

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

**Criminal Appeal No. 107 of 2023**

Appellants	:	Through Mr. Wazeer Hussain Khoso, Advocate.
1. Ali Gohar son of Mumtaz Ali		
2. Mir Hazar son of Mumtaz Ali		
3. Qadir Bux son of Badaruddin @ Saddam (all in custody)		
 The State	:	 Through Mr. Ali Anwar Kandhro, Addl. Prosecutor General, Sindh.
 Complainant Siraj Ahmed son of Muneer Ahmed	:	 Through Mr. Muhammad Munsif Jan, Advocate a/w Complainant.
 Date of hearing	:	 26.05.2025
 Date of Judgment	:	 26.05.2025

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**JUDGMENT**

**MUHAMMAD SALEEM JESSAR. J-** By means of instant Cr. Appeal, the appellants have assailed judgment dated 20.12.2023 passed by learned Additional Sessions Judge. Mehar vide Sessions Case No.90/2022, re-The State v. Ali Gohar Jatoi & others, being outcome of FIR No. 83 of 2021 under Sections 302, 147, 148, 148, 506-(2) PPC registered at P.S. Radhan Station, whereby appellants Ali Gohar and Mir Hazar both sons of Mumtaz Ali Jatoi and Qadir Bux son of Badruddin @ Saddam were convicted U/S 265-H (ii), Cr,P.C for the offence punishable U/S 302 (b) r/w section 149 PPC and were sentenced to suffer R.I for life as Ta'zir besides to pay Rs.500,000/- (five lacs) each to the legal heirs of the deceased, as compensation as provided U/S 544-A, Cr,P.C. In case of non-payment of compensation amount, they were ordered to suffer S.I for six months more. They were also convicted U/S 265-H (ii), Cr,P.C for the offence punishable U/S 148, r/w section 149 PPC and sentenced to undergo R.I for three years and to pay fine of Rs.10,000/- each and in case of failure, they were ordered to suffer further S.I for one month.

Aforesaid sentences were ordered to run concurrently; however, benefit of section 382-B Cr.P.C was extended to them. However, the case against absconding accused Mumtaz Ali Jatoi and one unidentified accused was ordered to be kept on dormant file till their arrest or as and when they surrender themselves before the Court. Office was directed to issue fresh NBW against absconding accused.

2. Brief facts, relevant for disposal of instant Cr. Appeal, as per FIR lodged by complainant Siraj Ahmed Wadho on 20-11-2021 at 2330 hours at P.S. Radhan Station are; that certain amount of complainant's son Irshad Ali remained outstanding against accused Mumtaz Ali Jatoi in connection with certain transaction of cattle. Complainant's son used to demand the accused to pay the said outstanding amount. On 18-11-2021 at about 5-30 P.M. complainant's son Irshad Ali told the complainant that accused Mumtaz Ali Jatoi has called him at his Otak for paying outstanding amount and he was going towards his Otak. However, despite passing of sufficient time till midnight time when son of the complainant did not return to home, the complainant got worried and apprehended certain harm being caused to his son by accused Mumtaz Ali Jatoi. Therefore, he, his son Ali Murad and his brother Mashooque went towards village Ali Abad and reached at the Otak of Mumtaz Ali Jatoi at 1-00 A.M on 19-11-2021 where they saw that accused Mumtaz Ali S/o Muhammad Moosa as well as Ali Gohar and Meer Hazar, both sons of Mumtaz Ali, and Qadir Bux S/o Badaruddin alias Sadam, all by caste Jatoi and one unknown person were forcibly administering the poison and intoxicant things through bottle to complainant's son while lying him on a cot, whereas his son was vomiting and was shivering. The complainant party asked the accused not to commit such unfair and illegal act on which accused Mumtaz Ali Jatoi took out Pistol from his folder and while pointing the same towards them, asked to go away else they will be murdered. In the meantime in their presence the complainant's son Irshad Ali died away while shivering and crying. The complainant party called the villagers who reached there. Sufficient time was consumed there and then they shifted the dead body of his son towards their village. They intimated the police about the incident. The police arrived at his village took the dead body and after conducting autopsy the dead body was handed over to the complainant party. The complainant after completing funeral ceremony of his son appeared at police station and

got registered instant FIR against above named accused, in the terms stated above.

