IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Jail Appeal No. S- 62 of 2024

Appellant	Ali Khan @ Jhandi son of Qutub Uddin Brohi through Mr. Rafique Ahmed Abro, Advocate.
Complainant	Zaheer Ahmed Khoso son of Gul Hassan through M/s Aashique Ali Jatoi & Naseer Ahmed Waggan, Advocates.
Respondent	The State through Mr. Sardar Ali Solangi, Deputy Prosecutor General [Sindh].
Date of hearing /short order	**25-08-2025**
Date of detailed reason	**04-09-2025**

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JUDGMENT

SHAMSUDDIN ABBASI, J. Ali Khan @ Jhandi son of Qutub Uddin has challenged the validity of the judgment dated 03.12.2024, handed down by the learned Additional Sessions Judge-I /MCTC, Kamber, in Sessions Case No.273-A of 2015 {FIR No.03 of 2014} registered at Police Station 'A' Section, Shahdadkot, for offences under Section 365-B and 34, PPC, through which he was convicted under Sections 365-B read with Section 34, PPC and sentenced to as under:-

> *"The accused Ali Khan @ Jhandi son of Qutub Uddin by caste Brohi is convicted for an offence punishable U/S 365-B PPC R/W Section 34 PPC, and sentenced to suffer imprisonment for life, for commission of offense of abducting the complainant's sister Mst. Saeeda Khoso with intention to seduce her to illicit intercourse or for marriage, and to pay the fine of Rs.100,000/- [One Lac], in case of default, in payment of the fine amount, he shall suffer S.I for six months more.*
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> *35. The benefit of Section 382-B Cr.P.C. is also extended to the accused Ali Khan @ Jhandi, for a period, which he has already remained in jail as a UTP, hence the period of detention suffered during this trial and since, his arrest in this FIR, shall be deducted from the terms of his sentence. Accused Ali Khan # Jhandi s/o Qutub Uddin by caste Brohi is produced in custody from the Central Prison Larkana, hence he is returned back to the same jail authorities, with the conviction warrant and slip, to serve out the aforesaid sentences awarded to him in accordance with law. Let the copy of this judgment be delivered to the accused /convict, free of cost, so also to the learned ADPP for the State.*

36. The case against absconding accused is kept on dormant file till their arrest".

2. Complainant Zaheer Ahmed Khoso son of Gul Hassan is the brother of abductee Mst. Saeeda, aged about 20 years, who alleged to be abducted with intention to seduce /force her to illicit intercourse or to force /seduce her to marry against her will and wishes. Per contents of the FIR, on 01.01.2014 the complainant alongwith his sister Mst. Saeeda, brother Naveed Ahmed and cousin Qaiser Khan had gone to market for shopping and it was about 1:00 pm when they were returning to home and reached near Classic Bakery, Shahdadkot, they saw and identified persons namely, Ali Khan @ Jhandi son of not known, Mukhtiar son of Ali Khan Brohi, Fatan son of Waryal Khan Jamali, Ali Khan son of Allahdino Jamali and Zeeshan son of Fatan Ali Jamali, accompanied by two unidentified person with open face, who came in white colour Mehran car without number plate and purple Alto bearing Registration No.KLZ-954 and as soon as they alighted from the cars took out pistols and meanwhile Ali Khan @ Jhandi hold arm of Mst. Saeeda and forcibly dragged her inside the car while rest of them resisted the complainant party not to cause any interference on the pointation of pistols and thereafter all of them decamped in their cars. The complainant went to his house and after consultation and on the advice of nedmards went to P.S. 'A' Section, Shahdadkot, and lodged FIR under Section 365-B and 34, PPC.

3. Pursuant to the registration of FIR, the investigation was followed and in due course the challan was submitted in Court placing the names of accused Ali Khan Jamali, Fatan Jamali, Zeeshan Jamali and Abdul Rehman Magsi in column No.2 of the challan as innocent and the case was proceeded under Section 512, Cr.P.C. in absentia, however, on arrest of the appellant from Nara Jail, Hyderabad, he was sent up to face the trial.

4. A charge in respect of offences under Sections 365-B, PPC was framed against appellant. He pleaded not guilty to the charged offence and claimed to be tried.

