

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Syed Fiaz ul Hasan Shah

Criminal Accountability Appeal No.1 of 2003

Qurban Ali Jatoi S/o Karim Bakhsh Jatoi

Versus

The STATE

Criminal Accountability Appeal No.2 of 2003

Mushtaq Ali Jatoi and 4 others

Versus

The STATE and another

Criminal Revision Application No.22 of 2003

Hisamuddin and 2 others

Versus

The STATE and another

APPELLANT : Qurban Ali Jatoi s/o Karim Bux Jatoi
in Appeal No.1/2003 Through Syed Mehmood Alam Rizvi,
Advocate.

APPELLANTS : 1. Mushtaq Ali Jatoi s/o Qurban Ali Jatoi,
in Appeal No.2/2003 2. Mst.Badshahzadi w/o Mushtaq Ali Jatoi,
3. Zahid Ali Jatoi s/o Qurban Ali Jatoi,
4. Karim Bux Jatoi s/o Qurban Ali Jatoi &
5. Moula Bux Jatoi s/o Qurban Ali Jatoi
Through Mr. Raj Ali Wahid Kunwar,
Advocate.

APPLICANTS : 1. Hisamuddin s/o Moulvi Shahabuddin
in Crl. Rev. Appln. 2. Naseer Ahmed s/o Rasool Bux Sheikh &
No.22/2003 3. Ali Mohammad s/o Late Wattar Khan
Jatoi
Through Mr. Abdul Majeed Khoso,
Advocate.

RESPONDENT / : National Accountability Bureau (NAB)
THE STATE Through Syed Khurram Kamal,
Special Prosecutor.

Dates of Hearing : 15.01.2026, 29.01.2026, 10.02.2026 &
11.02.2026

Date of Short Order : 11.02.2026

J U D G M E N T

Syed Fiaz ul Hassan Shah, J: - Through the instant Crl. Accountability Appeals No.1 and 2 of 2003 and Cr. Revision Application No.22 of 2023, the Appellants have challenged the Judgment dated 11.01.2003 (“**Impugned Judgment**”) passed by the learned Judge, Accountability Court No.V, Sindh at Karachi (“**Trial Court**”) in NAB Reference No.2 of 2001 filed by the National Accountability Bureau (“**NAB**”), wherein the Appellant Qurban Ali Jatoi son of Karim Bux Jatoi held guilty for the commission of offence of corruption and corrupt practices as defined under section 9(a)(v) of National Accountability Ordinance, 1999 (“**NAO**”), he was convicted and sentenced to suffer Rigorous Imprisonment (“**R.I**”) for five (05) years and to pay fine of Rs.10,00,000/- and in case of default, he would further undergo Simple Imprisonment for one (01) year as well as following properties were confiscated in favor of Government of Pakistan:

1. Agricultural land measuring 21-10 acres situated at Vikia Sanghi Larkana;
2. Agricultural land measuring 19-10 acres situated at Vikia Sanghi Larkana;
3. Sapna Construct Company;
4. Sapna Inn Hotel situated at Station Road, Larkana;
5. Sindhu Ice Factory situated at Bakrani Road, Larkana;
6. Sapna Ice Factory situated at Latif Colony, Larkana;
7. Sapna Rice Mills;
8. House at Dari Mohallah, Larkana;
9. House at Mai Kolachi Road, Karachi; and
10. Flats and parking area 1400 sq. yards situated at Station Road, Larkana.

Furthermore, he stood disqualified for seeking or being elected, appointed or nominated as Member of representative of any public office or Government or any statutory or local authority and prohibited not be allowed to apply or be sanctioned financial facility in the form of any loan by any bank or financial institutions controlled by the government for a period of 10 years.

2. The facts of the prosecution case were that the Chairman NAB received information against Qurban Ali Jatoi, an ordinary Store Clerk at the Field Store, WAPDA, Larkana that he had accumulated movable and immovable properties (assets) and other assets disproportionate to his known sources of income. The matter was then referred to the FIA, Karachi Zone, where Muhammad Akbar Baloch, Assistant Director FIA, conducted an inquiry and collected details of the properties owned, controlled, and possessed by the Appellant Qurban Ali Jatoi, his dependents or ostensible owner and submitted his police report under section 173, Cr. P.C. with opinion that the accused had amassed wealth and properties hide in the names of his sons and others overtly disproportionate to his lawful income.

3. Subsequently, the Appellant Qurban Ali Jatoi was charged as Accused for the commission of offence under section 9(v) NAO for accumulation of assets by corruption and corrupt practices. Copies of the case record were supplied to the appellant under Section 265-C, Cr. P. C. A charge was framed on 29.03.2001 at Exh.6 and Exh.6/A against Qurban Ali Jatoi, to which he pleaded not guilty and claimed trial at Exh.7.

4. The prosecution examined twenty-two (22) witnesses to prove the case, these witnesses also produced documents and record Exh.10 to Exh.336. The prosecution then closed its side at Exh.339. The statement of the appellant was recorded under Section 342, Cr. P.C. at Exh.340, and he produced four (04) defence witnesses at Exh.389 to Exh.396. The appellant did not examine himself on oath under Section 340(2), Cr.P.C. After hearing both the parties, the trial Court convicted the appellant, which judgment has impugned before us.