3. After usual investigation charge sheet was submitted before the concerned Court showing accused Ali Gohar s/o Mumtaz Ali, Meer Hazar S/o Mumtaz Ali and Qadir Bux S/o Badaruddin alias Sadam Jatoi to be in custody, while accused Mumtaz Ali s/o Muhammad Moosa Jatoi as absconder. After completing necessary formalities, accused Mumtaz Ali S/o Muhammad Moosa Jatoi was declared proclaimed offender.

4. A formal charge was framed against the accused vide Ex. 06. The accused denied the allegations of prosecution and claimed trial through their pleas recorded vide Ex. 07 to 09 respectively.

5. In order to prove its case against the accused, prosecution examined PW- Complainant Siraj Ahmed at Ex.11, who produced FIR as Ex.11-A. P.W-2, alleged eye witness, Ali Murad was examined at Ex. 12. PW-3 mashir Aijaz Ahmed was examined at Ex.13, who produced memo of dead body of deceased as Ex.13-A, memo of place of incident as Ex.13-B, memo of receiving last worn clothes of deceased as Ex.13-C, memo of place of incident as Ex.13-D, memo of arrest of accused Ali Gohar Jatoi, Meer Hazar Jatoi and Qadir Bux Jatoi as Ex.13-E. PW-4 Dr. Niaz Ali Qureshi was examined at Ex.14, who produced police letter as Ex.14-A, police inquest form as Ex.14-B, provisional post mortem report of deceased as Ex.14-C, copy of letter issued by Dr. to Chemical Examiner for chemical analysis as Ex.14-D, final post mortem report of deceased as Ex.14-E and original chemical report as Ex.14-F. P.W-5 ASI Khuda Bux Solangi was examined at Ex.15, who produced entry No.25 as Ex.15-A, lash-chakas form as Ex.15-B, police letter for postmortem as Ex.15-C, receipt regarding handing over the dead body as Ex.15-D, copy of entry No.19 as Ex.15-E, entry No.20 as Ex.15-F and case property of deceased in sealed condition as articles "15-1". PW-6 Tapedar Zulfiquar Ali Soomro was examined as Ex.16, who produced letter of SHO for preparing sketch of place of incident as Ex.16-A, sketch of wardhat as Ex.16-B. P.W-7 I.O/Inspector Mumtaz Ali Sarki was examined at Ex.17, who produced letter dated 20-11-2021 as Ex.17-A, departure entry for site inspection as Ex.17-B, arrival entry No.11 as Ex.17-C, police letter dated 29-11-2021 as Ex.17-D. Thereafter, ADPP closed the prosecution side vide his statement Ex.18.

6. Statements of accused under Section 342 Cr, P.C. were recorded on 07-10-2023 vide Ex.19 to 21 respectively, in which, they denied the prosecution allegations and claimed to be innocent. All the three accused persons further stated that the deceased was patient of epilepsy and was on medication for the treatment of seizure disorder of epilepsy coupled with medication of depression and anxiety and was alcoholic and he died due to natural death having chronic barbiturate and such facts were confirmed by the Medical Officer. The deceased died at his own house where his body was inspected by police. The accused claimed to be innocent. The accused in their defense got examined Dr. Rasheed Ahmed Pathan as DW-I at Ex.22.

7. After formulating points for determination, recording evidence of the prosecution witnesses and defence witness and hearing counsel for the parties, trial Court vide impugned judgment convicted the appellants as stated above. The appellants have challenged said judgment by preferring instant appeal.

8. I have heard arguments advanced by learned counsel for the appellants, learned APG appearing for the State and learned counsel for the complainant and have perused the material made available before me on the record.