5. At trial, the prosecution has examined as many as seven witnesses. The gist of evidence, adduced by the prosecution in support of its case, is as under:-

6. ASI Ghulam Ali, second Investigation Officer, appeared as witness No.1 at Ex.17, ASI Mumtaz Ali, arresting officer of appellant, appeared as witness No.2 Ex.18, Zaheer Ahmed, complainant, appeared as witness No.3 Ex.19, Mst. Saeeda, alleged abductee, appeared as witness No.4 Ex.20, Qaiser Khan, eye-witness, appeared as witness No.5 Ex.21, PC Zubair Ahmed, mashir of memo of site inspection, appeared as witness No.6 Ex.22 and SIP Shahid, first Investigation Officer, appeared as witness No.7 Ex.23. All of them have exhibited certain documents in their evidence and were subjected to cross-examination by the defence. Thereafter, the prosecution closed its side vide statement Ex.24.

7. Appellant was examined under Section 342, Cr.P.C. at Ex.25. He has denied the allegations imputed upon him by the prosecution, professed his innocence and stated his false implication in this case just to usurp an amount of Rs.70,00,000/- that was outstanding against complainant party. He opted not to make a statement on Oath under Section 340(2), Cr.P.C. nor adduce any evidence in his defence.

8. Upon completion of the trial, the learned trial Court found the appellant guilty of the offences charged with and, thus, convicted and sentenced him as detailed in para-1 [supra], which necessitated the filing of the listed appeal.

9. It is contented on behalf of the appellant that he is innocent and has falsely implicated in this case by the complainant with malafide intention as otherwise he has nothing to do with the alleged offence and has been made victim of the circumstances. It is next submitted that an amount of Rs.70,00,000/- was due and payable to appellant and just to usurp the same the complainant has concocted a false story and got the appellant implicated in this false case after joining hands with local police. It is also submitted that the FIR has been lodged after two days of the incident and that too without furnishing any plausible explanation whereas the story narrated by the abductee in her 164, Cr.P.C. statement that she got a chance and fled from the clutches of the accused and on the way met with police mobile and police brought her at P.S. is beyond

imagination and benefit to that count must go to the appellant. Per learned counsel the complainant has not challenged placing of names of accused Ali Khan Jamali, Fatan Jamali, Zeeshan Jamali and Abdul Rehman in column No.2 of the challan as well acceptance report despite they were fully nominated in the FIR as well as in Section 164, Cr.P.C. This aspect of the matter has rendered the case of the prosecution extremely doubtful. The witnesses are related to each other and they being interested and inimical to the appellant have recorded false evidence. The ocular account has been furnished by related and interested witnesses, whose testimony is unsafe to rely upon and the prosecution has failed to discharge its legal obligation of proving the guilt of the appellant as per settled law and the appellant was not liable to prove his innocence. The impugned judgment is bad in law and facts and based on assumptions and presumptions without producing any valid and cogent evidence. The witnesses being interested and inimical to the appellant have falsely deposed against him. They were inconsistent with each other rather contradicted on crucial points benefit whereof must go to the appellant. The learned trial Court while passing the impugned judgment has deviated from the settled principle of law that a slightest doubt is sufficient to grant acquittal to an accused. The investigating officer has conducted dishonest investigation and failed to dig out the truth and involved the appellant in a case with which he has no nexus and exonerated the real culprits. The learned trial Court also did not appreciate the evidence adduced by the prosecution and defence in line with the applicable law and surrounding circumstances and based its findings on misreading and non-reading of evidence and arrived at a wrong conclusion in convicting the appellant merely on assumptions and presumptions. The impugned judgment is devoid of reasoning without specifying the incriminating evidence against appellant. The learned trial Court totally ignored the plea taken by the appellant in his defence. The learned trial Court did not consider the pleas taken by the appellant in his Section 342, Cr.P.C. and recorded conviction ignoring the neutral appreciation of whole evidence. The material available on record does not justify the conviction and sentences awarded to the appellant and the same are not sustainable in the eyes of the law. The learned counsel while summing up his submissions

has emphasized that the impugned judgment is the result of misreading and non-reading of evidence and without application of a judicial mind, hence the same is bad in law and facts and the conviction and sentence awarded to the appellant, based on such findings, are not sustainable in law and liable to be set-aside and the appellant deserves to be acquitted from the charge and prayed accordingly.