5. Mr. Syed Mehmood Alam Rizvi, learned counsel appearing on behalf of appellant Qurban Ali Jatoy in CrI. Acct. Appeal No.2/2003, argued that the NAB Reference inherently suffered with serious defects as the case was investigated and charged against only one person i.e. Qurban Ali Jatoy S/o Karim Bux Jatoy for accumulation of assets beyond his known sources while properties admittedly stood in favor of sons of Qurban Ali Jatoy or their legitimate companies or third party being co-sharers and none of them was joined during the investigation and even they have not been charged and therefore the impugned Judgment for confiscation of such properties is illegal and ultra vires. He further contended that the absence of alleged ostensible owners of the subject properties during trial was conveniently ignored by the trial Court and thus the trial Court has committed serious illegality which is liable to be interfered with by this Court. He further contended that there is nothing in the investigation report and even the prosecutorial decision was silent as to how and in what manner, the questionable assets were accumulated through legal or illegal means and there was no iota of evidence that these assets were purchased by Qurban Ali Jatoy

and that too from illicit funds. He further contended that the trial Court passed the impugned Judgment while relied upon the investigation report prepared by the Investigating Officer of the case and without appreciating record and appraisal of evidence and necessary findings. He further contended that sons of late Qurban Ali Jatoi had voluntarily filed application to join them but the said application was dismissed by the trial court and recorded the evidence in the absence of beneficiary or alleged ostensible owners while after filing appeal before the High Court, such ostensible owners / sons of Late Qurban Ali Jatoi were allowed to give evidence and at such time period, only the evidence of Investigation Officer was left before the trial Court, therefore, at that belated stage, the appellants were only cross-examined the Investigating Officer. He urged that due to constraint circumstances, the appellants had not examined PWs, except Investigating Officer of the case and eventually there was no evidence that the subject properties were purchased from the illicit funds allegedly provided by the accused Qurban Ali Jatoi, hence the impugned judgment is liable to be set aside.

6. Mr. Raj Ali Wahid Kunwar, learned counsel appearing on behalf of the appellants / legal heirs of accused Qurban Ali Jatoi in Crl. Acct. Appeal No.1/2003, followed same line of arguments as argued by Mr. Mehmood Alam Rizvi. He contended that accused Qurban Ali Jatoi was implicated in the case while alleged that 24 properties acquired by his legal heirs or third party, who were not joined during the course of investigation or even at the time of framing of charge and only on the last stage, owners of the properties / appellants appeared as a defence witnesses and the NAB prosecution has failed to discharge its burden.

He has further contended that if the prosecution case is encircling around the appellant Qurban Ali Jatoi, but the NAB had attempted to demonstrate that at the time of purchasing of the properties, the ages of appellants Moula Bux Jatoi and Mushtaq Ali Jatoi were 18 to 24 years and it was presumed that the funds were provided for the said purchase of the properties by the deceased accused Qurban Ali Jatoi, father of the appellants and the NAB could not produce any cogent evidence in order to prove its allegations. Per learned counsel, the appellants were voluntarily appeared themselves before the NAB, which shows their fairness.

7. Mr. Abdul Majeed Khoso, learned counsel appearing on behalf of the Applicants in CrI. Revision Application No.22/2003, has contended that PW-8 Khuda Bux Abbasi, who was Income Tax Officer at Larkana, during his cross-examination has admitted that the applicants are the owners of 70% rights in the property i.e. Sapna Hotel and as per the record of Income Tax authorities, the sources of income was issued by ITO Larkana through a certificate available at page 1017 of second part of the paper book, which establishes that the applicants in revision application had independent sources of income in this property and have no connection or concern with Qurban Ali Jatoi. He has further submitted that Sapna Hotel was formed after taking loan from Industrial Development Bank of Pakistan (“**IDBP**”) and earning and profits coming out from Sapna Hotel were reimbursed towards repayment of such loan. Per learned counsel, the trial Court vide its order dated 23.05.2022 directed the Chairman NAB about the non-joining of legal heirs of accused Qurban Ali Jatoi and third party in

those names' properties stand registered, despite the fact that the Chairman NAB was not joined the owners of the properties, which were made part in the present reference before the trial Court. He has lastly argued that the applicants were registered contractors at the advance age of 70 years and had independent source of income and, therefore, they obtained the property at the age of 24 years i.e. after seven years of civil contract work, however, such fact was completely ignored by the trial Court.

8. Conversely, Syed Khurram Kamal, learned Special Prosecutor appearing on behalf of the NAB, has supported the impugned judgment passed by the trial Court after proper appraisal of evidence and submitted that the appellants have failed to give money trail, as the properties admittedly purchased by appellants in their names when they were about 18 to 24 years old. He has prayed that instant appeals may be dismissed.

9. We have heard the learned counsel for the appellants and learned Special Prosecutor for NAB and with their assistance minutely perused the record of the case.

10. The Counsels for Appellants encapsulated arguments on two points one that trial Court convicted on the basis of presumption when no evidence was available against Appellants and second without joining the sons (alleged dependent) or third-party ostensible owners during inquiry or trial their properties were confiscated.

11. Before indulging into the merits of the case and to record findings, we deem it appropriate to discuss intricate concept relating to

the cases of assets accumulated beyond known resources or in other words ownership or control of properties disproportionate to income earned by a public office holder or public servant or his dependent, or any third party as an ostensible owner. It is foundational principle of Criminal jurisprudence in Common Law jurisdictions that the prosecution is bound to prove its case against the accused beyond reasonable doubt and this doctrine of law is attached with another foundational principle often referred to as the "*golden thread*" of criminal law that an accused is presumed innocent until proven guilty and the burden never shifts to the Accused to prove their innocence.