9. Learned counsel for the convicts / appellants submitted that there was delay of about 46 hours in lodging FIR although the distance between the place of incident and P.S. Radhan Station was only one kilometer, but no explanation has been furnished by the complainant for such delay, which shows consultation and deliberation on the part of the complainant. Learned counsel further submitted that alleged eye-witnesses are closely related to the complainant as well as the deceased, as such, they are interested witnesses, hence their testimony is not of worth reliance. It was also submitted that although several villagers had gathered at the place of incident despite that no independent and disinterested witness of the vicinity has been cited or examined to support the prosecution case. Learned counsel further contended that there are various contradictions in the evidence of the complainant Siraj Ahmed and the alleged eye witnesses. Besides, there are also contradictions between ocular testimony and medical evidence. It was further submitted that no incriminating article has been recovered from the possession of the

accused. He further submitted that P.W/eye witness Mashooque Ali and mashir Aziz Ahmed who were important witnesses were not examined and given up by the prosecution as they might have not supported the case of prosecution. He further contended that the motive of incident has not been established. According to him, deceased was patient of epilepsy and was on medication for the treatment of seizure disorder of epilepsy coupled with medication of depression and anxiety and was alcoholic and he died due to having chronic barbiturate. It was further contended that neither bottle through which poisonous water was being allegedly administered to deceased was recovered by the police nor such evidence has been brought on record. It was further submitted that although the deceased took his last breath in the Otaq (out house) of accused Mumtaz, despite that his body was shifted by the complainant party to their own home without assigning any specific reason of not intimating the offence to police and the FIR was registered at a belated stage i.e. after a delay of about 46 hours. It was further submitted that it is also not understandable as to why the accused waited for the complainant party to come in odd hours of the night i.e. at 1.00 a.m. and then they by administering the poisonous substance to deceased caused his death. All these factors have not been explained by the prosecution plausibly which create serious doubts in the prosecution story and the prosecution has failed to establish the charge against the appellants beyond reasonable shadow of doubt.

10. Learned counsel for the appellants relied upon the cases reported as Amir Muhammad Khan v. the Stato (2023 SCMR 566), Ejaz Alhmed and others v. The Stale and others (2025 YLR 451), Abid Hussain and others v. The Slate (2016 YLR 1042), Sardar Bib and another v. Munir Ahmed and others (2017 SCMR 344), Muhanunad Rafique alias Feeqa v. The State (2019 SCMR 1068), Zalar v. The Stale and others (2018 SCMR 326) and case of Nazir Ahmed v. The Stata (2018 SCMR 326).

11. Learned Counsel for the complainant supported the impugned judgment and placed reliance on the cases reported as Faisal Mehmood and another v. The State and another (2010 SCMR 1025), Miss Najiba and another v. Ahmed Sultan alias Sattar and 2 others (2001 SCMR 988), Muhammad Iqbal and others v. Muhammad Akran and another (1996 SCMR 908), Zakir Khan and others v. The Slate (1995 SCMR 1793), Muhammad Iyas and others v. The State (2011 SCMR 460), Muhammad Hanif v. The State (PLD 1993 Supreme

Court 895), Naeem Akhtar and others v. The State and others (PLD 2003 Supreme Court 396) and case of Sh. Muhammad Amjad v. The State (PLD 2003 Supreme Court 704).

