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CERTIFICATE OF THE COURT IN REGARD TO REPORTING

**CRIMINAL APPEAL NO. D-365 OF 2011
CONFIRMATION CASE NO. 23 OF 2011**

PEERAL MAGSI V/S THE STATE

**CRIMINAL APPEAL NO. D-376 OF 2011
KOURO MAGSI V/S THE STATE**

SINDH HIGH COURT CIRCUIT COURT HYDERABAD

Composition of Bench

HON'BLE MR. JUSTICE MOHAMMAD KARIM KHAN AGHA

HON'BLE MR. JUSTICE RASHEED AHMED SOOMRO


(D.B)

Date of last hearing (heard/reserved): 16-06-2020 & 17-06-2020

Decided on: 24-06-2020

(a) Judgment approved for reporting

YES ✓



CERTIFICATE

Certificate that the Judgment/Order is based upon or enunciates a principle of law/decide a question of law which is of first impression/distinguishes over-rules/explains a previous decision.

Strike-out whichever is not applicable.

NOTE: - (i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used, the Reader must attach it to the top of the first page of the Judgment.

(iii) Court Associate must ask the Judge written the judgment whether the judgment is approved for reporting.

(iv) Those directions which are not to be used should be deleted.

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

Cr. Appeal No: - D- 365 of 2011.

01/-

PEERAL S/o. Fateh Mohammad Magsi,
adult, Muslim, R/o. Village Peeral Magsi,
Deh 92 Taluka & District Mirpurkhas.
At present confined in,
Central Prison Hyderabad.....Appellant.

V E R S U S

THE STATE.....Respondent.

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14/12/2011

PRESENTED ON 14.12.2011
Additional Registrar
14/12/11

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

Cr. Appeal No: - B - 376 of 2011.

KOURO S/o. Wassand Magsi,
adult, Muslim, R/o. Village Peeral Magsi,
Deh 92 Taluka & District Mirpurkhas.
At present confined in,
Central Prison Hyderabad.....Appellant.

V E R S U S

THE STATE.....Respondent.

783

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

Cr. Appeal No.D-365 of 2011

[Confirmation Case No.23 of 2011]

Cr. Appeal No.D-376 of 2011

DATE

ORDER WITH SIGNATURE OF JUDGE

17.06.2020

Mr. Irfan Ahmed Qureshi, advocate for appellant in Cr. Appeals No.D-365 of 2011

Mr. Muhammad Hashim Leghari, advocate for complainant

Mr. Noor-ul-Haq Qureshi, advocate for appellant Kouro, who is present on bail in Cr. Appeal No.D-376 of 2011

Ms. Safa Hisbani, Assistant Prosecutor General Sindh

Pursuant to order dated 16.06.2020, learned counsel for appellant Peeral Magsi and learned counsel for appellant Kouro Magsi have made their submissions, learned APG and learned counsel for complainant have also made their submissions.

Reserved for judgement.


JUDGE

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Before:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Rasheed Ahmed Soomro

1. **Cr. Appeal No.D- 365 of 2011**
(Confirmation Case No. 23 of 2011)

Peeral

Versus

The State

2. **Cr. Appeal No.D- 376 of 2011**

Kouro Magsi

Versus

The State

Appellant : Peeral in Cr. Appeal No.D-365 of 2011 (alongwith Confirmation Case No.23 of 2011)	Through Mr. Irfan Ahmed Qureshi Advocate
Appellant : Kouro in Cr. Appeal No.D- 376 of 2011 (present on bail)	Through Mr. Noorul Haq Qureshi Advocate (appointed on State expenses vide order dated 16.06.2020)
Respondent : The State	Through Miss Safa Hisbani, A.P.G. Sindh
Complainant : Muhammad Ismail	Through Mr. Muhammad Hashim Laghari Advocate
Date of hearing	16.06.2020 and 17.06.2020
Date of judgment	24.06.2020

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J.- By this single judgment we intend to dispose of both aforementioned Criminal Appeals and confirmation reference together as the same relate to one and the same incident as well as F.I.R. and have been filed against the same judgment passed by the trial court.

2. By means of aforementioned Appeals, appellants Peeral and Kouro Magsi have assailed the Judgment dated 30.11.2011, passed by learned Sessions Judge, Mirpurkhas, in Sessions Case No.111 of 2000 (Re: State V Peeral and others), emanating from Crime No.20 of 2000, registered at Police Station Khan, under sections 302, 324, 337-A(i), 337-A(ii), 337-F(i), 337-F(v), 504, 147, 148, 149 PPC; whereby they have been convicted and sentenced, as mentioned in Point No.3 of the impugned judgment, in the following terms:-

“ Point No.3.