12. The knotty cases of assets allegedly accumulated from illicit funds originate from a complicated challenge, as prosecution case commences with a presumption. The Court does not waive the mandatory foundational rule of criminal law; rather, it strictly adheres to it and stipulate that the Prosecution must first discharge its burden to prove primarily existence of assets, prove of ownership either directly in the name of the accused or indirectly through his dependents or ostensible owner, and secondarily prove the relevancy of facts such as the date of acquisition of assets and the value of assets at the relevant point in time of an accused or beneficiary defined under section 5(d), 5(e), or 5(n) NAO and nobody else being alien to the statutory definition. Therefore, the first contention of the learned Counsels for Appellants that conviction based on presumption is repelled out and further reasons elaborated in the concluding paragraphs.

13. The second legal contention raised by the learned Counsels find no merits too. Contention that prosecution had set up case that Qurban

Ali Jatoi being clerk (public servant) was not financially sound and assets accumulated in the name of his sons were actually purchased by him and were disproportionate to his legitimize income and failed to join dependent i.e. his sons Moula Bux Jatoi, Mushtaq Ali Jatoi, Karim Bux Jatoi or daughter in law Badshahzadi or third party (business partners). While the dependent or alleged beneficiary voluntarily appeared before trial Court which application was not allowed and eventually High Court of Sindh in appeal allowed application of alleged dependent and this was the Stage when evidence of all prosecution witnesses was completed except the Investigation Officer and further ignored its own Order about such infirmity communicated to the Chairman, NAB.

14. In our view there are various reasons. Firstly, in cases concerning assets accumulated beyond known resources, the Investigation Officer is generally treated as a material witness. This is because such matters revolve around the undisputed fact that the property stands in the name of the accused, his dependent, or an ostensible owner and the prosecution has to prove link of an accused and the dependent or ostensible owner in whose name assets from illicit funds stand. Secondly, in presence of accused and in the absence of direct charge against such dependents, the requirement of recording of evidence does not apply to the dependent or ostensible owner. Thirdly, a legal course still *provided* under sections 340 & 342 to such dependents, beneficiaries, or ostensible owners through Accused or even to appear as Defence Witness to disprove such presume facts through reasonable explanation of their legitimize funds or prove

money trail. Further legal course exists under section 540 Cr.P.C., to call any witness or to re-examine any prosecution witness who may be material to rebut evidence of prosecution or may create a dent in the case of prosecution to favor defence. When confronted with this position, learned counsel conceded that no such procedure either to appear as defence witness or to re-examine prosecution witness was adopted before the trial Court except that Mushtaq Ali Jatoi and his DW. The appellants, however, had cross-examined the Investigation Officer extensively, yet failed to elicit anything that could undermine the prosecution's case. No prejudice was caused to the appellants by the evidence of other prosecution witnesses, as they merely produced records pertaining to the properties which were undisputed documents which do not require to be proved. Moreover, the appellants did not produce any evidence in rebuttal or establish legitimate sources of funds or consideration under Section 340(2) Cr.P.C, despite having full opportunity to do so. Prosecution did not array these sons as Accused as it was their case that sons were dependent upon father Qurban Ali Jatoi when assets were purchased into their names. Consequently, the contention raised by learned counsel stands rejected.

15. The NAB prosecution has claimed following properties accumulated by Qurban Ali Jatoi through dependent beyond his pecuniary known source of income, which held in his name or in the name of his sons/family:

S.No	Property Description	Owner's Name
1.	Agricultural land measuring 21-10 acres situated at Vikia Sanghi Larkana	Moula Bux Jatoi

2.	Agricultural land measuring 19-10 acres situated at Vikia Sanghi Larkana	Mushtaq Ali Jatoi
3.	Sapna Construction Company	Mushtaq Ali Jatoi & his Wife Mst.Badshahzadi
4.	Sapna Inn Hotel situated at Station Road, Larkana	Mushtaq Ali Jatoi
5.	Sindhu Ice Factory at Bakrani Road, Larkana	Mst.Badshahzadi
6.	Sapna Ice Factory at Latif Colony, Larkana	Mushtaq Ali Jatoi
7.	Sapna Rice Mills	Mushtaq Ali Jatoi
8.	House at Chanti Chowk, Larkana	M/s.Ghulam Qadir Jatoi, Hidayatullah Jatoi & Ghulam Rasool Jatoi
9.	House at Dhari Mohallah, Larkana	Mushtaq Ali Jatoi
10.	House at Mai Kolachi Road, Karachi	Mushtaq Ali Jatoi
11.	Residential house in Village Hassu Jatoi, Larkana	Qurban Ali Jatoi
12.	Flats and parking area 1400 square yards situated at Station Road, Larkana	Mushtaq Ali Jatoi
13.	Agricultural land measuring 16-18 acres situated at Station Road, Larkana	Qurban Ali Jatoi

16. The learned Trial Court after hearing the parties has passed impugned judgment and out of aforesaid properties, following properties were confiscated:

S.No.	Property Description
1.	Agricultural land measuring 21-10 acres situated at Vikia Sanghi Larkana
2.	Agricultural land measuring 19-10 acres situated at Vikia Sanghi Larkana
3.	Sapna Construction Company
4.	Sapna Inn Hotel situated at Station Road, Larkana
5.	Sindhu Ice Factory at Bakrani Road, Larkana
6.	Sapna Ice Factory, Latif Colony, Larkana
7.	Sapna Rice Mills
8.	House at Dhari Mohallah, Larkana