10. The learned DPG for the State, duly assisted by the learned counsel for the complainant, while controverting the submissions of learned counsel for the appellant has submitted that the witnesses while appearing before the learned trial Court remained consistent on each and every material point. They were subjected to lengthy cross-examination but nothing adverse to the prosecution story has been extracted which can provide any help to the appellant. The role of the appellant is borne out from the evidence adduced by the prosecution. The recovery of abductee has also been proved through her statement under Section 164, Cr.P.C. The prosecution in support of its case has produced oral as well as circumstantial evidence, which has rightly been relied upon by learned trial Court. The findings recorded by the learned trial Court in the impugned judgment are based on fair evaluation of evidence and documents brought on record, to which no exception could be taken. The prosecution has successfully proved its case against the appellant beyond shadow of any reasonable doubt, thus, the appeal filed by the appellant warrant dismissal and his conviction and sentences recorded by the learned trial Court are liable to be maintained.

11. I have heard the learned counsel for the respective parties, given my anxious consideration to their submissions, and also scanned the record carefully with their able assistance.

12. A keen look of the record reveals that the complainant in his FIR as well as while appearing before the learned trial Court besides others has also nominated accused Ali Khan Jamali, Fatan Jamali, Zeeshan Jamali and Abdul Rehman Magsi and fully implicated them in the commission of kidnapping of his sister Mst. Saeeda by stating that they alongwith appellant Ali Khan @ Jhandi and others came in two

cars, armed with pistols, and forcibly abducted his sister by show of force on the pointation of weapons and this statement of complainant has also been supported by eye-witness Qaiser Khan in his evidence. The record is also suggestive of the fact that during investigation, the Investigating Officer found the said four accused innocent and released them by placing their names in column No.2 of the challan sheet. The complainant, on the other hand, has neither challenged such a report of Investigating Officer nor preferred any appeal or a revision against its acceptance as well as the order dismissing his application under Section 190, Cr.P.C. Had they been the actual culprits and involved in the commission of offence, the complainant must have challenged their release before appropriate forum. Non-challenging the release of four accused on the part of complainant gives rise to a presumption he has falsely implicated them in his FIR, therefore, he avoided to prefer an appeal or a revision against their release. The learned trial Court too though noted this aspect of the matter in the impugned judgment, but did not take pain of their release by the Investigating Officer and failed to join them as accused despite of the fact that they were assigned same role that was attributed to other accused. It is also to be noted that abductee Mst. Saeeda alleged to be kidnapped on 01.01.2014 and shown recovered on 13.02.2014 i.e. after 36 days of her abduction when she got herself freed from the clutches of the accused and fled from the place of her confinement and on the way met with a police mobile and police brought her at P.S. and on next day i.e. 14.02.2014 produced her before a Court of Magistrate, where she got recorded her statement under Section 164, Cr.P.C. wherein besides others she has fully implicated the said four accused, who have been released during investigation, and such a report as well as its acceptance has neither been challenged by the complainant or by the State in appeal, which has caused a serious dent to the prosecution case and created a doubt as to involvement of other accused including the appellant.

13. The crime is shown to have taken place on 01.01.2014 at 1:00 pm whereas the FIR has been lodged on 03.01.2014 at 7:00 pm, resulting a delay of about 54 hours. According to complainant, soon after the incident, he went to his house and after consultation with the nekmards went to P.S. and lodged FIR on 03.01.2014 at 7:00 pm.

