

IN THE HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD.

Present:

MR. JUSTICE NAIMATULLAH PHULPOTO
MR. JUSTICE SHAMSUDDIN ABBASI

Cr. Appeal No.D-292 of 2012
Confirmation Case No.D-14 of 2012

Criminal Acquittal Appeal No.D-327 of 2012

Date of hearing: 12 & 16.4.2018.
Date for Announcement of Judgment: 02.05.2018

Appellants : Pahar and Patang in Cr. Appeal No.D-292/12
Through Syed Madad Ali Shah, Advocate.

Respondent No.1: Sikandar in Criminal Acquittal Appeal No.D-372/12
through Mr. Shabeer Hussain Memon, Advocate.

Respondent No.2: Khadim Hussain in Criminal Acquittal Appeal No.D-372/12.
through Mr. Kashif Hussain Agha, Advocate.

The State: Through Shahzado Salim Nahyoon, D.P.G for the
State.

J U D G M E N T

SHAMSUDDIN ABBASI, J: We intend to dispose of Cr. Appeals No.D-292 of 2012, filed by Appellants Pahar and Patang against the judgment dated 10.10.2012 passed learned Additional Sessions Judge Kotri in Sessions No. 160 of 2008 (Re: State Versus Sikandar and others) arising out of Crime No.36/2008 under section 302, 324, 341, 427, 114, 147, 149 PPC registered at P.S Khanoth, whereby the appellants were convicted under section 302(b) PPC and sentenced to death and to pay fine of Rs.300000/- each as compensation u/s. 544-A Cr.P.C to be paid to the legal heirs of both deceased and in case of non-payment they were ordered to further undergo S.I for one year. They were further convicted U/s 149 PPC to suffer R.I for 2 years and to pay fine of Rs.10000/- and in default of payment of fine, they shall suffer S.I for one

month more, they were further convicted u/s. 324 PPC to suffer R.I for 5 years each and to pay fine of Rs.50000/- to be paid to injured Zahoor Ahmed, in case of its default of payment, they shall suffer S.I for 3 months, they were also convicted u/s. 427 PPC to suffer R.I for one year and both to pay fine of Rs.10000/- and its default to suffer S.I for one month more and u/s. 341 PPC to suffer R.I for one month and to pay fine of Rs.1000/- and in its default to suffer S.I for 15 days more. However, both the appellants were extended benefit of section 382-B, Cr.P.C. Learned trial court has also made a reference as Confirmation Case No.14/2012 for confirmation of death sentence. The learned trial court has also acquitted co-accused Sikander and Khadim Hussain by extending them benefit of doubt through same judgment. The complainant of this case has preferred Criminal Acquittal Appeal No.D-327/2012 against acquitted accused / respondents No.1 and 2. As all the appeals arise from the same judgment, therefore, we dispose of the same together.

2. The brief facts of prosecution case as disclosed in the F.I.R. lodged by one Mazhar Iqbal that on 26.10.2008, he being store keeper, Super Coal Mines Co; alongwith other employees of the company namely Haji Abid Hussain, Liaquat Ali, Javed and Nazeer Ahmed had gone to Hyderabad in a Toyota Hilux for purchasing some articles. The vehicle was being driven by Haji Abid Hussain. While returning, at about 10.40 p.m when they reached near Andoo Jo Dhoro, on Road, found a 10 wheeler truck was standing there when they reached near the truck and saw 10 suspicious person armed with weapons available there. Out of them, on headlight of the vehicle they identified accused Pahar Khoso, Patang and Khanu Siyal armed with Kalashnikovs, three others were armed with pistols and remaining were armed with rifles.

Meanwhile, accused Pahar alongwith other accused fired upon them with their respective weapons. Haji Abid Hussain accelerated the speed of vehicle, but he sustained firearm injuries and the vehicle went out of control and stopped at some distance. They found Abid Hussain had sustained firearm injuries on right arm pit, left leg and left arm. They also found Liaquat Ali sitting on front seat and also sustained firearm injury on his right eye and died on spot. They communicated such information to Micro police picket and shifted Haji Abid Hussain in injured condition and body of Liaquat Ali to Jamshoro hospital, but on the way Abid Hussain succumbed to injuries. They had also found a truck bearing Regd: NO.QAG-2665, where one Zahoor Ahmed was also lying in injured condition, having sustained firearm injury on his leg, he was also shifted to hospital. After usual formalities and conducting postmortems, the dead bodies were handed over to complainant party, thereafter, the complainant went to Police Station and recorded his statement being F.I.R. No.36/2008. After usual investigation police submitted challan against the accused u/s. 302, 324, 341, 427, 114, 148, 149 PPC.

3. Charge was framed against the accused Sikandar, Pahar and Khadim Hussain by learned trial court, in which they did not plead guilty and claimed to be tried.

4. Subsequently, absconding accused Patang was also arrested and police submitted supplementary challan and learned trial court framed the amended charge to which all accused pleaded not guilty and claimed for their trial.

5. During pendency of case, absconding accused Hakim Ali was also arrested and police submitted supplementary challan and he was

acquitted by the trial court under section 265-K Cr.P.C vide order dated 10.05.2012, during pendency of trial.

6. Prosecution in order to prove its case had examined complainant Mazhar Iqbal at Ex.13, P.W Muhammad Javed at Ex.14, P.W Nazeer Ahmed at Ex.15, P.W Muhammad Abbas (mashir) at Ex.16, P.W Dr. Dileep Kumar at Ex.18, P.W ASI Mazhar Ali Pitafi at Ex.19, P.W Zahoor Ahmed (injured) at Ex.21, P.W SIP Tarique Muhammad Ameen at Ex.22, P.W ASI Muhammad Yakoob at Ex.23, P.W Ghulam Mustafa Messo (Tapedar) at Ex.24, P.W Khadim Hussain (mashir) at EX.26. Thereafter, learned DDA closed the side of prosecution vide his statements Ex.27 and Ex.29. .

