

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Cr. Appeal No.S-12 of 2016

Date of Hearing	ORDER WITH SIGNATURE OF JUDGE
08.2.2019.	

For hearing of Case.

Mr. Mohammad Afzal Jagirani, advocate for appellant, along with appellant (on bail).

Mr. Sharafuddin Kanhar, APG.

Learned Counsel for the appellant while arguing the appeal submits that no specific role or overt act is assigned to the appellant and mere his presence was shown. He further submits that though the appellant was shown to have had G-3 Rifle, yet after his arrest nothing was secured from him. He also focused upon FIR available at Page-53 of the Paper Book and submits that co-accused Niaz alias Kat had allegedly fired upon complainant HC Shah Nawaz and that co-accused Niaz alias Kat has not been arrested by the police as yet. In support of his contentions, he has relied upon the following reported cases:-

1. Faqeer Mohammad v. The State (2012 M L D 1826),
2. Mohammad Sadiq v. The State (2017 SCMR 144),
3. Mohammad Asif v. The State (2017 SCMR 486),
4. Mohammad Mansha v. The State (2018 SCMR 772).

Learned APG while opposing the appeal supports the impugned judgment and submits that the appellant is nominated in the FIR with specific role of firing upon the complainant/police party. He further submits that complainant HC Shahnawaz, head of the police party, had sustained injury during the encounter, besides, one accomplice of the accused, namely, Riaz due to firing of his own companions also died in the encounter. He, however, could not controvert the fact that accused Niaz alias Kat, who alleged had caused firearm injury to complainant HC Shahnawaz has not been arrested, besides, PW Imam Din (Ex.19, at page 101 of Paper Book) has

deposed that one of the accused, namely, Nadir Ali had caused firearm injury to complainant. However, he is arrogant to oppose the appeal and supports the impugned judgment.

Heard arguments. For the detailed reasons to be recorded later-on, instant appeal is allowed. The impugned judgment dated 26.2.2016 penned down by learned II-Additional Sessions Judge, Shikarpur, in Sessions Case No.754/2009 re-State v. Bashir & others, emanated from Crime No.110/2009, registered at Police Station Garhi Yaseen, under Sections 324, 353, 337-H(2), 148, 149, PPC, is hereby set aside. Consequently, the appellant is acquitted of all the charges. The appellant is present on bail in terms of order dated 29.4.2016, therefore, his bail bonds are hereby cancelled and surety furnished by him is also discharged.

JUDGE

Abuse under camp bid
as Dated 1704-2019,

Dr. Mann Singh
7.5.19

IN THE HIGH COURT OF SINDH, CIRCUIT COURT
LARKANO

CRIMINAL APPEAL NO.S-12 of 2016

Appellant	:	Bashir Jatoi, through Mr. Muhammad Afzal Jagirani, advocate.
State through	:	Mr. Sharafuddin Kanhar, APG, Sindh
Date of hearing	:	08.02.2019
Date of judgment	:	08.02.2019

JUDGMENT

Muhammad Saleem Jessar, J.-The appellant is aggrieved by the judgment dated 26.02.2016, passed by II-Additional Sessions Judge, Shikarpur in Sessions Case No.754 of 2009 (State v. Bashir and others) whereby the appellant was convicted and sentenced under section 324, PPC read with section 149, PPC to suffer R.I. for five years and to pay fine of Rs.50,000/- and in default thereof to suffer S.I. for one year. He was also convicted and sentence under section 337-H(ii), PPC read with section 149, PPC to suffer R.I. for three months. Appellant was further convicted and sentenced under section 353, PPC to suffer R.I. for three months. All the sentences were to run concurrently and he was also extended benefit of section 382-B, Cr. Procedure Code. While the case against the absconding accused was kept on dormant file.