Surprising to note that abductee Mst. Saeeda is real sister of the complainant and eye-witness Naveed whereas PW Qaiser Khan is her close relative and in their presence she alleged to be abducted by seven persons, armed with weapons, with intention to commit zina or seduce her to marry against her will and wishes, but none either from the two brothers or a close relative deemed it necessary to inform the incident to police. It is beyond one's imagination and common sense that how could a person went home when his sister has been abducted with intention to commit rape or seduce her to marry against her will and wishes and kept mum for more than two days. This aspect of the matter does not appeal to the prudent mind rather it seems to be unbelievable. In such a situation, the explanation put-forth by the complainant is not convincing. The question arises why the complainant kept mum and did not lodge FIR till 7:00 pm on 03.01.2014. Non-lodging of FIR in time without furnishing any plausible explanation gives rise to a presumption that the FIR has been lodged after consultation and due deliberation. The Hon'ble apex Court, in absence of any plausible explanation, has always considered the delay in lodgment of FIR to be fatal and castes a suspicion on the prosecution story, extending the benefit of doubt to the accused. It is a well-settled principle of law that FIR is always treated as a cornerstone of the prosecution case to establish guilt against those involved in a crime, thus, it has a significant role to play. If there is any delay in lodging of a FIR and commencement of investigation, it gives rise to a doubt, which, of course, cannot be extended to anyone else except to the accused. Reliance in this behalf may well be made to the case of *Zeeshan @ Shani v The State* (2012 SCMR 428) wherein it has been held that *"delay of more than one hour in lodgment of FIR give rise to an inference that occurrence did not take place in the manner projected by prosecution and time was consumed in making effort to give a coherent attire to prosecution case, which hardly proved successful".* In another case reported as 2010 SCMR 97 *(Noor Muhammad v The State)* it has been held that *"when the prosecution could not furnish any plausible explanation for the delay of twelve hours in lodging the FIR, which time appeared to have been spent in consultation and preparation of the case, the same was fatal to the prosecution case".* We are, thus, of the view that the explanation furnished by the

prosecution in lodgment of FIR after 35 hours of the incident is not plausible, benefit whereof must go to the appellant.

14. To prove the ocular account besides complainant Zaheer Ahmed, the prosecution has kept in its fold one eye-witness, namely, Qaiser Khan [PW.5 Ex.21] as well as abductee Mst. Saeeda [PW.4 Ex.20]. Since this is a case of awarding capital punishment of life imprisonment, therefore, it would be appropriate to reassess and reexamine the evidence adduced by complainant, eye-witness and abductee as well. Admittedly the abductee is real sister of complainant whereas eye-witness is his close relative as such they seem to be interested witnesses particularly in the back ground of money dispute as well as scandalous delay of about 54 hours in lodgment of FIR, therefore, propriety of safe administration of justice demands to examine their evidence with care and caution. A detailed examination of their evidence reveals that they have not only contradicted each other on crucial points but altogether narrated a conflicting story in their respective depositions. The complainant appeared as PW.3 Ex.19 and deposed that on the day of incident he alongwith his sister Mst. Saeeda, brother Naveed and relative Qaiser Khan was returning to his house after completing shopping from Shahi Bazar and when reached near Classic Bakery, the accused persons came in two cars make Suzuki Mehran [white colour] and Suzuki Alto [purple colour] bearing Registration No.KLZ-954 and forcibly dragged his sister in one car on the show of weapons and then fled away from the scene towards northern side. Though he has given registration number of Suzuki Alto, but did not disclose the fact that Suzuki Mehran was without number place as stated by him in his FIR. On the other hand, the eye-witness Qaiser Khan [PW.5 Ex.21] though supported the story narrated by the complainant in his deposition but contradicted him by deposing that after commission of offence the accused persons escaped towards southern said. The abductee Mst. Saeeda appeared as PW.4 Ex.20 and in her deposition she has deposed that on the day of incident they went to Resham Gali for shopping and by deposing so has contradicted the complainant and eye-witness, who have stated in their respective depositions that they went to Shahi Bazar. She has also contradicted the complainant and eye-witness by deposing that six persons came in two cars of