7. Statements of accused were recorded under sections 342, Cr.P.C in which they pleaded their innocence and denied the charges of alleged crime. Accused Sikander, Khadim Hussain and Patang neither examined themselves on oath nor led any evidence in their defence. Accused Pahar did not examine himself on oath. However, he examined D.Ws Motiyo and Muhammad Ramzan in his defence and produced copies of F.I.R., and civil suit pending against complainant party.

8. After hearing the parties and assessment of the evidence, learned trial court passed the judgment dated 10.06.2012, whereby convicted and sentenced the appellants Pahar and Patang as stated above, whereas, acquitted the accused Sikandar and Khadim Hussain. Against said judgment the above Cr. Appeal and Criminal Acquittal Appeal have been preferred

9. Learned Counsel for appellants Pahar and Patang has contended that in fact incident was unwitnessed; that there were material contradictions in prosecution evidence; that Appellants have been

involved due to enmity. He further contended that the F.I.R. was delayed by 48 hours; as incident took place on 26.10.2008 at 10:40 p.m whereas F.I.R. was lodged on 28.10.2008 at 10:00 p.m. He further contended that the ASI Mazhar Ali asked complainant to lodge F.I.R. but he replied that after burials of the dead bodies they would return back at Police Station for lodging the F.I.R. He further contended that F.I.R was not lodged for the whole day at Hyderabad / Jamshoro this shows that F.I.R. was lodged after due deliberations and consultation, such fact has been admitted by complainant that he has lodged the F.I.R. after consultation with his boss. He further contended that the delay in lodging the F.I.R. has not been explained. He further contended that there was civil litigation between the accused party and complainant. He further contended that the Appellant Pahar had lodged F.I.R. No.6/2007 against P.W Haji Nazeer Ahmed and others prior to this incident. He further contended that there was enmity between Nazeer Ahmed and Appellant Pahar Khan. He further contended that ASI Mazhar Ali has deposed that on 27.10.2008 he was on duty when at about 11.00 p.m he received information by Micro Police Post and went there where he saw that a truck was parked on the road behind it, one Datsun Pick-up of new model was standing in which he found that injured Liaquat sustained injuries, while Abid Hussain died; the eye witnesses were neither present at the place of wardat nor they witnessed the incident but they have been set up. He further contended that P.W Muhammad Javed did not state the time of incident and P.W Nazeer Ahmed states that incident took place at 1040 hours (morning) whereas injured Zahoor Ahmed states that incident took place 10:00 / 10:30 a.m. He further contended that according to M.O Dileep Kumar, the injuries were sustained by the deceased round about 9 p.m. He further contended

that in the inquest report it is mentioned that death occurred during the course of robbery; police prepared inquest report before the registration of F.I.R. so also mashirnama of injuries. He further contended that statement u/s 161, Cr.P.C of eyewitness Muhammad Javed was recorded after 10 days, whereas, statement of injured Zahoor Ahmed was recorded after 6 days of registration of the F.I.R. He further contended that identification was on headlight of the vehicle always treated as weak source of identification. He further contended that after 58 hours of the incident empties were recovered from the place of wardat. He further contended that there is no mention in mashirnama of place of wardat regarding the identification of accused on headlight of the vehicle. He contended that injured Zahoor Ahmed has not supported the case of prosecution. He further contended that identification parade of accused Sikander was held but he has been acquitted on 10.10.2012 by learned trial court u/s. 265-K, Cr.P.C. He further contended that appellant Pahar was absconder and during investigation nothing incriminating was recovered from him except from accused Sikander, who has been acquitted. He contended that the 10 empties were collected on 29.10.2008. He further contended that no empties of K.K. was recovered. He further contended that Accused Sikander was arrested on 06.11.2008 and on 11.11.2008 pistol was recovered from him. He further contended that there was delay of two months in sending the pistol and empties to the Ballistic Expert. He further contended that there was no evidence regarding safe custody of the empties and pistol during that period. He further contended that Complainant during investigation appeared at P.S on 02.01.2009 made further statement and implicated accused Hakim and Mehar and in further statement there was no mention regarding the name of appellant

Pahar; and Accused Hakim, who was subsequently involved and was acquitted by the trial court under section 265-K, Cr.P.C against whom Criminal Acquittal Appeal No.D-180/2012 was filed by complainant Mazhar Ali before this Court, which was also dismissed. He further contended that the charge was also defective as it is mentioned in the charge that incident occurred on 26.10.2008 at 1040 hours (morning). He further contended that the same date and time has been mentioned in the statement of accused under section 342, Cr.P.C incorrectly. He further contended that in the point for determination formulated by trial court time has been mentioned as 1040 hours (morning) whereas, incident had occurred at 10-40 p.m. He further contended that impugned judgment has been passed without reasons, which cannot be termed as judgment in the eyes of law. He further contended that the bullet shells were not recovered/collected from the vehicle in which incident took place. He further contended that identification on headlight of the vehicle was at the distance 20/25 fts. which is very difficult to identify in a very weak source of identification. He further contended that the witnesses were interested and there was no independent corroboration. He further contended that no recovery was effected from the appellants. Lastly, he prayed for acquittal of the appellants. In support of his contentions, learned Counsel for the appellants has placed reliance on the cases of (1) SHOUKAT ALI vs. The STATE (2004 WLR 356), (2) GHULAM QADIR vs. The STATE (2014 P.Cr.L.J 865), (3) ABDUL MAJEED vs. THE STATE (2001 YLR 2128), (4) MUHAMMAD HANIF @ POCHO vs. THE STATE (SBLR 2014 Sindh 45), (5) MUHAMMAD AFZAL alias ABDULLAH and others vs. THE STATE (2009 SCMR436), (6) Mst. RUKHSANA BEGUM and others vs. SAJJAD and others (2017 SCMR 596), (7) RAHAT ALI vs. THE STATE (2010 SCMR 584), (8)