2. The brief facts of this prosecution case are that complainant HC Shahnawaz Udho lodged FIR at PS Garhi Yaseen on 03.10.2009 at 1415 hours, alleging therein that he along with his subordinate staff viz. PC Imamuddin, PC Gulab Khan, PC Rafique Ahmed and PC Jameel Ahmed left PS by official vehicle under station diary No.5 at 0945 hours for patrolling. During patrolling when they were going from Yasin Wah to Garhi Yaseen and reached at Koreja Police Picket, they heard firing from Sim Shakh and through mobile phone informed and disclosed his name Khair Muhammad that accused Riaz Kharos and other armed persons are murdering his brother Abdul Nabi alias Arbelo, Gulshan and his relative Pathan were going. On receipt of such information complainant party proceeded there and at 1050 hours they reached near Sim Shakh they saw and identified accused Jurial s/o Ali Sher alias Sher, Nadir s/o Jurial, Riaz s/o Babal, Juman alias Jumo s/o Not known, armed with G-3 rifle, Ismail s/o Not known, Niaz alias Kat s/o Babal, Habibullah s/o Ghulam Rasool s/o Not known, Bashir s/o Qabool, armed with

Kalashnikovs, and five unidentified accused whom complainant and his staff saw clearly and will be identified if seen again, were armed with Kalashnikovs. The police party stopped their vehicle, and accosted to the accused. The accused started direct firing upon them with intention to commit murder, police party also fired in their defence. During firing accused Niaz alias Kat fired direct shot from his Klashinkov at the complainant, which hit him on the knee of right leg. During firing accused Riaz Kharos raised cries and told their companions that he was hit by their fire on his elbow of left arm, and fell down along with his G-3 rifle on the ground. In the meantime, accused Jurial Kharos and his companions went near to accused Riaz and tried to take him along with his rifle, on which police accosted and fired upon accused. Accused Jurial left injured accused Riaz and took his rifle, bag and ran away along with other accused and by taking advantage of water course decamped from the scene of offence. The complainant along with his staff went to accused Riaz and saw that he had sustained injuries on left side of his arm and was dead. The dead accused was proclaimed offender in various cases of District Shikarpur. The complainant informed his high ups and shifted dead body and injured to Civil Hospital Shikarpur wherefrom, he went to PS Garhi Yaseen and lodged FIR against accused on behalf of the State.

3. After usual investigation, police submitted challan against accused Bashir showing accused Jurial, Nadir, Hussain alias Jumo, Ismail, Niaz alias Kat, Habibullah, Ghulam Rasool, and five unknown accused as absconders to face their trial in above mentioned case/crime. Accused Riaz has been shown as dead accused in challan sheet.

4. After completing legal formalities charge against accused Bashir was framed at Ex.3, to which he pleaded not guilty and claimed to be tried.

5. At the trial, prosecution examined PW-1 Dr. Imtiaz Ali Memon at Ex.4, who produced postmortem report of dead accused Riaz at Ex.4/A, inquest report at Ex.4/B, PW-2 ASI Irshad Ali at Ex.5, who produced FIR at Ex.5/A, PW-3 SIP Lal Bux Mangnejo at Ex.6, who produced mashirnama of inspection of dead body of injured HC Shahnawaz at Ex.6/A, mashirnama of inspection of dead body of deceased accused Riaz at Ex.6/B, Danishnama at Ex.6/C, receipt of dead body at Ex.6/D, mashirnama of inspection of wardat at Ex.6/E, mashirnama of arrest of accused Bashir at Ex.6/F, PW-4 PC Jameel Ahmed at Ex.7, PW-5 Tapedar Imtiaz Ahmed Maher at Ex.9, who produced sketch of wardat at Ex.9/A. thereafter learned ADPP for the State closed the Prosecution vide his statement at Ex.11.

6. Statement of accused Bashir was recorded under section 342, Cr.P.C at Ex.12. The accused stated that he has not committed any offence and further stated that PWs being police officials have deposed falsely. He claimed innocence and prayed for justice. The accused did not lead evidence in his defence and also declined to give statement on oath.

7. Thereafter accused Nadir was arrested hence an amended charge was framed against accused Bashir and Nadir at Ex.13, to which they both pleaded not guilty and claimed to be tried.

8. At the trial prosecution examined PW-1 ASI Irshad Ahmed at Ex.16, PW-2 SIP Lal Bux Mangnejo at Ex.18, PW-3 PC Imamuddin at Ex.19, PW-4 Dr. Imtiaz Ahmed Memon at EX.20, who produced MLC of injured HC Shahnawaz at Ex.20/A, PW-5 PC Jameel Ahmed at Ex.21, PW-6 Tapedar Imtiaz Ahmed at Ex.22. Thereafter learned ADPP for the State closed the prosecution side vide his statement at Ex.23. Statements of accused Bashir and Nadir were recorded U/S 342 Cr.P.C-at Ex.24 & 25. The accused stated that they have not committed any offence and further stated that PWs being police officials have deposed falsely and nothing substantial has come on record against them. The evidence of prosecution is inconsistent. They are innocent and prayed for justice. The accused did not lead evidence in their defence and declined to give statement on oath.