30. -----.

31. “The case against accused Kouro S/o Wasand Magsi is proved u/s 324 PPC for attempt to commit murder / Qatl-e-Amd, therefore, I hereby convict and sentence him for 10 years R.I with fine of Rs.50,000/- to be paid to the L.Rs of deceased and in case of default in payment of fine, he shall suffer S.I for three months more. The benefit of section 382(b) Cr.P.C is extended to the accused Kouro.

32. The prosecution has also established their case against accused Piral (Peeral) s/o Fateh Muhammad of murdering deceased Ahmed Lakho and hereby convict accused Piral s/o Fateh Muhammad Magsi and sentence him for capital punishment i.e. death u/s 302(a) PPC as Qisas and to pay Rs.2,00,000/- as compensation to the L.Rs. of deceased Ahmed Lakho and in case of default in payment of compensation he shall suffer S.I for six months more. The prosecution has also established their case regarding gathering of both accused namely Kouro s/o Wasand Magsi and Piral s/o Fateh Muhammad at the place of incident armed with deadly weapons and they are convicted u/s 147, 148, 149 PPC and sentenced for one year R.I on each count. The benefit of section 382(b) Cr.P.C. is extended to the accused Piral. -----.”

3. Through said judgment, the trial court has acquitted co-accused Yar Muhammad, Fida Hussain and Gulab under section 265-H(i) Cr.P.C; whereas co-accused Ghulam Rasool has been declared as a proclaimed offender.

4. The prosecution case in brief is that complainant Muhammad Ismail appeared at Police Station on 09.06.2000 and lodged F.I.R. stating that Ahmec, Bachal Lakho and their father and brothers are his cousins and they used to reside adjacent to his land. Peeral Magsi and others have dispute with Ahmed Lakho Wara on the tube well of LBOD. On 09.06.2000 at 07:30 a.m he was available in the house where Ghulam Mustafa and Rab Dino informed him that today at 0715 hours accused Peeral, Fida Hussain, Ghulam Rasool, Yar Muhammad, Kouro, Gulab duly armed with guns, pistol, hatchets and lathi respectively, were standing on the western side's Rasti near the house of Ahmed Lakho; on which Muhammad Bux and Bachal Lakho told them why they are standing near their house as they have no compromise with them; whereupon Yar Muhammad Magsi caused hatchet to Muhammad Bux and Bachal on their heads and other parts of their bodies with intention to kill them. They raised cries, which attracted Ahmed and Ghulam Hussain who came there running. Then Peeral Magsi made straight fire upon Ahmed Lakho from his gun with intention to kill him, Yar Muhammad Magsi also caused hatchet injuries to Ghulam Hussain Lakho, whereas Ghulam Rasool Magsi made fire from his pistol and Kouro caused hatchet injuries to him. After receiving injuries Ahmed Lakho fell down on the ground. In the meanwhile, they also reached there and made hakals that not to kill Ahmed Lakho but accused persons within their sight continued causing injuries to Ahmed Lakho. After some time Ahmed expired at the spot within their sight. After receiving such information from Ghulam Mustafa and Rab Dino, complainant also reached at the place of wardat and saw that Ahmed was expired. They saw the injuries sustained by deceased Ahmed Lakho, Muhammad Bux Lakho and Ghulam Hussain Lakho also received lathi and hatched injuries and blood was oozing. They brought dead body of deceased Ahmed Lakho and injured persons at civil hospital.

5. After usual investigation, police submitted challan before the concerned court and after completing necessary formalities, learned trial court framed the charge against all accused, to which they pleaded not guilty and claimed trial.

6. The prosecution in order to prove its case examined 10 PWs and exhibited numerous documents and other items. The statements of the

accused were recorded under section 342 Cr.P.C whereby they claimed that in fact they had been attacked by the complainant's party and had registered a counter FIR to this effect. The appellants examined themselves on oath and called one witness in support of their defense case and exhibited numerous documents.

7. Learned trial court after hearing the learned counsel for the parties and examining the evidence available on record convicted and sentenced the appellants as stated earlier in this judgment.

8. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition.