MUHAMMAD ASIF vs. The STATE (2017 SCMR 486), (9) SHAKEEL AHMED vs. THE STATE (SBLR 2015 Sindh 100), (10) MUHAMMAD ASIF vs. THE STATE (2008 SCMR 1001), (11) ABDUL RAZZAQ and 3 others vs. The STATE (2014 YLR 1479), (12) G. M. NIAZ vs. The STATE (2018 SCMR 506), (13) GUL ZAMAN vs. The State & another (SBLR 2016 Sindh 1291), (14) ZEESHAN @ SHANI vs. THE STATE (2012 SCMR 428), (15) ABDUL QADIR alias FAUJI vs. The STATE and another (2017 YLR 2284), (16) MUHAMMAD SHAH vs. THE STATE (2010 SCMR 1009), (17) ISHAQ alias KAKAN VS. THE STATE (SBLR 2016 Sindh 1157), (18) HABIBULLAH alias BHUTTO and 4 others vs. THE STATE (PLD 2007 Karachi 68), (19) HABIB Vs. The STATE (2014 P.Cr.L.J 1067), (20) MUHARRAM and another vs. THE STATE (2008 YLR 2441), (21) TARIQ vs. The STATE (2017 SCMR 1672), and (22) MUHAMMAD NADEEM alias BANKA vs. THE STATE (2011 SCMR 1517).

10. On the other hand, Mr. Aijaz Shaikh learned counsel for appellant / complainant Mazhar Iqbal has contended that the names of accused transpired in the F.I.R. He further contended that role has been assigned to them. He further contended that the place of incident is admitted; and the number of accused persons is mentioned in the F.I.R alongwith weapons and P.Ws have supported the prosecution case at trial except P.W Zahoor Ahmed. He further contended that ocular evidence was corroborated by the medical evidence alongwith circumstantial evidence i.e 10 empties of 7.62 m.m and 5 empties of 32 bore pistol as well as broken glass of the windscreen of the vehicle so also datsun pick-up in which the complainant party were boarding having 19 bullet whole. He further contended that the delay has been explained as dead bodies were sent out of the province. He further

contended that accused were acquitted by the trial court as their case was distinguishable. He further contended that accused were identified on headlight of the vehicle. He further contended that luckily eye witnesses did not receive any injury as they were sitting on rear seat and deceased persons were sitting on the front seat of the vehicle. He further contended that further statement of the complainant was recorded to clarify the position and to give the names of remaining accused. He further contended that the trial court has wrongly and in the artificial manner acquitted the respondents. He further contended that the delay in recording 161, Cr.P.C of the P.Ws in the circumstances of the case would not be fatal to the prosecution case. He further contended that death sentence has been rightly awarded to appellants Pahar and Patang and requested for dismissal of their appeal by maintaining the judgment to the extent of their conviction and sentence and further requested for setting aside of the judgment to the extent of acquittal of the respondents and prayed that the acquittal appeal may be allowed.

11. Shahzado Salim Nahyoon, D.P.G for the State has argued that appellants Pahar and Patang were rightly awarded death sentence by the trial court. He further argued that the judgment of the trial court with regard to the acquitted accused / respondents is speculative. He submits that acquittal appeal filed by Mazhar Iqbal against respondent Hakim Ali, which was dismissed by this court vide order dated 05.03.2018, said acquittal order has not been challenged before the Supreme Court.

12. Mr. Shabeer Hussain Memon learned Counsel for respondent Sikander in Criminal Acquittal Appeal No.D-327/2012 submitted that respondent Sikander was arrested on 6.11.2008. He further submitted

that identification parade was held on 12.11.2008 after 6 days of his arrest but according to him identification was doubtful. He contended that complainant in his examination-in-chief has named respondent Sikander that he was demanding Bhatta from them but his name was not mentioned in the F.I.R. Finally, he argued that the prosecution has failed to prove it's against respondent Sikander and trial court has rightly acquitted the respondents and this Court has already dismissed the acquittal appeal filed by complainant against acquittal of accused Hakim and as per prosecution story role of Sikandar Ali was identical to role assigned to accused Hakim and prayed for dismissal of the acquittal appeal.

13. Mr. Kashif Hussain, learned counsel for respondent Khadim Hussain in Criminal Acquittal Appeal No.D-327/2012 contended that the prosecution had not been able to prove it's case against respondent Khadim Hussain and he has been rightly acquitted by the learned trial court. He prayed for dismissal of the Criminal Acquittal Appeal.

14. Heard learned Counsel for the parties and perused the record. We have carefully scanned ocular evidence of eye-witnesses, which rests upon P.W-1 Complainant Mazhar Iqbal, P.W-2 Javed Ahmed, P.W-3 Nazeer Ahmed and P.W-4 Zahoor Ahmed (injured) who was the eye-witness of the incident.