9. Learned trial Court, after formulating points for determination, hearing arguments of the learned counsel for the parties and going through the evidence brought on record by the Prosecution, vide the impugned judgment, convicted and sentenced the present appellant as above while case of the absconding accused was kept on dormant file.

10. I have heard learned counsel for the appellants and learned APG for the State and have also perused the record with their assistance.

11. Learned counsel for the appellant vehemently opposed the impugned Judgment and submitted that no specific role or overt act has been assigned to the appellant. He further submitted that though the allegation against the appellant was that he was armed with G-3 rifle, however, upon his arrest nothing incriminating was recovered from his possession or his pointation. Learned counsel has drawn my attention to the FIR (available at page 53 of the paper book) and submitted that as per the contents of the FIR, co-accused Niaz alias Kat had allegedly fired upon complainant Shahnawaz and he has not been arrested by the police as yet. In support of his submission learned counsel relied on the following cases:

1. Faqeer Mohammad v. The State (2012 MLD 1826),
2. Mohammad Sadiq v. The State (2017 SCMR 144)
3. Mohammad Asif v. The State (2017 SCMR 486), and
4. Mohammad Mansha v. The State (2018 SCMR 772).

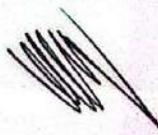
12. On the other hand, learned APG fully supported the impugned Judgment and submitted that the appellant has been named in the FIR with specific role of firing upon the complainant / police party. He submitted that complainant Head Constable

Shahnawaz, sustained fire arm injury during the police encounter with the accused and one of the accused, namely, Riaz, also died in the encounter due to the firing of his own companions. However, he did not deny that Niaz alias Kat, who alleged fired at HC Shahnawaz has not been arrested so far. However, he supported the impugned Judgment and prayed for dismissal of the instant appeal.

13. As per the contents of the F.I.R., lodged by Head Constable Shahnawaz Udho at PS Garhi Yaseen on 3.10.2009, he (the said Head Constable) was leading a police party on patrol of the area and when they reached Koreja Police Picket, they heard firing from Sim Shakh and through mobile they were informed by one Khair Muhammad that accused Riaz Kharos and other armed persons are murdering his (Khair Muhammad's) brother Abdul Nabi alias Arbelo, Gulshan and his relative Pathan. On receipt of such information the police party proceeded there and at 1050 hours they reached near Sim Shakh where they saw accused Jurial s/o Ali Sher alias Sher, Nadir s/o Jurial, Riaz s/o Babal, Juman alias Jumo s/o Not known, armed with G-3 rifle, Ismail s/o Not known, Niaz alias Kat s/o Babal, Habibullah s/o Ghulam Rasool s/o Not known, Bashir s/o Qabool armed with Kalashnikovs and five unidentified accused who were armed with Kalashnikovs. The accused started direct firing on the police party with intention to commit murder and the police party also fired in their defence. During such firing accused Niaz alias Kat fired direct shot from his Klashinkov at the complainant, which hit him on the knee of right leg. During firing accused Riaz Kharos raised cries and told his companions that he was hit by their own fire, and fell down along with his G-3 rifle on the ground. In the meantime, accused Jurial Kharos and his companions went near to accused Riaz and tried to take him along with his rifle, on which police accosted and fired upon accused. Accused Jurial left injured accused Riaz and took his rifle, bag and ran away along with other accused and by taking advantage of water course decamped. However, very surprisingly, the complainant was not examined by the prosecution.

14. A perusal of case diaries of the trial Court shows that numerous processes were served on PWs but they did not appear to record their evidence. Finally, on 12.12.2011, the trial Court was informed by the process server that complainant HC Shahnawaz has died his natural death. In this regard statement of process server Ahmed Saleem son of PC-Karimuddin Qureshi was recorded as Exh.10 (available at page 75 of paper book), who deposed that he went at the given address where he came to know that PW-Shahnawaz has died his natural death. However, neither his death certificate was placed on record nor date of his death was mentioned in the deposition or the order recorded in the diary sheet. For this reason, evidence of complainant Shahnawaz could not be recorded.

15. When a crime is allegedly committed the law is put into motion by registration of an FIR under section 154 of the Cr. Procedure Code to bring the culprit(s) to book.