white and brown [nasi] colours and she identified all of them by their names including Abdul Rehman Magsi whereas per statement of complainant and eye-witness there were seven accused came in two cars including two unknown persons, armed with pistols, and forcibly dragged her in white car, wherein a lady was already seated, and went towards northern side. On the other hand, the complainant and eye-witness did not utter a single word as to availability of a lady in white car. The abductee has also appeared before the Court of learned Magistrate and got recorded her statement under Section 164, Cr.P.C. wherein she has conflicted her own deposition by stating that accused persons came in two Corolla cars, which is contrary to her evidence recorded at trial wherein she has stated in her cross-examination that there were two cars make Suzuki Mehran and Suzuki Alto. In her Section 164, Cr.P.C. statement, the abductee has stated that out of six accused, five took out pistols and ordered her to sit in the car whereas while appearing before the learned trial Court she has deposed that all six accused were armed with pistols and they directed her to sit in the car on the show of their respective weapons. I am cognizant of the fact that the abductee is shown recovered on 13.02.2014 and in her evidence recorded at trial she has deposed that after 45 days of her confinement, she got a chance and escaped from the clutches of the accused, but in her statement under Section 164, Cr.P.C. has stated that she got herself freed from the custody of accused one day prior to recording her statement under Section 164, Cr.P.C. There is no denial of the fact that the incident took place on 01.01.2014 whereas her statement under Section 164, Cr.P.C. was recorded on 14.02.2014, and the intervening period from the date of incident and her fled from the place of confinement is 36 days and not 45 days as stated by her in her Section 164, Cr.P.C. statement.

15. Reviewing the evidence of ocular account furnished by complainant Zaheer Ahmed [PW.3 Ex.19], eye-witness Qaiser Khan [PW.5 Ex.21] and alleged abductee Mst. Saeeda [PW.4 Ex.20], it is established that they have not only contradicted each other, but altogether narrated a conflicting story. It is, thus, difficult for a prudent mind to ascertain as to who was deposing true facts, when otherwise under the facts and circumstances of the case they are the star witnesses of the prosecution and being the central figures, the

entire prosecution case revolves around their testimony, but due to glaring contradictions and discrepancies, referred herein above, their testimony cannot be termed to be worth credence and give rise to an adverse inference that the ocular account furnished by the prosecution is neither convincing nor trustworthy, hence in no way their testimony is helpful rather caused a big and irreparable dent to the prosecution case.

16. Parties are known to each other previously in the background of dispute over payment of money. Mst. Saeeda was abducted by accused party, with intention to commit Zina or seduce her to marry against her will and wishes, in presence of her two brothers and a close relative. It is against the normal human conduct that in presence of two brothers and a close relative a lady was abducted and despite having sufficient opportunity and space of time, they did not make even an abortive attempt to catch hold any of the accused. Had they been present at the relevant time, they would not have waited for abduction and would have raised commotion the moment they saw the accused. This conduct of the two brothers and a close relative is itself creating doubt in the case of prosecution. It does not appeal to the logic that how such an incident could happen without any intervention on the part of complainant party to rescue their sister when they were at a little distance of three paces from the accused as admitted by the complainant in his cross-examination. In such a situation, the explanation furnished by the prosecution that the complainant party was empty handed and made no resistance due to fear of weapons is irrelevant.

17. The meticulous examination of record gives a lead that the acclaimed presence of complainant and eye-witness is a sheer coincidence. It needs no elaboration that presence of complainant and eye-witness at the spot is not to be inferred rather is to be proved by prosecution beyond scintilla of doubt. In absence of any confidence inspiring explanation regarding their presence at crime scene, both complainant and eye-witness are seems to be interested and chance witnesses and their testimony can safely be termed as suspect evidence.

18. Record demonstrates that prosecution has failed to associate an independent person to provide an independent support to the evidence of interested witnesses. There is no denial of the fact that the place of incident is situated in a thickly populated area and at that time so many persons were available and vehicles were also plying on the road and this fact has also been admitted by the complainant in his cross-examination. It is also noteworthy that the incident took place in broad day light at 1:00 pm at a distance of 10 to 12 paces from Classic Bakery and this fact has also been admitted by the complainant in his evidence despite no independent person has been associated to substantiate the case of the prosecution. I am conscious of the fact that there should some plausible explanation that actually attempts were made to associate an independent witness from the place of occurrence, when otherwise under the circumstances of the present case the appellant has pleaded his false implication in the background of money dispute, hence association of an independent witness was necessary to substantiate the evidence of ocular account, but admittedly no such efforts were made. In this way, the best piece of evidence, independent in nature, was withheld from the Court for obvious reasons and this fact by itself is sufficient to discard the evidence of the interested and related witnesses because their evidence is of second degree. It is well settled that ocular account, if not qualifying the parameters of evidentiary value, same requires independent corroboration. I am, thus, in agreement with the learned counsel for the appellant that ocular account has been furnished by interested and related witnesses, who could not prove the story narrated in the FIR and remained unable to bring the guilt of the appellant home rather they miserably failed to justify truthfulness of their depositions before the learned trial Court.