15. P.W-1 Mazhar Iqbal has deposed that he was store keeper, Super Coal Mines Co; and on 26.10.2008 he alongwith Haji Abid Hussain (who was driving the vehicle), Liaquat Ali (sitting with driving seat), Javed Ahmed and Nazeer Ahmed (both alongwith complainant were sitting on rear seats) were returning from Hyderabad on their vehicle bearing No.9678 KM. At about 10-40 p.m when they reached at Habibullah

curve on Road near Indoji Dohree and found one 10 wheeler truck was standing there. They stopped their van and saw that 10 armed persons came out, out of them three were armed with K.K and they identified them as Pahar Khan, Khano Siyal and Patang and four persons were armed with rifles and three were armed with pistols. Accused Pahar challenged the complainant and directed their companions that they are workers of Super Coal Mines, on that, they started firing on them wherein Haji Abid Hussain received bullet injuries on his left side of chest, wrist and on right thigh, whereas Liaquat Ali had received bullet injury on his right eye. Thereafter accused fled away and they also noticed that truck driver Zahoor had also received bullet injury. Thereafter complainant party informed Microw Wave Police Post and with help of police shifted all the injured persons to LMCH Jamshoro, where complainant party came to know that Abid Hussain and Liaquat Ali had been expired. Thereafter, postmortems were conducted of dead bodies of deceased persons and thereafter dead bodies were handed over to the complainant party for funeral ceremony. He further deposed that they send the dead bodies of deceased to their native places and on 28.10.2008 he went to Police Station Khanoth where police registered his F.I.R. bearing Crime No.36/2008 under section 302, 324, 341, 427, 114, 147, 149 PPC. This P.W further deposed that he was working in the Company since 2005 whereas the land of coal mine was leased out to the company in the year 1991. During cross examination he admitted that the said land was leased out to one Muharram Khoso and such litigation was going on in civil court. He further admitted that accused Pahar Khoso was attorney of Muharram Khoso and he was appearing in the cases pending in between Muhammad Khoso and their Company. He further admitted the fact that Pahar Khoso had lodged

F.I.R. against Nazeer Ahmed and Abid Hussain at P.S Coal Mines bearing Crime No.06/2007 and according to him such F.I.R. was cancelled but to next suggestion he admitted that challan has been submitted before the competent court of law. This P.W had contradicted his previous statement. In examination-in-chief he stated that they stopped their vehicle due to 10 wheeler truck, which was standing on the road and thereafter 10 persons came out towards them but in cross-examination he has deviated from this version and stated that their vehicle was slow and after firing on their vehicle, their vehicle was stopped about one furlong away from the place of incident (where firing took place). This shows that their vehicle was on speed and could not stop at the place of firing.

16. We have also examined the deposition of P.W Javed Ahmed, who made his statement in same line as stated by complainant Mazhar Iqbal. During cross-examination, this witness stated that accused attacked on them at the place of incident and they got slow down their vehicle but at the same time he again said that their driver made speed to their vehicle while seeing accused. This P.W stated that accused persons came from three corners and they crossed the accused persons within 30 second. This P.W denied the aspect that the complainant party faced the dacoits and they tried to escape from the scene of offence and accused fired on them. This P.W also admitted this fact that neither he has mentioned any description of accused in his statement recorded by police u/s. 161, Cr.P.C nor statement u/s. 164, Cr.P.C. Even in both statements has not disclosed the name of any accused.

17. We have also examined the evidence of P.W-3 Nazeer Ahmed, who has also stated the same facts as given by both P.Ws. He has given different version regarding speed of the vehicle at the time of

incident. He has stated that their vehicle was so speedy but due to receiving injuries their vehicle was slow and stopped after covering distance of one furlong. This P.W has given contradictory statement about Bhatta as complainant has stated that Pahar Khoso was taking Bhatta from their company but this P.W has stated that accused Pahar Khoso was demanding Bhatta but they did not pay the same to accused Pahar Khoso. This P.W has admitted that the names of accused persons were not mentioned in his statement u/s. 161 and 164, Cr.P.C but he stated that they disclosed the names of accused before learned Judge while recording statement u/s. 164, Cr.P.C but learned Judge has not written their names. He has further stated that he has disclosed this fact during recording statement u/s 164, Cr.P.C that accused persons made firing from three sides but such fact was not written by police. He has further stated in his deposition that they made complaint to the Magistrate that why their whole statement was not recorded and why he (Magistrate) did not write the same as per their verbatim, but he admitted that they did not make any application in writing. Even, he has admitted that they had not submitted any application against the Magistrate.

18. We have also examined the deposition of P.W Zahoor Ahmed, who is the star witness of the incident and had received firearm injury. He has clearly stated that on the night of incident, he was proceeding from Habibullah Curve towards Indus Coal Mines at about 10/10-30 a.m at that time he was driving the truck when he reached near Indro Ji Dhoru he saw 8/10 persons emerged on the road and started firing upon his truck and resultantly he received bullet injury on his left leg and **due to darkness he did not see any further more. Thereafter, he was brought to hospital by his relatives on his own vehicle. He could**

not identify any of the accused present in court as at the time of incident there was darkness.

19. We have examined the motive, defence of appellants coupled with source of identification and delay of 48 hours in lodging of F.I.R. The motive which is treated as backbone of any criminal case. Motive is always treated as doubt edged weapon, which cuts both sides. The complainant has disclosed the facts and motive in the F.I.R. that he identified accused Pahar, Patang and Khano at the place of incident alongwith seven other accused (their names were not disclosed in the F.I.R.) and accused Pahar Khoso after verification of their vehicle directed to his accomplices that this is the vehicle of Super Coal Mines and do not spare them, on that, accused party made firing at complainant party and resultantly two persons namely Abid Hussain and Liaquat Ali lost their lives and he further disclosed that there was dispute on land in between accused Pahar Khoso and the company. Accused Pahar had also taken the same plea that there was dispute over the land in between Super Coal Mines Khanoth and Muharram Khoso and accused Pahar was attorney of Muharram Khoso in civil litigation. He has produced certified copy of Civil Appeal No.28/2008 alongwith his statement u/s. 342, Cr.P.C and he has further produced Special Power of Attorney, allotment order of disputed land and certified copy of Form-VII of disputed land in faovur of Muharram Khoso. He has also produced certified copy of F.I.R. bearing Crime No.06/2007 of P.S Coal Mines u/s. 337A(i), 337F(i), 427, 447, 504, 148, 149 PPC against Super Coal Mines. He has also produced two DWs in his defence namely D.W Motio at Ex.36 and D.W Muhammad Ramzan at Ex.37. Both D.Ws have stated that accused Pahar had gone to village Shadi Khan Khoso to attend marriage ceremony alongwith them on 26.1.2008 and they