Section 154, Cr. Procedure Code commences with the words "every information relating to commission of a cognizable offence...", meaning thereby that all the information available with the complainant has to be laid before the police officer recording the FIR. Therefore, the superior Courts have held that any statement or further statement of the First Informant recorded during investigation by the police neither can be equated to nor can be read as part of an FIR. However, it may be clarified that minute details are not necessary to be mentioned in the FIR. Contents of an FIR cannot be used against an accused unless the same are proved. Acronym "FIR" denotes "First Information Report" which clearly means that this is the first information given by a complainant to police regarding commission of an offence. The law laid down by the superior courts regarding FIRs is very particular about the contents of FIR and the spontaneity and promptitude with which such FIR is registered the reason being that delay in lodging of an FIR gives rise to speculation and doubt that it was lodged after consultation and deliberation and in such event false implication cannot be ruled out.

16. On the other hand, if complainant of an FIR is not examined by the trial Court, then the entire contents of the FIR becomes useless and the same cannot be used against an accused. It is well settled principle of law that FIR is not a substantive piece of evidence. It can be used to contradict its maker in terms of Article 140 of the Qanun-e-Shahadat Order and for the purpose of corroboration in terms of Article 153 thereof. Thus, the facts mentioned in the FIR cannot be used against the accused unless the first informant (i.e. the complainant) is examined and he supports the contents of the F.I.R. The Honourable Supreme Court of Pakistan in the case of *Tufail Masih v. The State* (1985 SCMR 838) observed that F.I.R. is not a piece of substantive evidence, it cannot be used against the accused unless put to the maker for corroboration or contradiction.

17. In the present case, since the complainant was not examined by the prosecution due to his death, therefore, the contents of the FIR could not be put to the complainant to contradict him and, accordingly, the same cannot be used against the accused.

18. Prosecution tried to fill this lacuna by examining PC-Imamuddin at Exh.19. He deposed that on 03.10.2009 he was posted as Police Constable at Police Station Garhi Yaseen. On the same day, he along with HC Shahnawaz, PC Jameel, Ahmed and PC Rafique Ahmed left PS by official vehicle driven by DPC Ansar under entry No. 5 at 0945 hours for patrolling. During patrolling, when they were coming back from Yaseen Wah towards Koura Picket they heard noise of firing coming from Sim Shakh. They stopped vehicle and HC Shahnawaz informed them that he received telephonic message that one Khair Muhammad Udho informed him that Kharos and Udha have fought with each other and Kharos have committed murder of three persons of Udha namely Arbelo, Gulshan and Pathan by accused Riaz and others near Sim Shakh. They rushed towards pointed place. They reached at 1050 hours and saw accused namely Jurial, Nadir, Juman,

Bashir, Niaz, Habibullah, Ghulam Rasool and five unknown persons. Accused Jurial, Nadir Juman and one unknown accused were armed with G-3 rifle and remaining armed with Kalashnikovs. The accused seeing the police party started firing upon them with intention to commit murder, they stopped vehicle, alighted from it and fired in their defence by taking position. During firing HC Shahnawaz sustained injuries fired by accused Nadir which hit him on his right knee joint. Accused by firing were escaping and during their escape fire of accused hit to his companion Riaz who raised cries and asked that fire of his companion hit to him. The companion of the injured accused Riaz tried to took the injured but they accosted hence accused took his rifle and decamped from the scene of offence. They went and saw Riaz Kharos having injuries on left lumber region below left arm, he was dead. They took dead body of deceased Riaz Kharos in their vehicle and sent to PS. They also sent injured HC Shahnawaz by another vehicle to Hospital. HC Shahnawaz informed his higher officers that dead accused was absconders in various cases of different police station and lodged FIR at PS Garhi Yaseen against accused. Investigation Officer examined him.

19. In the above deposition, PC-Imamuddin states that Kharos and Udha have fought with each other, while the complainant HC-Shahnawaz has stated in the FIR that he was informed through mobile by one Khair Muhammad that accused Riaz Kharos and other armed persons are murdering his brother Abdul Nabi alias Arbelo, Gulshan and Pathan. It also becomes hearsay evidence that PW-Imamuddin did not hear this statement from the mouth of Khair Muhammad. This part of the FIR cannot be verified by PW-Imamuddin. In this regard it is also very important that said Khair Muhammad was not examined by Prosecution in support of its case. Therefore, there is gaping hole in the prosecution's case due to this lacuna and this gap cannot be filled by examining PW-Imamuddin.