9. Learned counsel for the appellants in both appeals have argued the matter almost on the same lines and have contended that the charge was defective, that there was an explained delay of 11 hours in lodging the FIR which enabled to complainant with the connivance of the police to cook up a false case against the appellants, that the eye witness PW's are all closely related, had enmity with the appellants and had a motive to falsely implicate him in this case and as such their evidence cannot be believed or safely relied upon, that the appellants had filed a counter case at the same time which ultimately lead to the conviction of the complainant and some PW's in this case, that the pistol and hatchet were foisted on the appellants, that there was no blood found on the hatchet, that there was no FSL report, that other co-accused were acquitted on the same evidence and as such the appellants are entitled to equal treatment, that questions used to convict the appellants were not put to them in their S.342 Cr.PC statements and thus for any of the above reasons the appellants should be acquitted by extending them the benefit of the doubt. In support of their contentions, learned counsel for the appellants placed reliance on the cases of **Muhammad Nadeem alias Banka V The State** (2011 SCMR 1517), **Shahbaz V The State** (2016 SCMR 1763), **Muhammad Afzal V The State** (2017 SCMR 1645), **Imtiaz alias Taj V The State and others** (2018 SCMR 344), **Muhammad Asif V The State** (2017 SCMR 486), **Hashim Qasim and another V The State and Jehangir Elahi V Shoaib Ahmed and others** (2017 SCMR 986).

10. On the other hand learned APG appearing on behalf of the State as well as the learned counsel for the complainant fully supported the impugned judgment and in particular contended that there was no delay in lodging the FIR which ruled out any chance of cooking up a false story against the appellants, that the eye witnesses were reliable, trust worthy and confidence inspiring and their evidence should be believed by us and it is not relevant that they are related, that the medical evidence supported the eye witness evidence, that the recoveries supported the prosecution case, that the injuries to the appellants were self inflicted in order to save their skins and as such the appeals against conviction should be dismissed and that the impugned judgment should be upheld and the confirmation reference in respect of appellant Peeral Magsi be answered in the affirmative. In support of their contentions learned APG and complainant placed reliance on the cases of **Majeed and another V The State** (1999 SCMR 2317), **Mst. Salma Shahida V The State** (2008 SCMR 787), **M. Younus Habib V The State** (PLD 2006 Supreme Court 153), **Sikandar V The State and another** (2006 SCMR 1786), **Nasir Shah V The State** (2006 SCMR 1796), **Lal Khan V The State** (2006 SCMR 1846), **Nawab V The State** (2006 SCMR 456), **Muhammad Tashfeen and others V The State and others** (2006 SCMR 577) **Maqsood Ahmed V The State** (2006 SCMR 672), **Haq Nawaz and others V Haji Ghulam Farid and others** (2011 SCMR 782), **Tanveer alias Rabail and another V The State** (2012 YLR 2026), **Muhammad Iqbal Shah and another V The State** (2005 MLD 85), **Yasir and 2 others V The State** (2018 MLD 1014), **Qadir Bakhsh and other V The State through Shaukat and others** (2013 YLR 1418), **Elahi Bakhsh and others V The State and others** (2005 SCMR 810) and **Mubarak V The State** (1982 SCMR 531).

11. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by learned counsel for the appellants and the impugned judgment with their able assistance and have considered the relevant law including that cited at the bar.

12. In our view after our reassessment of the evidence based on the evidence of the PW eye witnesses, PW MLO's, PW police witnesses, IO and the S.342 Cr.PC statements and evidence under oath of the appellants and

the acquitted co-accused we are satisfied that the prosecution has proved beyond a reasonable doubt that on 09.06.2020 at 7.15am near the house of Ahmed Lakho situate in Deh 92 Taluka Mirpurkhas Ahmed Lakho (the deceased) was fired upon which caused him injuries who later died from these injuries and was thus murdered.

13. The only issue therefore, in our view, left before us is whether it was the appellants or some other third party who attempted to murder and did murder the deceased by firearm and hatchet.

14. The evidence on record shows that it is not disputed by either the defense or the prosecution that all eye witness PW's were present at the time of the incident and that both the appellants and their acquitted co-accused were also present at the time of the incident. The question of identification does not arise as it was a day time incident, all the appellants and PW's knew each other being either being related by blood or caste and lived close by and saw each other regularly being agriculturalists who were attending their nearby land.