remained there from 06:00 p.m to 12:00 midnight. The case of prosecution and defence plea taken by accused Pahar had brought the case in juxtaposition. We have carefully examined available material on record and found delay in lodging of F.I.R. coupled with source of identification, case of prosecution has become doubtful. It is a matter of record that incident had taken place on 26.10.2008 at 10:40 p.m whereas, the F.I.R. has been lodged on 28.10.2008 at 2200 hours. This delay of 48 hours in lodging of F.I.R. was explained by the complainant that after postmortem they sent the dead bodies of deceased out of province and after their burial, they lodged the F.I.R. It has come on record that soon after the incident complainant party reported the incident at police post Microw Wave. It has also come on record that P.W-06 ASI Mazhar Ali Pitafi reached soon after the incident at place of incident and shifted the injured to LUMHS and issued the letter for postmortem and prepared inquest reports and mashirnama of receiving the dead bodies and completed other formalities and P.W ASI Mazhar Ali has clearly stated that after completing all the formalities, he handed over the dead bodies to the complainant party and thereafter he asked the complainant party to lodge F.I.R. but complainant party refused to lodge the F.I.R. and stated that after burial of the dead bodies they will lodge the F.I.R. He has further stated that he did not secure anything from the place of incident. It could not be ruled out that the F.I.R. has been lodged after consultation and same facts have been admitted by the complainant in his deposition that he has lodged the F.I.R. of the incident after consultation with Nazeer Ahmed (owner of Coal Mines). Another aspect of the case which is brought by the complainant on record that accused Pahar Khan was demanding bhatta from their company and he also admitted that no such F.I.R. of demanding bhatta

has been lodged by the company against Pahar Khoso. It is very hard to believe that when criminal and civil litigation on landed dispute was pending in between the parties before Court of Law and both parties are attending court proceedings then how a person can demand bhatta / extortion money from the complainant party and this aspect of the case has not been given by the complainant in his F.I.R. neither any P.W stated this fact in the statement u/s. 161, Cr.P.C nor in statement u/s. 164, Cr.P.C. It appears that complainant party had decided to bring the case against the accused Pahar and others from all corners and its after thought improvement made by complainant party. We have observed that accused Pahar has produced sufficient material / record, which shows civil and criminal litigation in between the parties but complainant party has not produced any single document to show that prior to this incident any aggression was made by accused Pahar Khoso against complainant party and even complainant party had shown any proof that accused Pahar had issued any threat for dire consequences against them particularly when complainant party did not lodge any complaint against accused on the issue of Bhatta.

20. Another important aspect of this case is that place of incident was Road, time of incident was odd hours of night (10:40 p.m) and the source of identification was headlight of vehicle which is also very weak type source of identification. Complainant, P.WS Jawaid Ahmed and Nazeer Ahmed have stated in their evidence that they identified three accused on the headlight of vehicle, whereas, P.W Jawaid Ahmed in his cross-examination had stated that they had seen the accused on searchlight available on their vehicle but he denied that he had seen the accused on headlight of the vehicle. We have also gone through the statements u/s 164, Cr.P.C of P.W Jawaid Ahmed and P.W Nazeer

Ahmed and surprisingly we have noticed that P.W Nazeer Ahmed did not disclose source of identification in his statement u/s. 164, Cr.P.C. It is pertinent to mention here that injured witness has clearly stated that he did not identify any accused due to darkness at the time of incident.

21. We have also gone through the evidence of eye witnesses in respect of explaining the manner of incident. Complainant deposed that they saw 10 wheeler truck was standing on the road side and they stopped their vehicle, thereafter 10 persons armed with weapons came there and fired at their vehicle but complainant in his cross-examination has stated that at the time of incident their vehicle was slow and after firing their vehicle was stopped after covering distance of about one furlong. We cannot understand that complainant stated that when their vehicle was stopped and accused made firing then how their vehicle was stopped after covering the distance of one furlong. On the same point, P.W Jawaid Ahmed has given different version that when accused were attracted to their vehicle, they got slow but he again changed this version and stated that their driver made speed to their vehicle. On this point, prosecution witnesses contradicted each other as complainant stated that accused party fired on them when they reached near to them but P.W Jawaid Ahmed in his statement under section 164, Cr.P.C at Ex.14-A has stated different version, *which is reproduced as under:-*

“on 26.10.2008I alongwith Liaquat, Abid and Nazeer Ahmed left Hyderabad to Khanoth Coal Company when we reached at Habibullah Morr it was about 10:30 p.m and we saw on the searchlight of our vehicle that a truck was standing in one side of the road and on other side some persons were standing thereafter they started firing towards us. I have seen them and could be identified them out of them four were armed with rifles, three were armed with Kalashnikovs and three were armed with pistols out of them we have identified four accused to whom we knew them one was Pahar, second was Patang, third one was Khan alias Khanoo and fourth one was Sikandar alias Sikoo who were armed with pistols. When our vehicle crossed them thereafter accused fired on us from back side of our vehicle and fled away. Thereafter we

saw that Liaquat Ali was died on the spot whereas Abid was injured who had succumbed to injuries on the way to hospital. Accused Sikandar alias Sikoo is same”.