9.	House at Mai Kolachi Road, Karachi
10.	Flats and parking area 1400 square yards situated at Station Road, Larkana

17. Adverting towards merit of the case, the prosecution claimed that Qurban Ali Jatoi son of Karim Bux Jatoi and his sons Moula Bux Jatoi, Mushtaq Ali Jatoi, his wife Badshahzadi and others accumulated the properties during the period commencing from **1985 to 2000**. It is admitted fact that Qurban Ali Jatoi was a public servant and worked as a clerk in WAPDA, Larkana. Notwithstanding the fact that the NAB Prosecution has not brought forward the details of income of Appellant Qurban Ali Jatoi for the period of 1985 to 2000, but it is admitted fact that salary as ordinary clerk could hardly meet up with the financial requirement of monthly expenses and 10 expensive properties could not be purchased by the Appellant through his legitimate funds or income. The absence of such income chart does not adversely affect the Appellants as they pleaded that the properties were purchased by the sons from their income and thus directly under onus of burden to explain plausibly such claim that at such young age of 18 to 20 years they had adequate independent source of income.

18. The table chart of relevancy of facts i.e. date of acquisition of properties as brought forward by prosecution and details of funds paid for, are as under:

S.No	Property Description	Date of Acquisition	Valued at Pak Rupees
1	Plot bearing CS No.2041/31, Station Road Larkana measuring 311.10 sq. yards in the name of Zahid Ali Jatoi sold to Mola Bux Jatoi vide Sale Deed No.1912 dated 21.09.1991 mutated dated 07.10.1991 at Exh.38	28.06.1990	50,000/-

2	Agricultural land measuring 21-10 acres situated at Vikia Sanghi Larkana in the name of Moola Bux Jatoi Exh.70 & 73	15.01.1992	20,000/-
3	Agricultural land measuring 19-10 acres situated at Vikia Sanghi Larkana in the name of Mushtaq Ali Jatoi Exh.70 & 72	14.04.1986	20,000/-
4	Sindhu Ice Factory, Survey No.68,69 FU-18, at Bakrani Road, Larkana measuring 5000 Sq feet in the name of Mst.Badshahzadi and Kareem Bux Jatoi Exh.64 & 75	17.12.1998	4,50,000/-
5	Sapna Inn Hotel situated at Survey No.1475/1 Station Road, Larkana in the name of Moula Bux Jatoi Exh.34	28.06.1990	20,000/-
6	Sapna Rice Mills Old name Naveed Rice Mill, land Survey No.59,60& 75, Deh Valeed, Miro Khan Road, Larkana measuring 03 Acers in the name of Mushtaq Ali Jatoi Exh.283	07.07.1995	33,50,000/-
7	Sapna Ice Factory, Survey No.397, Deh Waj Nabi, Tappo Baqapur, Nazar Road, Latif Colony, Larkana measuring 4500 sq feet through Sole Proprietor Mushtaq Ali Jatoi Exh.78 & 80 to 90	29.11.1992	25,000/-
8	Sapna Construction Company, Plot bearing CS No.2041/30 Station Road Larkana measuring 2800 or 311 sq. yards in the name of Mushtaq Ali Jatoi Exh.55&56	01.09.1994	1,30,000/-
9	House at Mai Kolachi Road, Karachi		
10	Flats and parking area 1400 square yards situated at Station Road, Larkana		

19. **House Dhari Mohallah bearing C.S. No.2041/31, Station Road Larkana measuring 311.10 sq. yards** was purchased in the name of Zahid Ali Jatoi on 28.06.1991 against consideration of Rs.50,000/- vide Sale Deed at Exh. 384 who further sold to Mola Bux Jatoi vide Sale Deed No.1912 dated 21.09.1991 mutated dated 07.10.1991 at Exh.38 purchased by Zahid Ali Jatoi on 28.06.1990 for Rs.50,000/-. No explanation had given by Zahid Ali Jatoi to demonstrate that in the 1991 he had legitimate funds to purchase said property. Therefore, the trial Court has rightly confiscated this property. We have recorded findings that all the properties in the name of dependent of Qurban Ali Jatoi are purchased from illicit funds with the exception that Mushtaq Ali Jatoi rebutted evidence of prosecution and established that since July 1992 he had independent source of income

from his companies. However, present property was purchased in the year 1986 and admittedly when Mushtaq Ali Jatoi was doing nothing, therefore, the order of trial Court to confiscate this property is **affirmed.**

20. **Agricultural land measuring 19-10 acres situated at Vikia**

Sanghi Larkana: Prosecution produced PW-6 Zulfiqar Ali, Revenue Mukhtiarkar, Larkana who produced Deh Form-VII/B in respect of the agricultural land measuring 19-10 acres situated at Vikia Sanghi, Larkana in favour of Moula Bux Jatoi s/o Qurban Ali Jatoi. According to said witness, the said land was purchased by Moula Bux Jatoi on 14.04.1986 against consideration of Rs.20,000/- at Exh.70. PW-6 produced Deh Form VII-B in respect of same agricultural land purchased on 14.04.1986 and confirmed that it stands in the name of Mushtaq Ali Jatoi, which was valued by PW-22 at Rs.45,095/- on 14.04.1986.