15. What is in dispute is what actually happened at the scene of the incident as in effect the appellants have put up a counter case. Namely, that it was the complainants side which attacked them and not the other way around as alleged by the complainant in his FIR and that Ghulam Hussain from the complainants side during the altercation mistakenly shot and killed the deceased whilst shooting at appellant Peeral.

16. On the day of the incident at 11.30am the appellant Peeral registered an FIR 21/2000 at PS Khan U/s 324,147,148,149,504,337-A(ii), 337-F(i) PPC against the complainant party which notes that it was lodged without delay in the following terms

"Sir it is complained that I reside at the above address along with my family and am Zamindar. Adjacent to our house Bachal Lakho reside and we have old dispute with them over Tube well of LBOD and such case is pending before Civil Court, therefore we remain in quarrel with them. Today i.e on 09-6-2000 in the morning at about 0715 hrs, Yar Muhammad son of Sajawal Magsi, Koro son of Wasand Magsi, Fida Hussain son of Peeral, Gulab son of Nabi Bux Magsi with their common intention were going towards hedge of Ali Muhammad Mari

in the way Bachal son of Wali Muhammad Lakho, Ghulam Hussain S/o Wali Muhammad Lakho, Muhammad Bux S/o Wali Muhammad Lakho were available adjacent to their house armed with hatchet. Bachal Lakho abused upon which Yar Muhammad Magsi and Koro Magsi asked why you came here as they have not agreed upon tube well. Saying so they gave straight hatchet blow upon Yar Muhammad and Koro Magsi and they raised cries upon which Ghulam Mustafa son of Sajawal Magsi, went there running. Muhammad Ismail son of Darya Khan Lakho armed with hatchet, Sher Muhammad son of Ismail armed with hatchet, Ghulam Mustafa son of Allah Bux Lakho armed with lathi, Jumoon son of Sawan Lakho armed with lathi, and Muhammad Ismail Lakho gave hatchet blow upon me with intent to kill and I received injury upon my head. Ghulam Mustafa Magsi, Sher Muhammad son of Ismail gave straight hatchet blow while others gave straight hatchet blow and beat with fists and kicks. Thereafter we raised cries on which Nabi Bux Magsi, my brother and Ghulam Serwar son of Sajawal Magsi came there running and they requested accused and saved ourselves. The accused run away towards their houses. Now I have appeared and complained that Bachal S/o Wali Muhammad, Muhammad Bux S/o Wali Muhammad, Ghulam Hussain S/o Wali Muhammad, Muhammad Ismail S/o Darya Khan, Sher Muhammad S/o Muhammad Ismail, Rustam son of Muhammad Ismail, Jumoon S/o Sawan and Ghulam Mustafa S/o Allah Bux all by caste Lakha R/o deh 92 taluka Mirpurkhas armed with hatchet and lathies in furtherance of their common intention made rioting and gave straight hatchet blow with intent to kill and caused us injuries. It is complained. Investigation be made and letter for treatment be issued".

Note:- Complaint of the complainant recorded verbatim and read over to him who after accepting the same to be true has signed on it.

Sd/-

Sd/-

Peeral S/o Fateh Muhammad Magsi

SHO PS KHAN

R/o Village own deh 92 Taluka Mirpurkhas.

17. Thereafter appellant Peeral lodged a complaint under the same sections mentioned in the above mentioned FIR against the same persons who he mentioned in the FIR had attacked him and his party. Namely the complainant's party before II Additional sessions Judge Mirpurkhas in SC 53/2002 in more detail than the original FIR which he claimed had deliberately omitted some parts of his narration.

18. This complaint (i.e the counter case) lodged by appellant Peeral culminated in a full dressed trial against the complainant and the others

named in the complaint by appellant Peeral before the court of sessions Judge Mirpurkhas which lead to the following findings convictions and sentences being handed down by the learned trial court at para 29 against the complainant, PW Bachal and Sher Muhammed on the same date as the impugned judgment:

"29. In view of dictum laid down in above discussed case law as well as evidence come one record, the prosecution has established that accused Bachal has caused injuries to Kuro on his head and caused injuries to Yar Muhammad in the result his arm was fractured, therefore, I hereby sentence and convict accused Bachal u/s 337-A(i) PPC and sentence him to suffer two years R.I. I also convict accused Bachal u/s 337-A(ii) PPC and sentence him to suffer R.I for five years R.I and to pay fine of Rs.25000/- and in case of default in payment of fine he shall suffer S.I for three months more. I also convict accused Bachal for causing injuries to Kuro and Yar Muhammad u/s 337-F(i) PPC and sentence him to suffer 01 year as Tazir, all conviction would be run concurrently. The prosecution has also established their case against accused Ismail s/o Darya Khan and Sher Muhammad s/o Muhammad Ismail for causing injuries to Piral on different parts of his body, as such I hereby convict accused Ismail s/o Darya Khan and Sher Muhammad s/o Muhammad Ismail u/s 337-A(i) and sentence them to suffer R.I for one year and also convict Ismail s/o Darya Khan and Sher Muhammad s/o Muhammad Ismail u/s 337-A(ii) PPC and sentence to suffer R.I for five years. Accused Muhammad Ismail, Sher Muhammad and Bachal are present on bail; their bail bonds are cancelled and surety stands discharged and they are taken into custody and remanded to jail to serve out the sentence awarded to them. The benefit of section 382-B Cr.P.C. awarded to all three accused persons."

19. In the case before us the eye witnesses in their evidence have maintained throughout that they were unarmed and that they were the victims of the attack made by the appellants however the above findings convictions and sentences which remain in the field clearly show that the complainant and his side were armed at the time of the incident and may well have been the instigators and as such they do not appear to be telling the truth in their evidence. Furthermore, if they were unarmed how was it possible for the appellants to receive the injuries which they did about which the appellants gave evidence and was corroborated by DW 1 Dr. Abid Ali who states in his evidence about the nature of the appellants injuries and that such injuries were not self inflicted which again indicates that the eye witness PW's have not been truthful in their evidence since if they were unarmed how could the appellants have sustained such non self inflicted injuries. In particular according to the evidence of DW 1 Abid Ali that Peeral had

received an incised wound 4 cm x 1cm (**bone exposed**) on the left parietal region which deep and serious wound was not likely to have been self inflicted and lead to Peeral remaining in hospital for 4 days and fits in with the appellants and acquitted co-accused's version of the incident. Peeral's FIR was also lodged with promptitude so he would not have had sufficient time to cook up a false case and he went to the hospital via a police letter after he had reported the incident to the police. That the PW's state in their evidence that no katcha path runs close to the deceased house however it has come in evidence of both the appellants, PW 9 IO Zulfiqar Ali Khan and PW 8 Boorji who was the tapedar and his sketch that such a path does exist and this is where the altercation between the two sides occurred so once again it appears that the PW's have not been truthful in their evidence. Appellant Peeral was sent to the hospital by the police after registration of his FIR where he was medically examined and was even seen by eye witness PW 3 Bachal in hospital from where he was arrested. The IO PW 9 Zulfiqar Ali Khan in his evidence states that appellant Peeral was arrested from hospital which again fits in with appellant Peeral and Kouro's defense case. Allegedly the pistol was recovered on the pointation of appellant Peeral which he denies but in any event the recovery of the pistol is inconsequential in the absence of an FSL report. Furthermore, if the appellant Peeral was armed it does not appeal to logic, reason or commonsense that he could have been so badly injured by hatchet which implies close proximity to him by the person who attacked him when he had a firearm as he would have shot that person before they could strike him as he allegedly did to the deceased if the prosecution story is to be believed. As already discussed based on the medial evidence we do not find his wounds to be self inflicted.

20. The above finding in para 29 is corroborated by the appellants in their S.342 Cr.PC statements and evidence given under oath. Furthermore, the eye witnesses are all closely related to each other, had an enmity with Peeral over him winning the court case which enabled him to use the tube well over which admittedly the parties were in dispute and as such the complainant and eye witnesses had every reason to fix the appellants in a false case so that they could take over the disputed tube well which they have now done and as such their evidence must be treated with great caution as they are

interested witnesses and their evidence requires independent corroboration which appears to be lacking in this case. In this respect reliance is placed on **Ijaz Ahmad V The State** (2009 SCMR 99).

21. After considering the above discussion we do not find the eye witnesses to be reliable, confidence inspiring or truthful and we disbelieve their evidence. In this respect reliance is placed on **the case of Notice to Police Constable Khizer** (PLD 2019 SC 527) where it was held that the principle of *falsus in uno, falsus in omnibus* is applicable to criminal cases in Pakistan meaning in essence that if a witness is untruthful about one aspect of his evidence then his whole evidence is to be disregarded as under in the following terms at P.626 Para 21;

"Para 21. 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 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 deliberate falsehood on a material aspect shall, without any latitude, invariably be proceeded against for committing perjury".