It is pertinent to mention here that as per prosecution story deceased Abid Hussain and Liaquat Ali were sitting on front seats of vehicle, whereas, other P.Ws were sitting behind them on rear seat. If we treat this PW as real and trustworthy witness then it is very difficult for us to believe that how persons who were sitting on front seats had received injuries from their front side and question arises here that why the persons sitting on rear seats had not received any single injury. We have considered the deposition of P.W-5 Dr. Dileep Kumar, who had conducted postmortems of deceased persons and deposed that deceased said to be expired due to discharge from firearm injury and as per post mortem reports both deceased received firearm injuries from their front side.

22. It is a case of prosecution that soon after the incident complainant party informed Microw Police Picket situated at the distance of 2/3 kilometers from the place of incident and complainant party had shifted the injured with the help of P.W ASI Mazhar Ali who reached at the place of incident to the hospital. P.W ASI Mazhar Ali was examined at Ex.19, who stated in his deposition that he was informed by Microw Police Post that some firing had taken place towards Indro Jo Dhoru (place of incident) thereafter he rushed towards the place of incident and saw that a Truck was parked on the road side and one Datsun Pickup was also standing there. He found injured Liaquat Ali in injured condition while Abid Hussain died on the spot. He brought the injured and deceased at LUMHS Hyderabad in same pickup. He issued letter to doctor for postmortem. He prepared inquest reports of deceased, lash chakas forms and mashirnamas of dead bodies and after postmortem

he handed over the dead bodies to complainant. We have perused the Lash Chakas Forms of deceased Abid Hussain and Liaquat Ali at Ex.18/C and 18/D. Column No.6 pertains to who furnished details of death of deceased alongwith date and time. In reply to this column it was mentioned that one Muhammad Saeed had furnished information that on 26.10.2008 at 10:00 p.m near Habibullah Morr, deceased Liaquat Ali was killed during robbery and this fact has also been admitted by P.W-5 Dr. Dileep Kumar who also stated in his deposition that he has gone through the Lash Chakas Forms furnished by police in which it was disclosed that both deceased were murdered during robbery. This admitted fact has created serious doubts in the case of prosecution that P.W ASI Mazhar Ali had prepared Lash Chakas Forms in which he has disclosed that fact that one Saeed Ahmed had furnished information about the incident of robbery in which both deceased had lost lives. Neither said Saeed Ahmed was examined by the police during investigation nor prosecution had produced him before the Court. Here at this juncture we consider the delay of 48 hours in lodging of F.I.R., identification on headlight and recorded enmity in between the complainant party and accused and also examined the defence plea taken by the appellants. All the P.Ws were put on question that they were not present at the time of incident and deceased had lost their lives during robbery on the road. Though they have denied this fact but we have noticed that five persons were travelling in a vehicle and 10 accused who were armed with sophisticated weapons all of them fired on the vehicle two persons had lost their lives and 19 bullets marks were found on the vehicle but all the three eye-witnesses of the incident who were travelling alongwith deceased in a same vehicle had not received any single injury. The contention raised by the learned Counsel

for complainant that accused had targeted the vehicle of complainant party then in a mystery position why remaining eye-witnesses had not received any scratch in this incident. We have also noticed that suppose accused party targeted the complainant party or their vehicle then why truck driver P.W-7 injured Zahoor Ahmed had received bullet injury on his leg while he was truck driver and travelling in a different vehicle. This all shows that in fact it was robbery incident on the road and complainant party in order to rob the accused party due to enmity had falsely implicated them and prosecution story is a result of after thought.

23. It is a matter of record that accused Patang has taken defence plea and produce his medical record that he is disabled person from his right arm as it is not working due to electric shock received by the accused and he remained under treatment from 15.12.2007 to 20.02.2008 from LUMHS and such certificate has been produced by him issued by Chief Casualty Medical Officer, LUMHS Hyderabad.

24. It is a matter of record that I.O of the case has recorded further statement of P.Ws in which the complainant party have implicated accused Hakim Ali and his name was not appearing in the interim challan submitted by the police before the concerned court on 21.11.2011 and on 04.12.2008 concerned police submitted subsequent challan showing the name of Hakim Ali in the list of absconders and subsequently accused Hakim Ali was arrested on 24.03.2012. Accused Hakim Ali after submission of supplementary challan moved application u/s. 265-K, Cr.P.C, which was allowed by learned trial court vide order dated 10.05.2012 and accused Hakim Ali was acquitted. The said order passed by the learned trial court of acquittal of accused Hakim Ali was challenged by the complainant before this Court by filing Criminal Acquittal Appeal No.D-180/2012, which was turned down by this court

vide judgment dated 05.03.2018. During arguments, we have also confirmed this fact from the learned Counsel for the complainant who has stated that the judgment of this court was not challenged by the complainant before the Honourable Supreme Court. This suggests that the complainant / appellant has not impugned the judgment passed by this court before the Supreme Court.