21. **Agricultural Land measuring 21-10 acres situated at Vikia**

Sanghi, Larkana: PW-6 Zulfiqar Ali, Revenue Mukhtiarkar, Larkana produced the record of another agriculture land measuring 21-10 acres at Exh.72 to 78 and Revenue Entry No.693 at Exh.72, the property was purchased by Mushtaq Ali Jatoi from Mehfooz Ali in the year 1986 against consideration of Rs.20,000/- on oral verification recorded in registered statement at page 13 in the office of said Mukhtiarkar.

22. According to prosecution, both above-mentioned agriculture lands were purchased by Qurban Ali Jatoi in favour of his sons Moula Bux Jatoi and Mushtaq Ali Jatoi for a sum of Rs.20000/- each in the year 1986 to 1992 and at the relevant point of time both appellants

Moula Bux Jatoi and Mushtaq Ali Jatoi were minor or aged around 18 years. It is unacceptable for a person of prudent mind that that these appellants had significant source of income to obtain valuable properties as claimed by the Appellants before the trial Court in their defence plea or even urged before us during argument. No rebuttal evidence or explanation was given with regard to payment of sale consideration by Appellant Mushtaq Ali Jatoi or Moula Bux Jatoi. Thus, the order of trial Court to confiscate these two agriculture lands in favor of Government of Pakistan is **affirmed**.

23. **Sindhu Ice Factory: Survey No.68, 69 FU-18, at Bakrani Road, Larkana measuring 5000 Sq feet**, this property purchased by Kareem Bux son of Qurban Ali Jatoi against consideration of Rs.25,000/- vide Sale dated 15.09.1998 at Exh. 381 was further gifted to Mst. Badshahzadi wife of Mushtaq Ali Jatoi on 28.12.1998 vide Exh.70 and 75. Later, Mst.Badshahzadi obtained loan of Rs.450,000/- from ABL, Larkana against the said Plot and still an amount of Rs.20 lac is outstanding against **Sapna Hotel**. The appellant failed to give evidence in rebuttal of prosecution evidence and no reasonable explanation was given by him with regards to funds for the purchase of this property. Therefore, this property was rightly confiscated by the trial Court, however, subject to first charge of M/s ABL, Larkana and it is hereby **affirmed**.

24. ***Sapna Hotel, Larkana:*** PW-3 Muhammad Zubair Asghar Qureshi confirmed that Plot having **City Survey No.1475/1, Station Road, Larkana, (Property-1)**, initially this plot of land was in the pool of Evacuee trust property, Central Government (now Federal

Government). Later, it was auctioned and transferred to Mst.Haseena being successful bidder and after her death, it was mutated in favor of her legal heir Qamar ul Hassan. Afterwards, Qamar ul Hassan sold this property to Moula Bux son of Qurban Ali Jatoi vide registered Sale deed dated 28.06.1990 against consideration Rs.20,000/-. Moula Bux Jatoi then gifted this property in favor M/s. M.B. Jatoi & Co. through Gift Deed dated 25.07.1992. There afterward, this plot was mortgaged with IDBP, Sukkur against loan of Rs.25 lacs vide Mortgaged Deed dated 20.08.1992 as per evidence of PW-7 Abdul Latif and the record of accounts produced at Exh.81. PW-9 Badaruddin, an officer of IDBP, Sukkur Branch, also confirmed this fact that on 30.07.1992, loan was granted to the tune of Rs.25 lacs in favour of M/s. MB Jatoi & Co. against collateral security of two plots of land bearing Plot No.CS-278/2 situated at Jungle Shah Mohallah, Larkana and Plot No.CS-726 Lahori Mohallah, Larkana through Mortgage Deeds.

25. According to the prosecution, this plot was purchased from the illicit funds accumulated by Qurban Ali Jatoi. The prosecution produced Exh.323 National Identity Card of Moula Bux Jatoi and date of birth is clearly mentioned showing he was just 18 years old when this plot in question was purchased by Moula Bux Jatoi. No rebuttal evidence was produced nor reasonable explanation for funds Rs.20000/- at the time of acquisition of the plot was given before the trial Court except word of mouth that at that point in time, Moula Bux had sufficient funds from his own business. Such plea is not acceptable to a person of prudent mind to believe that Moula Bux Jatoi, at the age of 18 years, had purchased *property-1* from his own legitimate income. Mere words of

mouth that at the age of 17 or age 18, Moula Bux Jatoi started working and had funds, is not sufficient explanation when nothing was brought on record through rebuttal (oral or documentary) evidence. Simultaneously, we find that it was the case of prosecution that plot was obtained in the name of Moula Bux Jatoi only and not the subsequent construction and physical structure, fittings etc in the present shape. Three Prosecution Witnesses confirmed this fact. in view of evidence of these witnesses and record produced, it has established that construction on the plot was raised with the help of bank finance. It cannot be considered that subsequent construction, fittings, fixtures on the above plot was also carried out from the illicit funds of Qurban Ali Jatoi and even this was not the case of prosecution too.

26. In view of above, we hold that the piece of land / plot was purchased from the illicit funds of Qurban Ali Jatoi and it is liable to be confiscated in favor of Government of Pakistan while the construction, fittings and fixtures and appurtenant thereto, were made with the help of loan amount sanctioned by the IDBP, Sukkur Branch and thus not liable to confiscate. The Nazir, therefore, shall auction the plot alongwith fitting, fixtures appurtenant thereto commonly known as *Sapna Inn Hotel, Larkana* and amount of auction of plot shall transmit to Federal Government head maintained with SBP/NBP while the amount of construction cost, fittings, fixtures shall be released in favor M.B. Jatoi & Co. through Appellant.