12. Learned Addl. P.G. also supported the impugned judgment and opposed the appeal.

13. It seems that most important point to be determined in instant case is; as to whether deceased Irshad Ali was murdered by the accused persons by means of administering forcibly poisoning substance to him, or as to whether his death was the result of suicide, or taking the barbiturates drug himself for a considerable time etc. or any other reason. From perusal of the evidence of the prosecution witnesses and other material available on the record, it appears that there are certain material admissions and contradictions in the evidence of alleged eye witnesses, so also there are discrepancies and lacunas in the prosecution case which put serious dents in the prosecution case and create doubts as to whether the deceased was murdered by the accused persons. In this regard, crucial statement is that of MLO Dr. Niaz Ali, who in his evidence deposed that on the basis of chemical report he issued final Medico legal certificate in which "Barbiturate Poison" was detected. In his cross-examination he admitted that **'Barbiturate' is not a poison**. He also admitted that **phenol Barbitone is also prescribed to newly born child** and that **Barbiturate are sedative drug usually used for the treatment of insomnia, anxiety and induction of coma and also used for fits and for treatment of epilepsy, acute migraine, headache depression**. He also admitted that **no poison/barbiturate was detected from the vomiting of deceased**. According to him, **after eating or drinking anything, it takes 6 to 8 hours to pass through stomach and small intestine, then enters into large intestine for further digestion**. He also admitted that **if any person is administered a poison and he vomits immediately, the instantaneous death will not be occurred and that sudden death will not be occurred due to barbiturate**. He also admitted that **in the instant case barbiturate was also detected from the liver of the deceased which, according to him, suggests that he was having chronic barbiturate since at least more than 6 months in his body**.

14. In view of abovesaid admissions made by the MLO, the defence plea that the deceased was not murdered by the accused and that his death occurred due to taking over dosage of barbiturate drug, is strengthened. This fact also gets support from the evidence of defence witness namely, Dr. Rasheed Ahmed Pathan, who in his evidence deposed that **'Barbiturate' is a poison which is taken as a drug but some time mostly with intention of committing suicide it is taken as over dosage.** According to him, **first barbiturate goes to the stomach, remains there at least for the four hours then it is absorbed to reach the liver after some time. It can also be used as a medicines for the hypnopsics to produce the sleep.** He further deposed that **no organ of the body will work after death instantaneously after taking any poison. The poison will not be detected in the liver if a person dies instantaneously by taking over dose. The fatal dose of barbiturate is 3 to 5 grams and fatal period means the person dies after taking the poison and fatal period of barbiturate poison is 1 to 2 days.** He further deposed that **he had gone through the FIR and the report of the MLO in the instant case and from perusal of the report of chemical analyzer it appears that the deceased was taking barbiturate since long time at least for 6 months that's why barbiturate was detected in the liver.** He further deposed that **long standing condition or problem is known as chronic and that the cynide poison is only poison which causes instantaneous death within 2 to 10 minutes.** He further deposed that **by way of vomiting the severity of poisoning is reduced.**

15. He was cross-examined by the ADPP appearing for the State; however, his evidence was not shaken and no material lacuna in his evidence came to surface. In fact, MLO, Dr. Niaz Ali also gave such opinion in his cross-examination which was elaborated by aforesaid defence witness.

16. The defence plea is also strengthened from the admissions and contradictions made by the prosecution witnesses, particularly the alleged eye-witnesses viz. the complainant and P.W. Ali Murad. It has come in the evidence of the complainant that he and other inmates of the house started getting worried from 10.15 p.m. and then he tried to contact his deceased son on his Cell Number but no reply was being received. P.W. Ali Murad, who is brother of deceased, deposed that **It was 11-45 of night when the complainant party left their village for proceeding to the village of accused.** It has also come in evidence that the Otak of the accused i.e. place of incident,

was at a walking distance from house of the complainant. It is also an admitted position that the complainant party reached the Otak of accused persons at about 01.00 AM. It is not understandable that when the distance between house of the complainant and the Otak of the accused was so short, then as to how it took the complainant party about one hour and 15 minutes in reaching Otak of the accused.