19. The prosecution has also claimed that the appellant has remained fugitive from law for more than six years and this fact alone is sufficient to prove his guilty conscious. This argument, on the face of it, is fallacious and contrary to the settled principle of law. The absconsion of an accused could be a suspicious circumstance, but not a conclusive proof of his involvement in the offence. Guidance is taken from the case of *Liaqat Hussain and*

others v. Falak Sher and others [2003 SCMR 611], wherein the august Supreme Court has held as follows:-

> *"Disappearance of an accused person could have ordinarily offered useful corroboration to the prosecution case. But this is so only in a situation where the prosecution case is reasonably believable to some extent and requires some corroboration for proof of the same".*

Likewise in the case of *Muhammad Tasaweer v. Hafiz Zulkarnain and 2 others* [PLD 2009 SC 53], the Hon'ble apex Court ruled as under:-

> *"Adverting to the question of abscondance, it may be stated that mere absconsion is not conclusive proof of guilt of an accused person. It is only a suspicious circumstance against an accused that he was found guilty of the offence. However, suspicions after all are suspicions. The same cannot take the place of proof. The value of absconsion, therefore, depends on the facts of each case. The courts have admitted it as a supporting evidence of the guilt of accused. The absconsion of the accused may be consistent which is to be decided keeping in view overall facts of the case."*

20. Taking guidance from the cases [supra], I am of the view that abscondance of appellant by itself is not sufficient to bring home the charge against him especially when the direct evidence and other material put-forward by the prosecution in respect of his guilt has been already disbelieved. Guidance is taken from the cases of *Imran Ashraf and 7 others v The State* (2001 SCMR 424) and *Dr. Israr-ul-Haq v Muhammad Fayyaz and another* (2007 SCMR 1427).

21. The another intriguing aspect of the matter which is an immense importance is that Naveed Ahmed, who is said to be one of the eye-witnesses of the incident, has not been examined without furnishing any explanation. Thus, the prosecution withheld a best piece of available evidence and in view of Article 129(g) of Qanun-e-Shahadat Order, 1984, adverse inference, that had this witness been produced before the learned trial Court, he would not have supported the prosecution case, can safely be drawn against the prosecution. Guidance to that extent is taken from the cases of *Lal Khan v The State* (2006 SCMR 1846), *Muhammad Rafique and others v The State and others* (2010 SCMR 385) and *Muhammad Asif v The State* (2017 SCMR 486). In the recent case of *Muhammad Asif*

(supra), the Hon'ble Supreme Court of Pakistan was pleased to observe as under:-

> *"9. In our considered opinion these two independent witnesses could provide the first degree of evidence of reliable nature, thus, adverse inference has been drawn that because they were not supporting the prosecution so set up, therefore, they were dropped at the trial. In this way, the best evidence, independent in nature, was withheld from the Court for obvious reasons. This fact by itself is sufficient to discard the evidence of the interested and related witnesses because their evidence is not only of the second degree but also for the reason given above due to their unnatural conduct."*

22. Insofar as recording of statement under Section 164, Cr.P.C. of abductee Mst. Saeeda is concerned, though the same has been recorded next day of her recovery, but when the case of the prosecution is an utter failure from all aspects including the direct evidence, no conviction can be brought home on the basis of sole statement recorded before a Magistrate, which can only be used as a supportive evidence, but keeping in light the contradictions and discrepancies, crucial in nature, noted in her deposition as well as Section 164, Cr.P.C. statement, the same has lost its evidentiary value and unsafe to rely upon for recording capital punishment of life imprisonment.