22. Through out their defense case through cross examination of each PW, in their S.342 Cr.PC statements, in their evidence under oath and in their defense witness the appellants and acquitted co-accused have raised a consistent and believable defense of a counter case whereby the complainants side were the aggressors and the deceased was killed by someone from the complainants side which cannot be excluded out of hand and creates doubt in the prosecution case as was held in the case of **Sabir Ali V State** (SCMR 201 629) at P.637 para 11 in the following terms;

"It may be observed that section 342, Cr.P.C. empowers the Court to put questions to the accused, enabling him to explain the circumstances coming up against him in the evidence. The answers given by the accused can be taken into consideration by the Court. This way the accused is given an opportunity to explain his position. Such a statutory opportunity provided to him conforms

the requirement of golden rules of natural justice i.e. Audi Alterm Partem. Once an accused chooses to render any explanation, it becomes the duty of the Court to consider the same objectively. It is in this way that the provisions of the law are given full meaning: An outright rejection of his explanation, without giving due consideration, will render these provisions redundant and nugatory defeating the object and purpose of the law. The court is obliged to have regard for such purposive provisions of law. Thus consistent with the legislative intendment, the answers given by the accused in the course of questions put to him under section 342, Cr.P.C. wherever, warranted by the facts and circumstances of case, should be given due consideration and effect. The explanation of the appellant in this case when considered in juxtaposition with the entire evidence and background casts serious doubts about the correctness of the prosecution version."

23. The recovery of the hatchet from appellant Kouro we find inconsequential as there was no blood on it and probably in a farming community there are many hatchets lying around and there is no evidence that this particular hatchet either belonged to appellant Kouro or was the hatchet which was used to hit the deceased with. Furthermore, it does not appeal to reason, logic or commonsense that the appellant Kouro would only have nicked the ear of the deceased if we wanted to kill him instead he would have made at least one or two purposeful blows on the deceased causing him some serious injuries. Even otherwise its recovery is doubtful as allegedly the hatchet was recovered from Kouro at 11.15am on 09.06.2000 yet on the same day Kouro was admitted to hospital at 10.40 am which is **before** the hatchet was allegedly recovered from him.

24. With regard to the S.342 Cr.PC statement of appellant Peeral we note that no specific question was put to him about him personally firing on the deceased. Like wise with regard to the S.342 Cr.PC statement of appellant Kouro no specific question was put to him that he attacked the deceased with a hatchet and thereby injured his ear. It is settled by now that since such questions were not put to the appellants such pieces of evidence cannot be used to convict either of them. With regard to appellant Kouro we also note that two other co-accused having a similar role of allegedly giving hatchet blows to other members of the complainants party have been acquitted and thus in our view appellant Kouro is entitled to the same treatment. In this respect reliance is placed on **Zafar V State** (2018 SCMR 326).

25. In our view what transpires from the evidence of both the defense and

prosecution when read as a whole is that most probably at the date, time and place mentioned in the charge an altercation took place between both sides both of whom were armed and injuries resulted to each side and in the fight the deceased was shot and murdered but it cannot in our view based on the evidence be proven beyond a reasonable doubt that it was appellant Peeral who actually shot and murdered the deceased or that it was actually appellant Kouro would cut the deceased's ear with his hatchet or even that the appellants side were the aggressors.

26. The above discussion leads us to the conclusion that there are doubts in the prosecution case. It is a golden principle of criminal jurisprudence that the prosecution must prove its case beyond a reasonable doubt and that any doubt must go to the benefit of the accused and in this case as mentioned above we find doubts in the prosecution case and as such the benefit must go to the appellants. In this respect reliance is placed on the case of **Tariq Pervez V/s. The State** (1995 SCMR 1345), wherein the Supreme Court has held as under:-

"It is settled law that it is not necessary that there should be many circumstances creating doubts. **If there is a single 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." (bold added)

27. Thus, based on the above discussion we by extending the benefit of the doubt to the appellants acquit the appellants of the charge and allow the appeals. The impugned judgment is set aside and the confirmation reference is answered in the negative. Appellant Peeral shall be released from custody unless wanted in any other custody case whereas the bail bonds of appellant Kouro stand discharged.

28. The appeals and confirmation reference are disposed of in the above terms.