17. Besides, the complainant deposed that **when they reached the main gate of the Otak of the accused, they saw that the accused were forcibly administering poison and some intoxicating substance from a bottle to his deceased son, who was lying on a cot and was vomiting and shivering. He also deposed that when they reached the place of incident, the iron gate of the Otak was opened.**

18. P.W. Ali Murad deposed that **4/5 minutes had consumed when the accused laid down forcibly his deceased brother on the cot. After that accused Mumtaz Ali Jatoi took out Pistol and then complainant party raised hue and cry. He further admitted that they did not push the accused persons away from his deceased brother Irshad Ali during 4/5 minutes for saving him. He further admitted that as soon as the accused persons had administered something to his deceased brother, he started vomiting at once and he died instantaneously.**

19. It seems to be totally illogical and unnatural that despite having seen that the accused persons were forcibly trying to lay down the deceased on a cot and were administering poison to him, neither the complainant nor other two alleged eye witnesses, who were also closely related to the deceased being his brother and uncle respectively, made any resistance or tried to prevent the accused to commit murder of the deceased. This appears to be quite unnatural and illogical because it is natural thing that if anybody witnesses that his close blood-relation is being assassinated, then the love and affection shall compel him to rashly jump and try to save his blood-relation and shall prevent the culprits to commit murder of his close relative having blood relation. However, the story narrated by the complainant and P.W. Ali Murad, who are father and real brother of the deceased respectively, is totally against such natural attitude and conduct.



20. Not only this, but very strangely, as admitted by P.W. Ali Murad, although the accused persons remained in the Otak viz. place of incident for 10/15 minutes but during this period no conversation took place between the complainant party and the accused persons, although the complainant party remained present there and did not go outside the Otak during this period. The complainant also admitted that the iron main gate of the Otak i.e. place of incident, was open when they reached there. This also seems to be illogical, because had the accused intended to commit murder of the deceased by forcibly administering him poison, as alleged, then what was the fun in opening the main gate of the Otak and let the people, particularly the complainant party, to witness the alleged incident. This also creates serious doubts in the prosecution story.

21. There is also inordinate delay of about 46 hours in lodging the FIR, as the incident allegedly took place on 19.11.2021 at 01.00 am; however, the FIR was lodged on 20.11.2021 at 11.30 pm. No plausible explanation has been offered by the prosecution for such an inordinate delay.

22. The complainant in his cross-examination admitted that they did not approach the police to inform about the incident from **3:00 A.M. until 7:00 A.M.** He further admitted that he did not approach the police to lodge the FIR on **20-11-2021** in the morning but approached the police **at sunset** time for lodgment of the FIR. He admitted that perhaps he had approached the police at about **7:00 or 8:00 P.M.**

23. The compliant took the plea that he did not have the number of police station, therefore, he could not inform the police on phone immediately after the incident. This plea is also absurd in view of the fact that police station was not far away from the house of the complainant which is evident from the admission made by P.W. Ali Murad in his cross-examination to the effect that **they could approach the Police station Radhan within 5 minutes from their house on Motorcycle.**

24. Even after receiving dead body of the deceased the complainant party did not approach the police immediately and they started funeral ceremony. There were several relatives of the complainant including his real son Ali Murad and brother Mashooq Ali, as such they could have made arrangement for funeral and burial and the complainant or, for that matter, any of the two

other alleged eye-witnesses namely, P.W. Ali Murad and P.W. Mashooq Ali, could have lodged the FIR. Not only this, but even after burial of the deceased the complainant did not go immediately to the police station but waited till 08:00 pm. He himself admitted in his cross-examination that **he** did not approach the police to lodge the FIR on **20-11-2021** i.e. after burial ceremony, in the morning but approached the police **at sunset** time for lodgment of the FIR. According to him, perhaps he had approached the police at about **7:00 or 8:00 P.M.**

25. From above it is apparent that the FIR was lodged after an inordinate delay without any plausible reason and justification.

26. Needless to emphasize that due to inordinate and unexplained delay in lodging the FIR, the possibility and probability of consultation and deliberation for implication of the accused cannot be ruled out.