23. A specific motive has been alleged, which became the cause of abduction of Mst. Saeeda. The prosecution has claimed that appellant had an ill intention on complainant's sister Mst. Saeeda and wanted to marry with her and failing to achieve his ill intention, the appellant with the help of his companions formed an unlawful assembly and abducted his sister with intention to force /seduce her to marry with him against her will and wishes. The complainant and sole eye-witness as well as alleged abductee in their respective evidence though supported the motive but failed to produce any strong evidence or any other material to substantiate such a motive. The complainant has neither produced any witness before Investigating Officer during investigation nor examined at trial and mere words of the prosecution witnesses are not sufficient to prove the motive. Thus, the motive set-forth by the prosecution remained far from being proved. No doubt, the prosecution is not required to disclose/ setup a motive, but once it

chooses to do so, then it becomes its obligation to prove it by cogent evidence and failure to do so shall not only damage the credibility of the prosecution case beyond repair, but it would also be fatal to the prosecution case.

24. In like cases involving capital punishment of life imprisonment, the evidence produced by the prosecution should be in chain and if the chain is not complete or any doubt which occurred in the prosecution's case that is sufficient to demolish the structure of evidence the benefit thereof must go to the accused especially when the accused had taken a specific stance of his false implication over money dispute, which cannot be brushed aside in view of contradictions and discrepancies, referred herein above. In appeal against conviction, the Court is under heavy obligation to assess by thinking and rethinking, lest an innocent person fall a prey to my ignorance of facts and ignorance of law. The Court must not close its eyes to human conducts and behaviours while deciding criminal cases, failing which the result will be drastic and impacts will be far from repair. The cardinal principle of justice always laid emphasis on the quality of evidence which must be of first degree and sufficient enough to dispel the apprehension of the Court with regard to the implication of innocent persons along with guilty one by the prosecution, otherwise, the golden principle of justice would come into play that even a single doubt if found reasonable would be sufficient to acquit the accused, giving him/them benefit of doubt because bundle of doubts are not required to extend the legal benefit to the accused. In this regard, reliance is placed on a view held by the Hon'ble Supreme Court in the case of Riaz Masih alias Mithoo v. The State (1995 SCMR 1730) and Sardar Ali v Hameedullah and others (2019 PCr.LJ 186). Likewise, it is a well settled principle of law that involvement of an accused in heinous nature of offence is not sufficient to convict him as the accused continues with presumption of innocence until found guilty at the end of the trial, for which the prosecution is bound to establish its case against the accused beyond shadow of any reasonable doubt by producing confidence inspiring and trustworthy evidence. It is a cardinal principle of administration of justice that in criminal cases the burden to prove its case rests

entirely on the prosecution. The prosecution is duty bound to prove the case against accused beyond reasonable doubt and this duty does not change or vary in the case in which no defence plea is either taken or established by the accused and no benefit would occur to the prosecution on that account and its duty to prove its case beyond reasonable doubt would not diminish. The prosecution has not been able to bring on record any convincing evidence against appellant to establish his involvement in the commission of offence charged with beyond shadow of reasonable doubt. Rather, there are so many circumstances, discussed above creating doubts in the prosecution case and according to golden principle of benefit of doubt one substantial doubt would be enough for acquittal of the accused. The rule of benefit of doubt is essentially a rule of prudence, which cannot be ignored while dispensing justice in accordance with law. Conviction must be based on unimpeachable evidence and certainty of guilt and any doubt arising in the prosecution case, must be resolved in favour of the accused. The said rule is based on the maxim "it is better that ten guilty persons be acquitted rather than one innocent person be convicted" which occupied a pivotal place in the Islamic Law and is enforced strictly in view of the saying of the Holy Prophet (PBUH) that the "mistake of Qazi (Judge) in releasing a criminal is better than his mistake in punishing an innocent".

25. The epitome of whole discussion gives rise to a situation that appellant has been convicted without appreciating the evidence and other material placed on record in its true perspective, rather the prosecution case is packed with various discrepancies, irregularities and lacunas, which make out a case of acquittal. Accordingly, by means of my short order dated 25.08.2025, I had allowed this appeal, set-aside the conviction and sentences recorded by the learned trial Court through impugned judgment dated 03.12.2024 and acquitted the appellant of the charge and these are the reasons thereof.

JUDGE

NAK/PA