20. The most intriguing point in the above narration of facts is that as per the contents of the F.I.R. fire shots were heard by the police party when they were near Sim Shahk and at that time HC Shahnawaz, complainant and being head of the police party, was informed on mobile phone by one Khair Muhammad that the accused are murdering his brother Abdul Nabi alias Arbelo, Gulshan and Pathan. However, there is no mention of the said deaths in the instant F.I.R. and no reason has been given for such omission.

21. The other point for consideration is that why Khair Muhammad informed HC Shahnawaz on mobile phone that accused are murdering his brother and some other persons when he should have informed the nearest police station / check post or should have called the emergency number for quick help. It is also not clear as to how Khair Muhammad came in possession of the phone number of HC Shahnawaz. It shows that Khair Muhammad was well acquainted with HC Shahnawaz. Since HC Shahnawaz did not come into the witness box, therefore, it could not be put to him whether he was

related to said Khair Muhammad or not. This creates a serious dent and doubt in the case of the prosecution.

22. Another significant point is that, if there had been an encounter with police then why the accused side had sustain injury and not a single scratch or injury (ies) was/were caused to any member of the police party. Hence, contention to the effect that police party, while performing their lawful duty(ies) was interfered and were deterred, is not much of consequence, therefore, application of section 353 PPC, in view of above, has not been established.

23. There is also mystery about the death of Raiz Kharos. It is alleged in the FIR that deceased Riaz Kharos died as a result of receiving fire arm injury at the hands of his own companions / co-accused. The reason for such assertion is that complainant HC Shahnawaz mentioned in the FIR that "During firing accused Raiz Kharos raised cries and asked their companions that their fire hit to him on his elbow of left arm, who saying so fell down along with his G-3 rifle on the ground." It may be mentioned that as per medical report, Riaz Kharos was hit near the nipple and the bullet damaged his left lung, heart, blood vessels, pericardium and pleurae. In such case it is hardly possible that an injured will make such a long statement in such clear and high voice that the opposing party would also hear the same, particularly when he died on the spot. However, since the complainant was not examined by the prosecution and was not confronted with the contents of the FIR in the witness box, therefore, this statement remains uncorroborated. There is nothing on record, other than the said statement of the complainant, that deceased Riaz Kharos was hit by the fire of his own companions. Therefore, it cannot be said that Riaz Kharos was killed by the firing of his own companions.

24. A suggestion was put to PW-3 Imamuddin (Exh.19 at page 101 of paper book) that in fact Riaz Kharos was murdered by people of Udha community and the complainant being himself being a Udha by caste, has managed this false case. This statement finds support from the deposition of PW-Imamuddin who stated that there was fight between Udha and Kharos.

25. In this regard it may be observed that the investigation by the I.O. of the case (FIR No.110/2009 lodged at PS Garhi Yaseen) was not carried out properly. He did not produce Khair Muhammad as a witness.

26. The duty of the I.O. was to unearth the true facts by using all means at his disposal. In this regard reference may be made to the deposition of PW-4, PC Jameel Ahmed, he has deposed that on 03.10.2009 he was posted as Police Constable at PS Garhi Yaseen. On the same date, SIO Lal Bux Mangnejo visited Civil Hospital Shikarpur where he inspected injuries of injured HC Shahnawaz and prepared memo of inspection of injuries in his presence and in presence of co-mashir Rafique Ahmed. The Sub-

inspector also inspected dead body of deceased accused Riaz Kharos murdered in encounter case lying in dead house of Hospital and prepared such mashirnama in his presence and in presence of co-Mashir Rafique Ahmed. SIO also prepared Danishnama of dead body in his presence and in presence of co-mashir Rafique Ahmed. On the same date at 2030 hours, the SIO inspected the place of incident and recovered blood stained earth and 20 empty bullets of G-3 rifle and 15 empty bullets of 7.62 bore fired by police party and 30 empty bullets of G-3 rifle and 12 of 7.62 bore fired by accused party from the wardat and sealed the same at the wardat and prepared such memo in his presence and in presence of co-mashir Rafique Ahmed. It is indeed very surprising that so many bullets were recovered from the place of wardat, however, they were not put to useful purpose by not sending them to ballistic expert. Thus, collection of empties from the place of wardat was of no use.