27. On the point of delay in lodging FIR, the Hon'ble Supreme Court in the case of Ayub Masih v. The State (PLD 2002 SC 1048) held as under:-

*“The unexplained delay in lodging the F.I.R. coupled with the presence of the elders of the area at the time of recording of F.I.R. leads to the inescapable conclusion that the F.I.R. was recorded after consultation and deliberation. The possibility of fabrication of a story and false implication thus cannot be excluded altogether. **Unexplained inordinate delay in lodging the F.I.R. is an intriguing circumstance which tarnishes the authenticity of the F.I.R., casts a cloud of doubt on the entire prosecution case and is to be taken into consideration while evaluating the prosecution evidence.** It is true that unexplained delay in lodging the F.I.R. is not fatal by itself and is immaterial when the prosecution evidence is strong enough to sustain conviction but it becomes significant where the prosecution evidence and other circumstances of the case tend to tilt the balance in favour of the accused.”*

28. In the case of Sabir Hussain V. The State (2022 YLR 173), it was held as under:

*“9. The complainant has knowledge about missing of the deceased on 13.07.2019, but despite that, the complainant did not lodge the report, and he lodged the report on 16.07.2019 at 10:30 a.m. Nothing came on record about lodgment of the report of missing of the deceased by the complainant in Levies Thana. It has also come on record that the dead body of the deceased was recovered from the water bank of the Madrasa on 16.07.2019 at 6:30 a.m., and the FIR was lodged on the same date at 10:30 a.m., with a delay of four hours from the recovery of dead body of the deceased. The lodgment of the FIR with delay by the complainant create reasonable doubt in the prosecution case. Reliance in this behalf is placed in the case of Mehmood Ahmed and 3 others v. The State and another (1995 SCMR 127).”*

29. Besides above, there are also certain other factors which create doubts in the prosecution version. For instance; the complainant in his evidence

deposed that his deceased son used to leave the house **routinely**, and it was not **uncommon** for him to come back home after 10:00 P.M. This statement is belied by P.W. Ali Murad, who also claims to have witnessed the incident and is also real brother of the deceased, in his evidence he deposed, "My brother did not remain absent from the house in odd night. It was routine of my brother to remain present inside the house after sun set."

30. Likewise, P.W. Ali Murad has made self-contradictory statements in respect of recording his 161 Cr. P.C. statement.

31. At one stage in his cross-examination he deposed, "On 21-11-2021 police recorded my statement U/S 161 Cr,P.C at P.S." He also deposed, "SHO Radhan called me on 21-11-2021 for recording my statement." However, in the same cross-examination he admitted, "It is a fact that in my statement U/S 161 Cr. P.C. the date is shown as 19-11-2021 at 5-30 P.M instead of 18-11-2021 as deposed today. He further admitted, "It is a fact that copy of statement U/S 161 Cr. P.C. shows the date 21-10-2021 instead of 21-11-2021 which deposed before this Court today." He also admitted, "ASI Khuda Bux wrote my statement on 19-11-2021. Again says "I do not know whether ASI Khuda Bux wrote my statement then and there or not."

32. Such attitude of an (alleged) eye-witness puts clouds on his credibility and veracity.

33. On minutely scrutinizing the medical evidence viz.a.viz. the ocular testimony, it is evident that there are also material and glaring contradictions therein.

34. As per ocular testimony, poison was administered to the deceased **forcibly** by accused. Such assertion is belied by the medical evidence as there were no marks of violence, nor was there any swelling, injury or fracture on the body of the deceased. As per ocular evidence, deceased **vomited immediately** after he was allegedly administered poison by the accused and he **died instantly**. This is also contradicted by the medical evidence as, according to chemical analyzing report, no poison was found in vomit, besides the MLO Dr. Niaz Ali also admitted in his cross-examination that barbiturates do not cause instantaneous death. It is also an admitted position, as per ocular testimony, that as soon as the accused administered poisoning substance to

the deceased, he immediately vomited and instantaneously died. This is also contradicted by medical evidence, because, as per chemical report, barbiturates were also found in liver and the MLO admitted in clear terms that if barbiturates are found in liver, then it would be case of chronically using the barbiturates over time. As per ocular evidence, the alleged eye-witnesses observed the administering of poisoning substance from a distance of 10 to 15 feet. Even the complainant admitted that he himself guessed that substance being administered to the deceased by the accused was poison.