27. **Sapna Rice Mill / Naveed Rice Mill: Old name was Naveed Rice Mill, situated on land bearing Survey No.59,60& 75, Deh Valeed, Miro Khan Road, Larkana measuring 03 Acres** was put for

auction by the Official Assignee, High Court of Sindh and on 07.07.1995, the property was transferred in the name of Mushtaq Ali Jatoi as successful bidder vide Exh.283 against Consideration of Rs. 33,50,000/-. PW-20 Shah Muhammad Junejo, Superintendent in the office of Official Assignee Karachi deposed that appellant Mushtaq Ali Jatoi had purchased this property in an open auction on behalf of Sapna Construction Company, a partnership concerned Firm, through its partners Mushtaq Ali Jatoi and confirmed that Mushtaq Ali Jatoi had paid Rs.33,50,000/- as auction price. While CW-2 Mushtaq Ali Jatoi rebutted such presumption by appearing into witness box. He produced records which established that since 1992 he was regular Tax payee having business of Buffalos Sale, income of agriculture lands, civil contractor with Government office through his company M/s Sapna Construction Company and he had established M/s M.B. Jatoi & Co which company had constructed Sapna Inn Hotel and still running this hotel. We have re-appraised the evidence and for the reasons recorded at following paragraphs we hold that though CW-1 Mushtaq Ali Jatoi examined himself and produced record of his various businesses to disassociate with illicit funds of Qurban Ali Jatoi, however, no reasonable explanation was given by him for purchase of this specific property in an open auction and arrangement of huge amount of Rs.33,50,000/- in the year 1995 when his business transaction uncompetitive or even not nearest to such bid while we have extended him benefits for other properties which he owned after comparing with recorded sale consideration in the deeds which are compostable. Therefore, Order of trial Court to confiscate this property is **affirmed**.

28. We have re-appraised the evidence of Appellants and found some justification demonstrated by Mushtaq Ali Jatoi. The DW-1 Asadullah, DW-2 Hamid Ali, and DW-3 Muhammad Hafeez confirmed through their testimony and sale deeds (Exhs.366, 378, 384) that properties were purchased by Mushtaq Ali Jatoi and Moula Bux Jatoi. However, no material evidence was produced to establish that the funds used were legitimate and independent of Qurban Ali Jatoi's illicit sources. Similarly, DW-4 Ahmed Hussain relied on a partnership agreement (Exh.393) and Iqrarnama (Exh.394), but as he neither owned the properties nor had direct connection with the confiscated assets, his evidence is of no assistance to the appellants. By contrast, CW-1 Ghulam Qadir established ownership of property at Ghanti Chowk (Exhs.349, 350) with no link to Qurban Ali Jatoi, leading the trial court to rightly exclude it.

29. CW-2 Mushtaq Ali Jatoi also produced evidence of independent business activity: enlistment of Sapna Construction Company (Exh.372), certificates of tax deduction by Reporting Agency i.e. Executive Engineer, Govt of Sindh in favor of FBR. He also established the banking transactions for buffalo sales (Exh.373), showing earnings of Rs.555,000/- and that regular income tax filings since 1992. He further demonstrated formation of M.B. Jatoi & Co., which obtained loans and managed Sapna Inn Hotel. On the other hand, Exhs.379 and 380 (partnership deed and tax deduction correspondence) lack corroboration, as neither partner appeared nor any income was

credited to Mst. Badshahzadi. In the cases of other sons of Appellant Qurban Ali Jatoi, all were aged ranging between 18 to 23 years and failed to give reasonable explanation about arrangement of funds for the purchase of properties in their respective names. In this background we deal with following two properties standing in the name of Mushtaq Ali Jatoi:

a. Sapna Ice Factory Land Survey No.397, Deh Wai Nabi Buksh, Tappo Baqapur, Nazar Road, Latif Colony, Larkana measuring 4500 sq feet: PW-21 Investigating Officer Muhammad Akbar Baloch in his evidence deposed that this property measuring 4500 square feet was purchased on 29.11.1992 in the name of Mushtaq Ali Jatoi valued at Rs.21,82,000/-. On the contrary, Exh-78 to 90 produced by prosecution itself rebut oral testimony of PW-21 which even otherwise unsupported from record. It had established that property was purchased by Mushtaq Ali Jatoi for Rs.25,000/-. The of fact of purchase of said plot in the name of Mushtaq Ali Jatoi was corroborated by PW-6 Mukhtiarkar Revenue vide Exh.70, 72. Further, PW-7 Muhammad Latif Solangi, Officer of IDBP Larkana also confirmed that loan Rs.0.640 million was sanctioned in favor of M/s Sapna Ice Factory through Mushtaq Ali Jatoi at Exh.87 and he committed default in payment of loan. 1 corroborated by PW-6 & PW-7. While evidence of Income Tax Officer, FBR stated that Sapna Rice Mill (old Naveed Rice Mills) contributed 50% funds by appellant Mst Badshahzadi and remaining 50% by appellant Mushtaq Ali Jatoi and funds were provided after taking loan Rs.640,000/- which was

sanctioned by IDBP, Sukkur Branch, Sukkur and Rs.400,000/- by ABL Bank, Larkana while funds for remaining 50% share was paid by his wife. Mst. Badshahzadi did not produce evidence about legitimate funds in her hand or that there was some lawful source of income to purchase such property. While it has established that Mushtaq Ali Jatoi was independent source of income since the fiscal year July 1992 and he paid the 50% consideration after raising loan from IDBP, Sukkur Branch and ABL Larkana. Therefore, the Nazir shall auction assets of this company to the extent of 50% in of M/s Sapna Construction Company which stand either in the name of Mst.Badshahzadi or having income thereof by her in whatsoever manner.