25. We have also taken into consideration the fact that the learned trial court did not believe the prosecution evidence against respondents Sikander and Khadim Hussain and while extending benefit of doubt to the respondents acquitted them by holding as under:-

“So far case of accused Sikandar Ali and Khadim Hussain being unidentified accused of the FIR is concerned, record shows that neither description/hulia form of any such accused shown in the FIR, statements of the PWs under Section 161 & 164 Cr.P.C. respectively, nor identification parade test of the accused Khadim Hussain has ever been held, therefore, I am of the opinion that mere mentioning the names of the accused in 162 Cr.P.C. statements of the complainant and eye witnesses produced by the I.O/SIP Tarique Muhammad Ameen Korejo at Ex.22-A to 22-C without furnishing source of information is not sufficient to link the accused Khadim Hussain with commission of the offence. Besides, as per prosecution theory, accused Sikandar Ali was arrested on 06.11.2008, recovery of a pistol & 5-live bullets affected on the pointation from a jungle on 11.11.2008, put in identification parade test on 12.11.2008, the empties recovered from venue of incident and recovery of weapons allegedly affected from the accused sent for forensic report on 15.12.2008. Means thereby, on arrest of the accused Sikandar, he was kept unauthorizedly for about 6-days by the police and without putting him in identification parade test, allegedly held on 12.11.2008, a day prior recovery of weapons was made from him on his pointation in presence of private mashirs Muhammad Abbas and Jan Muhammad. Glance on the evidence put-forth to that extent is another S. C. No.205/2011 re: (The State v. Sikandar Ali) under section 13(e) Arms Ordinance, PS Khanoth registered being off shoot case against the accused transpires that mashir Jan Muhammad in cross-examination deposed that on such date he and co-mashir Abbas had come to P.S, as complainant of main case had asked them to come there. Means thereby, the complainant had knowledge regarding the arrest of accused and subsequent recovery from him, therefore, I am convinced with the contentions raised by Mr. Memon, learned counsel for accused Sikandar Ali that there is every likelihood that prior to putting the accused in identification parade test, he was shown to the complainant. Moreover, the complainant in examination in chief deposed that accused Sikandar alongwith others nominated in the

FIR used to obtain bhatta from them, therefore, he knew him. Such piece of evidence prima facie shows that if the accused Sikandar Ali was known to the complainant, he was supposed to mention his name in the FIR, therefore, subsequent identification of such accused has lost his value. Besides, para-5 of the memo of identification parade test produced at Ex.13-B, it transpires that learned Magistrate asked the suspect (accused Sikandar Ali) to raise any objection with regard to his identification test and procedure, whereby he stated that he had been shown to the witness by the police at Police Station and also outside of the court. Though, learned Magistrate ignored such fact and conducted identification parade test, keeping in view that the accused used to say such type of the facts, but if the entire evidence is looked into, it transpires that no transparency is observed by the police before putting the suspicious in identification parade test. Here, I would also feel it necessary to mention that a day prior to putting the accused Sikandar Ali in identification parade test, he was held accused of the instant case, as contents of FIR above mentioned in off shoot case under Section 13(e) Arms Ordinance, 1965 pending on the file of this court prima facie shows that accused was arrested in the instant case. Such alone fact has made the recovery and subsequent identification parade test of accused Sikandar Ali very doubtful. In this regard, I am fortified by the case law reported in 1993 SCMR 585 & 1992 SCMR 96, in which it has been held by the Honourable Court that identification parade has no value for want of description of accused in FIR. In another case, reported in SBLR 2001 (Larkana) 621, it has been held that delay in holding identification parade test and that too in piecemeal. Such type of identification parade can be viewed with suspicion. Further more in absence of any explanation for identification in piecemeal, there was every possibility that the accused were shown to the witnesses by the police. Thus, when doubt is created, that is to be given to the accused.

The conclusion of above discussion is that the prosecution has successfully discharged the burden of proof of constituting unlawful assembly, committing Qatl-e-Amd of Eng. Abid Hussain and Liaquat Ali, as well as causing firearm injury to driver Zahoor Ahmed and damage to the vehicle of company against the accused Pahar Khan and Patang behind shadow of reasonable doubt on the basis of ocular testimony, supported by the medical and circumstantial evidence, coupled with enmity, hence point No.2 to that extent is proved. Since, the identification of accused Khadim Hussain and Sikandar Ali not seems to be in proper manner, therefore, they are extended benefit of doubt in the light of circumstances discussed above.”

26. We have come to the conclusion that there are several reasons to disbelieve the evidence of prosecution witnesses for the reason that this incident had taken place on road in odd hours of night and source of identification was headlight of vehicle, which is very weak source of identification and delay of 48 hours in lodging of F.I.R. has created

serious doubts in the prosecution case and it has come on the record from the mouth of complainant that F.I.R. of this incident was lodged by him after consultation, and delay has not been plausibly explained by the complainant. All the P.Ws are employees of Company, which had civil as well as criminal litigation with appellants, and all P.Ws are interested, set up and inimical to appellants and their presence in same vehicle with deceased persons is highly doubtful. Prosecution witnesses have made improvements as well as they contradicted each other and their evidence is not trustworthy, reliable and confidence inspiring. The learned trial court had not believed the evidence of recovery as well as evidence of identification parade and acquitted the co-accused Sikandar, Khadim and Hakim by extending them benefit of doubt. Moreover, star witness of the incident i.e injured Zahoor Ahmed had not supported the version of complainant party particularly when it has come on the record that police prepared Lash Chakas Forms in which it was clearly mentioned that one Saeed Ahmed informed the police that deceased had received firearm injuries during course of robbery on the road and this fact has denied the presence of complainant party at the scene of offence. This Court has already dismissed the acquittal appeal of complainant filed against Hakim and complainant has also not challenged the order of this Court before the Supreme Court and it has attained finality. In this regard reference is made to the case of *MURAD ALI and another vs. THE STATE* (2011 P.Cr.L.J 1133) wherein it has been observed as under:-

“It would be clear that the prosecution has failed to prove its case against the accused beyond any reasonable doubt. It is a well-settled proposition of law that when the prosecution fails to prove its case beyond reasonable doubt benefit of the same has to be given to the accused. Reference in this regard may be made to a latest judgment given by the Hon’ble Supreme Court of Pakistan in the case of Amin Ali v. The State, 2011 SCMR 323, wherein the Hon’ble Court observed as under:

After considering the material available on record, we are of the considered view that the prosecution has failed to prove the case against the appellants beyond any reasonable doubt. Therefore, they are entitled for the benefit of doubt, which is accordingly given to them. The conviction and sentences awarded to them are set aside, therefore, they are acquitted of the charge. They should be released forthwith, if not required in any other custody case. Consequently, the appeal is allowed.”