35. From this, it is crystal clear that there are material contradictions between the ocular version and medical evidence which create doubt in the prosecution case. In this connection reliance can be placed upon the cases of *Muhammad Ali Vs. The State* reported in 2015 SCMR 137 and *Nadeem alias Kala Vs. The State* reported in 2018 SCMR 153. The *ratio decidendi* of these cases is that where contradiction between the ocular testimony and the medical evidence occurs, benefit thereof should be given to the accused.

36. It seems that the motive is also shrouded in mystery as no tangible material was placed by the prosecution before the trial Court during the course of recording evidence in order to substantiate the motive for committing murder of the deceased by the accused persons. The complainant in his cross-examination admitted that he had not mentioned in the FIR about the **outstanding** amount of his **deceased son** against accused Mumtaz Ali. He also admitted that he had also not mentioned in the **FIR** how many times the deceased had **demande d the outstanding amount** from accused Mumtaz Ali. P.W. Ali Murad also did not specifically stated as to how much amount of his deceased brother and for what period was outstanding against the accused Mumtaz Ali Jatoi. It may be observed that if motive is alleged in the case, then the prosecution is duty-bound to prove the same by producing tangible evidence / material.

37. In this connection reference may be made to the case of *Shewaiz Rasool alias Shabi Vs. The State* reported in 2019 SCMR 1448, wherein Honorable Supreme Court acquitted the accused on consideration of various grounds including **lack of motive**.

38. In another case reported as MUHAMMAD DIN and others Vs. *The STATE and others* (2018 YLR 580 [Lahore]), Division Bench of Lahore High Court held as under:

*“Even in such a situation, the Court is still required to go through the prosecution case and if comes across any feature which goes on to establish the existence of some doubt regarding the missing of an essential constituent ingredient of the crime like in the cases of Qatl-i-amd the requisite intention and knowledge or the lack of motive, its benefit ought to be extended to accused. It needs no mention that the entitlement of an accused to the benefits arising out of above work out is not a matter of grace but as of right.”*

39. It is also an admitted position that no recovery of incriminating article, particularly of the bottle through which the accused persons were allegedly administering poisoning substance to the deceased, has been recovered from the possession of the accused or from the place of incident.

40. Another significant lacuna in the prosecution case is that although it has been alleged by the complainant in the FIR that his brother Mashooq Ali accompanied him to the Otak of accused Mumtaz Ali Jatoi and also witnessed the incident; however, very strangely neither such an important alleged eye-witness, nor the mashir Aziz Ahmed were examined by the prosecution and were given up. It is also an admitted position that immediately after the incident and before reaching the police at the spot, several villagers had gathered there but none of them was examined and cited as witness. The witnesses examined by the prosecution are very closely related to the deceased. It is settled principle of law that despite availability of essential witnesses, non-examination of such witnesses in the case gives an inference that in case such witnesses had been examined, they would not have supported the prosecution case, as envisaged under Article 129(g) of Qanoon-e-Shahadat Order, 1984.

41. In this connection, reference may be made to a decision of Honourable Supreme Court given in the case of *Abdul Ghani* Vs. *The State* reported in **2022 S C M R 2121**, wherein a Full Bench of Honourable Supreme Court held as under:

*“Thereafter, according to Noor Ullah Khan, S.I. (PW-4) on 08.06.2011 he sent the sample parcels to the office of Chemical Examiner but according to the report of Chemical Examiner the sample parcels were delivered there by one Head Constable No. 25 on 10.06.2011 but the said Head Constable was not produced by the prosecution during the trial. The learned state counsel could not*

