Dr.Zubeda had reached such opinion especially as she was not an eye witness and had been told by the police, according to her, that the deceased died on account of poisoning.

34. I cannot even understand as to how someone on a simple post mortem can conclude that someone died due to fear of the signs of violence which apparently brought on a cardio pulmonary.

35. I find such an opinion to be confusing and certainly not corroborative that the deceased died due to a lathi attack as she herself (Dr.Zubeda) had already opined.

36. Thus, I find the medical evidence to be of little, if any, corroborative value to the ocular evidence which as I have already discussed in terms of the eye witness PW 2 Juman and the complainant PW 1 Jano @ Natho to be completely unconvincing.

37. It is also relevant that absolutely no motive has come on record as to why the appellants would want to murder the deceased especially as it appears that her young minor daughter was living happily with them. No evidence of any fights between the appellants and the deceased or any other motive has come on record as to why the appellants would want to murder the deceased which may also be damaging to the prosecution case when the evidence is read as a whole. In this respect reliance is placed on **Zafar v. The State** (2015 PCr.LJ 424)

38. The Mushir's were interested persons and the new IO PW 8 Muhammed Iqbal who was appointed after filing of the FIR on 12-05-2011 recorded the statements of Alam and Juman. These statements were recorded more than 25 days after the incident and as such the delay in recording them especially as they were both eye witness may be fatal to the prosecutions case. Reference in this respect may be made to the case of **Muhammed Asif** (Supra). Even otherwise as mentioned earlier for unexplained reasons Alam was not called as a



witness despite being on the witness list. Since the vardat was inspected days after the incident such an inspection in my view is of little, if any, relevance. On 14-05-2011 PW 8 Muhammed Iqbal arrested appellant Abdul Qayoom at a busy area but did not associate any independent Mushir despite it being day time (12 noon) and there is no evidence to suggest that he attempted to associate any independent mushir.

39. It would appear from my assessment of the evidence that the main linkage of the appellants to the death of the deceased is that she was found in their house. Apart from that based on my earlier discussion of the evidence and the law there appears to be very little, if any, credible, reliable and trust worthy evidence against the appellants for the offense for which they have been convicted.

40. I agree with the well settled legal proposition that an eye witness should not be disbelieved simply because he is related to the deceased, but in this case enmity has come on record between the appellants and the complainant side and in my view as discussed above PW 2's evidence (the only eye witness) is not at all trust worthy, reliable or confidence inspiring. Like wise as a rule minor contradictions are to be ignored but in this case in my view the 3 key prosecution witnesses (PW 1 the complainant Jano @ Natho, PW 2 the eye witness Juman and PW 3 Dr.Zubeda's evidence is completely unreliable, untrustworthy and not confidence inspiring and as such cannot be safely relied upon what to speak of any potential minor contradiction.

41. Even other wise it is a well settled principle of criminal law that it is for the prosecution to prove its case against the accused beyond a shadow of a doubt and if there is any doubt in the prosecution's case the benefit of such doubt, as set out in the case of **Tariq Pervez v. The State** (1995 SCMR 1345) must go to the appellant as of right as opposed to concession. However in considering this aspect of the case I am also guided by the case of **Faheem Ahmed Farooqui V State** (2008 SCMR 1572) where it was held as under at P.1576 at Para D

"It needs no reiteration that for the purpose of giving benefit of doubt to an accused person, more than one infirmity is not required, **a single infirmity creating reasonable doubt in the mind of a reasonable and prudent mind regarding the truth of the charge makes the whole case doubtful.** Merely because the burden is on the accused to prove his innocence it does not absolve the prosecution from its duty to prove its



case against the accused beyond any shadow of doubt."(bold added)

42. In the recent supreme Court case of **Hashim Qasim V State** (Criminal Appeals No.115 and 116 of 2013) dated 12th April 2017 the Hon'ble supreme Court in respect of the benefit of doubt held as under at Para 20:

"Even a single doubt, if found reasonable, would entitle the accused person to acquittal and not a combination of several doubts is bedrock principle of justice. Reference may be made to the case of **Riaz Masih @ Mithoo v. The State (NLR 1995 Crl. 694).**"

43. In this case for the reasons discussed above primarily being the non credible, untrustworthy and non confidence inspiring evidence of PW 1,2 and 3, the unexplained contradictory NC initially filed vis a vis the FIR finally filed 25 days later, the lack of motive on the part of the appellants, the delay in filing of the FIR which went completely unexplained, the high probability that this case was improved if not concocted after the preliminary investigation but before filing of the FIR, enmity between the parties I have no doubt in my mind that when the evidence is read and considered in totality there would be more than a reasonable doubt in a reasonable and prudent person's mind that the appellants were not guilty of the offenses for which they have been convicted by the trial court.

44. Thus, for the reasons discussed above I find that the prosecution has failed to prove its case beyond a reasonable doubt against the appellants and that the appellants are entitled to the benefit of the doubt and as such set aside the impugned judgment and up hold the appeals of both appellants Abdul Qayoom and Daleel

45. As such the appellants Abdul Qayoom and Daleel are hereby acquitted in the above case and the concerned jail authorities are hereby ordered to immediately release them from custody provided that they have not been convicted or been placed behind bars in any other case.

Hyderabad:

Dated: 27-04-2017