b. Sapna Construction Company: The prosecution did not produce any details of the movable and immovable properties of this company. However, property bearing CS No.2041/30 Station Road, Ward C, Dari Mohallaha, Larkana measuring 2800 or 310 sq. yards relates to this company as it was mortgage on behalf of the Sapna Construction company by Mushtaq Ali Jatoi owner of the company and this property. Mushtaq Ali Jatoi purchased this property vide Sale Deed Exh.55, produced by PW-5 Muhammad Hassan which established that on 01.09.1994, Mushtaq Ali Jatoi purchased this property against consideration of Rs.1,30,000/-. We find that the amount in question is attributable to, and may be considered as, income derived from the CW-1 business enterprises as adduced by Mushtaq Ali Jatoi and discussed in above paragraphs.

30. **House at Mai Kolachi Road, Karachi:** The house admeasuring 450 square yards situated at Mai Kolachi Road, Karachi at Exh.264 and 265 as claimed by the prosecution as per evidence of PW-18 Qazi Sirajuddin, City Survey Officer, Karachi that the said house is located on the land of Sindh Government by way of illegal construction and he has also submitted such report at Exh.264 and 265. This was further confirmed by the Assistant Commissioner concerned through his report at Exh.268, therefore, we are not inclined to consider this property as part and parcel of the properties of late Qurban Ali Jatoi, as the title of the land stand in the name of Sindh Government. However, NAB may restore the area of land in favor of Government with assistance of Deputy Commissioner concerned.

31. **Flats and Parking Area on Land measuring 1400 square feet situated at Station Road, Larkana:** The prosecution has claimed this property was also part and parcel of assets beyond known source of income of late Qurban Ali Jatoi. PW-4 Muhammad Ali, City Surveyor, Larkana deposed that property in Survey No.903/414 is the property of Electric Supply Company at Larkana, which was occupied by the appellant. PW-10 Muhammad Ibrahim, Land Grant Officer, Larkana confirmed that it was a vacant piece of land near Shah Latif Library, Larkana allotted to one Ghulam Akbar Chandio by Chairman Municipal Committee, Larkana and subsequently vide order dated 22.11.1987 proposed construction was allowed to be raised and afterward in 1991 Moula Bux Jatoi moved an application before the Chairman, Town Committee and on 10.08.1991 rent agreement was executed at the rate of Rs.543/- per month and in 1992 Moula Bux Jatoi moved another application for remaining portion of land measuring 1000 sq. feet,

however, an area of land measuring 716 sq.fts. was allotted on 29.08.1992 on monthly rent of Rs.350/- for commercial purpose. Subsequently, tenement was transferred to Mushtaq Ali Jatoi at enhanced rate of rent. In view of the contradictory evidence of PW-4 and PW-10 the prosecution has failed to prove that such property was owned by Qurban Ali Jatoi or his son, one PW-4 deposed that it was the property of electric supply company, while PW-10 deposed that the property was Municipal Committee Larkana. In view of the evidence available on record at Exh.203 to Exh.227 and oral testimony of PW-13 Hafizullah it has been proved that Municipal Committee Larkana has leased out this piece of land initially to one Ghulam Akbar Chandio and subsequent tenement was changed in favour of Moula Bux Jatoi and lastly in favour of Mushtaq Ali Jatoi against monthly rent, therefore, this property cannot become subject of the present case being owned by Municipal Committee Larkana.

32. RE-APPRAISAL OF PROPERTIES EXCLUDED BY TRIAL COURT:

- i. House at Ghanti Chowk, Larkana;** As per evidence of PW-3 Muhammad Zubair, Assistant Commissioner concerned, has produced a report at Exh.32(2) in respect of the house constructed on the land bearing Survey Nos.1498, 1499 and 1500/1, total area 1248.08 square yards situated at Chanti Chowk, Larkana were purchased by Ghulam Qadir Jatoi, Hidayatullah Jatoi and Ghulam Rasool Jatoi jointly on 24.08.1995 from Abdul Hameed Jatoi and in the light of Exh.32(4) to Exh.32(8). This property was independently owned

by these individuals, which is not the part and parcel of the properties of Late Qurban Ali Jatoi and his family members, therefore, in view of the Prosecution evidence this property was rightly excluded by the Trial Court.

ii. **Agricultural Land measuring 16-18 acres situated at Chutto**

Mehser Larkana: This agricultural land was claimed firstly by the prosecution as part and parcel of the assets beyond pecuniary source of income accumulated by Qurban Ali Jatoi and as per evidence of PW-6 Zulfiqar Ali, Revenue Mukhtiarkar deposed that *“It is correct to say that Exh.74 produced by me discloses that accused Qurban Ali inherited land measuring 16-18 acres from his ancestor in the year 1983, and this entry was effected on 31-3-1983. It is correct to say that our record did not show any other property owned by accused Qurban Ali Jatoi.”* In view of the evidence given by the PW-6 and the record produced by him, this property is ancestor property of late Qurban Ali Jatoi. Secondly, this property was mutated in the year 1983 and the cut date stipulated with NAB cannot investigate for the properties prior to the period 1985, therefore, this property cannot include as part and parcel of the assets accumulated by Qurban Ali Jatoi from his beyond known source of income, being ancestor property. Thirdly, the NAB cannot investigate this property, which has been mutated in the year 1983, as it would be statutory violation at the hands of the NAB officials, therefore, it is ordered that this property is not part and parcel of the assets accumulated by Qurban Ali Jatoi and his family beyond his

known source of income, whether this property is validly stand in favour of Qurban Ali Jatoi and is free to convey or transfer in accordance with his own discretion.