*explain as to why the said Head Constable was not produced to confirm the safe transmission of the sample parcels to the office of Chemical Examiner so an adverse presumption under Article 129(g) of the Qanun-e-Shahadat Order, 1984 can be drawn against that person that he is not supporting the prosecution case. Non-production of the said Head Constable No. 25 indicates that safe transmission has also not been established by the prosecution. It has already been held by this Court in the cases of Amjad Ali v. The State (2012 SCMR 577), Ikramullah and others v. The State (2015 SCMR 1002), Taimoor Khan and another v. The State and another (2016 SCMR 621), The State through Regional Director ANF v. Imam Bakhsh and others (2018 SCMR 2039) and Khair-ul-Bashar v. The State (2019 SCMR 930) that in a case containing the above mentioned defect on the part of the prosecution, it cannot be held with any degree of certainty that the prosecution had succeeded in establishing its case against an accused person beyond the shadow of doubt."*

42. Prior to above decision, in the case of *Bashir Ahmed alias Manu vs. The State* reported in 1996 SCMR 308 it was held by Honorable Supreme Court that *despite presence of natural witnesses on the spot they were not produced in support of the occurrence an adverse inference under Article 129(g) of Qanun-e-Shahadat Order, could easily be drawn that had they been examined, they would not have supported the prosecution version.* In another case reported as *Mohammad Shafi vs. Tahirur Rehman* (1972 SCMR 144) it was held that *large number of persons had gathered at the place of occurrence but prosecution failing to produce single disinterested Witness in support of its case, therefore no implicit reliance could be placed on the evidence of interested eye-witnesses.*

43. It is a well settled principle of law that the prosecution is bound under the law to prove its case against the accused beyond any shadow of reasonable doubt. It has also been held by the Superior Courts that conviction must be based and founded on unimpeachable evidence and certainty of guilt, and any doubt arising in the prosecution case must be resolved in favour of the accused. In instant case the prosecution does not seem to have proved its allegations against the convicts/appellants by producing unimpeachable evidence, thus doubts have been created in the prosecution version. In the case reported as *Wazir Mohammad Vs. The State* (1992 SCMR 1134) it was held by Honourable Supreme Court as under:

*"In the criminal trial whereas it is the duty of the prosecution to prove its case against the accused to the hilt, but no such duty is cast upon the accused, he has only to create doubt in the case of the prosecution."*

44. In another case reported as Shamoon alias Shamma Vs. The State (1995 SCMR 1377) it was held by Honourable Supreme Court as under:

*"The prosecution must prove its case against the accused beyond reasonable doubts irrespective of any plea raised by the accused in his defence. Failure of prosecution to prove the case against the accused, entitles the accused to an acquittal."*

45. Needless to emphasize the well settled principle of law that the accused is entitled to be extended benefit of doubt as a matter of right and not as a grace or concession. In present case, there are various admissions in evidence of the prosecution witnesses which created doubts and put dents in the prosecution case. Even an accused cannot be deprived of benefit of doubt merely because there is only one circumstance which creates doubt in the prosecution story. In the case reported as Tariq Pervaiz vs. The State 1995 SCMR 1345 the Honourable Supreme Court held as under :-

*"The concept of benefit of doubt to an accused person is deep-rooted in our country. For giving him benefit of doubt, 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."*

46. For the forgoing reasons, by a short order dated 26.05.2025 instant Criminal Appeal bearing No. 107 of 2023 was allowed. Consequently, the impugned judgment dated 20.12.2023 passed by the learned 1<sup>st</sup> Additional Sessions Judge. Mehar (trial Court) vide Sessions Case No.90/2022, re-The State v. Ali Gohar Jatoi & others, was set aside to the extent of the appellants Ali Gohar son of Mumtaz Ali, Mir Hazar son of Mumtaz Ali and Qadir Bux son of Badaruddin @ Saddam, all by caste Jatoi; hence, the appellants were acquitted of the charge. They were ordered to be released forthwith, if not required to be detained in any other case. The order of the trial court in respect of absconding accused Mumtaz Ali Jatoi shall remain intact.

**JUDGE**

Larkana

Dated. 26.05.2025

Approved for Reporting