27. Trial Court discussed the evidence of PW Dr. Imtiaz Ahmed Memon examined at Ex.20 in detail. He deposed that on 03.10.2009 he was Senior Medical Officer, RBUT, Civil Hospital, Shikarpur. On the same date, he received a dead body of Riaz Kharos, for postmortem, the dead body was identified by Mst. Hakim (mother) and Mst. Gulzar (Aunt). From external examination, he found following injuries.

1. One LTP wound of entry measuring 0.75 cm in diameter in circular in shape margins inverted. Present over nipple 1/3rd of left upper arm on medial aspect (entry).
2. One LTP wound of exit measuring 2½ cm X 2 cm X cavity deep margin everted oval in shape of present over upper 1/3rd, left side of chest just below Axilla (exit).

28. It may be stated that the medical report does not establish as to who was responsible for the injury in a crime. However, the report points towards the place of injury, the effect of the injury (i.e. whether fatal or not), the cause of injury i.e. how it was caused i.e. whether by fire arm (pistol, rifle etc.) or by some blunt substance like hammer, iron rod etc., or by some sharp substance like knife, dagger etc. The medical report also mentions the time of injury and whether the same was anti mortem or post mortem. In the present case, it is alleged that Riaz Kharos was hit by a bullet fired by his own companion. This does not seem to be correct in view of the medical report. The medical report shows two injuries on the body of the deceased Riaz Kharos. One measuring 0.75 cm over nipple on medial aspect which has been marked as entry mark of the bullet. The other wound is on the left side of chest below axilla which is marked as exit mark of the bullet. The medical report itself is misleading as in case person is hit on the nipple i.e. chest, by a fire arm, the bullet will not exit from chest. It will exit from the back side of the body. Thus, deceased Riaz Kharos was hit by a bullet on the front side near nipple and if he was in an encounter with the police, there is no chance of his companion hitting him from the front. In case he was hit by any of his companions, then



he would have been hit on the back side and the exit wound would have been on the front side.

29. Since it was a case of encounter with police and per FIR during exchange of fire co-accused Niaz Ali Kaat fired direct shot from his K.K upon the complainant which hit him on the knee of his right leg. However, one of co-accused Riaz Kharos had also sustained fire arm injury on his elbow of left arm and died on spot. The appellant allegedly was having G-3 Riffle at the time of alleged offence, however, at the time of his arrest nothing was secured from his possession nor was any incriminating produced by him. Besides no specific role or any overt act is/was assigned to him except mere his presence with alleged ineffective firing upon the police party. This being case of encounter with police therefore, it was desirable and even imperative that it should have been investigated by some other agency and the police, in this case, could not have been investigators of their own cause. Such investigation which is woefully lacking independent character cannot be made basis for conviction, that too when it is riddled with many lacunas and loop holes discussed above. It would not be in accordance of safe administration of justice to maintain the conviction and sentence of the appellant in the circumstances of the case. It is well settled principle of law that prosecution is bound under the law to prove its case against the accused beyond any shadow of reasonable doubt. In the instant case particularly in view of aforesaid defects and discrepancies it can safely be held that the prosecution has not succeeded in discharging such obligation on its part. Needless to emphasize the well settled principle of law that the accused is entitled to be extended benefit of doubt as matter of right and not as grace even an accused cannot be deprived of the benefit of doubt merely because there is one circumstance which creates doubt in the prosecution evidence. I am fortified with the golden dictum laid down by Honourable Supreme Court of Pakistan in case of Tariq Pervaiz VS the State reported as 1995 SCMR 1345 whereby the Apex court has held as under:

"The concept of benefit of doubt to an accused 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".

30. I, therefore, by extending the benefit of doubt allow this appeal and set-aside the impugned judgment dated 26.02.2016 handed down by II-Additional Session Judge, Shikarpur vide Sessions Case No.754 /2009 re-the State VS Bashir & others being outcome of Crime No.110 of 2009, PS Garhi Yaseen under section 324, 353, 337-H(ii), 148,149 PPC The appellant was present on bail, his bail bonds were cancelled and surety was discharged.

31. Above are the reasons for my short order dated 08.02.2019.



Let R&Ps of Sessions Case No.754/2009 re-State Vs Bashir and others alongwith copy of judgment be sent to learned trial court through learned Sessions Judge, Shikarpur.

Judge