iii. **Residential House in Village Hassu Jatoi, Larkana;** The prosecution has only produced PW-1 Sarfaraz Jalbani, who produced inspection and valuation report of such house at Exh.17, according to which, this property was constructed on an area of land measuring 0-68 acres and no evidence has been given by any prosecution witness with regard to the date of acquisition, possession and its consideration, which is foundational factors in cases of assets accumulated beyond known source of income. Besides, no evidence has come on record whether this property is ancestral property or otherwise purchased by Qurban Ali Jatoi through his illicit fund, therefore, in view of no evidence, this property stands disproved as part and parcel of the properties of Late Qurban Ali Jatoi or his dependent.

33. The trial Court erred by collectively calculating the value at **Rs.280,80,290/-** of twelve properties, although it had itself excluded two properties and did not discuss whether each was acquired through illicit funds. Therefore, we have re-appraised record and all properties separately and recorded our findings.

34. Adverting to arguments advanced by Counsel of Appellants about conviction on presumption and towards conclusion, undoubtedly, it is settled principle that no one can be convicted on presumptions in any way or form. Under **Article 117 of Qanun-e-Shahadat Order,**

1984 (QSO) once the prosecution establishes a rebuttable presumption that the accused acquired property and no justified source of income exists, the rebuttable presumption forces an accused to produce evidence to rebuttable presumption thereby *burden* shifts upon Accused to prove that the purchase was made through legitimate means. This burden against rebuttable presumption stands until disprove through plausible explanation either under section 342 Cr. P.C. or *prove* that presumed fact does not exist or alleged illegal enrichment is unsupported by making compliance of section 340(2) Cr.P.C. Failure to rebut presumed fact, the Court accept such presumption or presumed fact as a *fact*.

35. The burden-shifting mechanism is firmly rooted in **Article 122 QSO**, which provides that when a fact is especially within the knowledge of a person, the burden of proving that fact rests upon him. Thus, while the foundational principle of criminal law—that the prosecution must prove its case—remains intact, and the evidentiary burden transits to the accused to disprove or justify the presumption and it cannot be termed as presumed fact nor it can be called conviction on presumption. The Supreme Court in *Muhammad Haneef Abbasi v. Jahangir Khan Tareen (PLD 2018 SC 114)* categorically held that the respondent must discharge this burden where assets beyond known sources are alleged. Similarly, in *Abdul Karim Nausherwani v. State (2015 SCMR 397)* and *Saeed Ahmed v. State (2015 SCMR 710)*, it was reiterated that failure to explain circumstances within personal knowledge leads to a presumption against the accused. Earlier, in *Mst. Kamina v. Al-Amin Goods Transport Agency (1992 SCMR 1715)*, the

Court emphasized that exclusive knowledge imposes a corresponding duty to prove. The Indian Supreme Court in *State of Rajasthan v. Kashi Ram* [(2006) 12 SCC 254], followed in *Sathya Narayanan v. State* [(2012) 12 SCC 627], affirmed the same principle under Section 106 of the Evidence Act, 1872.

36. This principle is supported by dictum in *Khalid Aziz v. The State* (2011 SCMR 136). The Supreme Court reaffirmed that the prosecution must first establish a disproportion between the assets held by the accused and his known sources of income. Only once this is shown, a limited burden shift to the accused, who is not required to prove his innocence beyond reasonable doubt but merely to offer a satisfactory explanation and if the accused can reasonably account for the assets, the burden is discharged; if not, the presumption against him stands.

37. Although, silence alone cannot constitute substantive evidence of guilt; it merely leaves the prosecution's case un-rebutted. The ultimate persuasive burden of proof always remains with the prosecution, which must establish the charge free from reasonable doubt. Mere denial or contradictory, unsupported or unsubstantiated assertions are insufficient to discharge the shifted burden. Therefore, where the prosecution proves disproportionate assets and the accused neither produces a money trail or funds arrangement, nor offers a plausible explanation, the statutory presumption constellate into proof and then conviction sustain, subject to the controlling rule. The Appellants did not produce evidence through reasonable explanation to rebut the prosecution's presumed fact or prove the fact specially within

their knowledge about the legitimate funds or sale consideration arrangements at the time of acquisition of properties and failed to make compliance of Article 118 of QSO except partial discharge of burden by Appellant Mushtaq Ali Jatoi. We have further noted that during 1990 to 1992 there is sharp rise in purchase of properties when dependent had aged around 18/20 years.

38. Therefore, no interference warranted with impugned Judgment except a few modifications as noted above and these are the reasons of dismissal of listed Appeals and criminal Revision Application through our short Order dated 11.02.2026. The Nazir is directed to auction the confiscated properties and transmit the amount in favor of Federal Government head maintained with SBP/NBP subject to deduction of taxes, redemption of bank charges and share of co-sharer, if any, with a first right of refusal in auction.

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