27. In the case of Ayub Masih v. The State (PLD 2002 SC 1048)

Honourable Supreme Court held as under:-

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

28. In the case of G. M. Niaz versus The STATE (2018 SCMR 506)

Honourable Supreme Court held as under:-

“An FIR in respect of the alleged occurrence had been lodged after about seven hours and forty minutes which by itself was a circumstances doubting the claimed availability of the above mentioned eye-witnesses with the deceased at the time of occurrence. The record of the case shows that Zahid Iqbal deceased was taken to the hospital in an injured condition by a police constable and not by the above mentioned closely related eye-witnesses and this fact completely belied the claim of the eyewitnesses regarding their presence with the deceased at the relevant time.”

29. It is a matter of record that statements u/s. 161, Cr.P.C of prosecution witnesses were recorded after 10 days of registration of F.I.R. which has not been explained by prosecution. The Honourable Supreme Court has been held in various judgments that delay in reporting the matter to the police or recording the statements of witnesses by the police has been found adversely affecting the veracity

of witnesses as held in the case of Muhammad Sadiq v/s. The State (PLD 1960 S.C 223, Sahib Gul v/s Ziarut Gul (1976 SCMR 136), Muhammad Iqbal v/s State (1984 SCMR 930) and Muhammad Asif v/s The State (2017 SCMR 486) respectively and unexplained delay would be fatal to prosecution and such statement of witness was not relied upon in the case of Syed Mahmood Shah v/s State (1993 SCMR 550).

30. The Honourable apex Court in the case of *MUHAMMAD AFZAL alias ABDULLAH and others vs. THE STATE and others* (2009 SCMR 436) has observed as under:-

“9. Admittedly, the occurrence took place in the dark hours of the night. It has not been disclosed as to how the witnesses were able to identify the culprits. It can, at the most, be presumed that they were seen in the headlights of the vehicle, however, in that case the culprits could not have been seen by the P.Ws. more than once and that too, for a while. Though it is alleged that the deceased as well as the complainant were fired at by one of the culprits yet, it has not been pointed out as to who was he? Nor his description by appearance was given in the F.I.R. Absence of such details in the report/F.I.R. militates against bona fides of the prosecution and greatly mars evidentiary value of the test identification parade. It is well-settled that when description by appearance of the accused is not given in the report/F.I.R. and specific role is not attributed to him, his identification in Court for the first time, in the absence of strong corroboratory evidence, is not safe to be relied upon because by the passage of time memory fades and possibility that an accused might not have been mistakenly picked out is augmented.”

31. In the case of *Mst. RUKHSANA BEGUM and others vs. SAJJAD and others* (2017 SCMR 596), the Honourable Supreme Court has held as under:-

“A single doubt reasonably showing that a witness/witnesses' presence on the crime spot was doubtful when a tragedy takes place would be sufficient to discard his/their testimony as a whole. This principle may be pressed into service in cases where such witness/witnesses are seriously inimical or appears to be a chance witness because judicial mind would remain disturbed about the truthfulness of the testimony of such witnesses provided in a murder case, is a fundamental principle of our criminal justice system.

We have already disbelieved as a whole. It is fundamental

principle of justice that corroboratory evidence, must come from independent source providing strength and endorsement to the account of the eye-witnesses, therefore, eye-witnesses, in the absence of extraordinary and very exceptional and rare circumstances, cannot corroborate themselves by becoming attesting witness/witnesses to the recovery of crime articles. In other words, eye-witnesses cannot corroborate themselves but corroboratory evidence must come from independent source and shall be supported by independent witnesses other than eye-witnesses, thus, these recoveries are equally of no judicial efficacy.”

32. The Honourable Supreme Court in the case of *MUHAMMAD NADEEM alias BANKA vs. THE STATE* (2011 SCMR1517), has held as follows:-

“8. In the F.I.R. lodged at about 10-15 p.m. the complainant Muhammad Imtiaz (P.W.7) had not named the co-accused Javaid Iqbal; instead described him to be an "unknown person", albeit in his supplementary statement recorded on the same night he disclosed his name. In his examination-in-chief, the complainant revealed that "I made a supplementary statement on the same night that other accused and who had accompanied Nadeem accused was Javaid Iqbal". In, his cross-examination, as well, he stated that "I had stated in my supplementary statement that other accused was Javaid Iqbal son of Ghulam Muhammad mohal 'by caste and was resident of chak No. 705 GB". If it was so, it became evident that he spoke a lie in his F.I.R. that the other accused was an unknown person. As a liar he appears to be, the complainant again took a somersault to contradict himself in his another statement in cross-examination to say that "It is also incorrect that I knew the accused Javaid Iqbal and his parentage and the chak where he resided prior to joining the identification parade". Thus, having made his above-noted conflicting statements the complainant cannot be considered a truthful witness.”

33. In the case of *MUHAMMAD ASIF vs. The STATE* (2017 SCMR486), the Honourable Supreme Court has held as under:-

“11. Both these two eye-witnesses have been disbelieved by the investigating agency qua the acquitted two co-accused/the real brothers of the appellant. It is a trite principle of law and justice that once prosecution witnesses are disbelieved with respect to a co-accused then, they cannot be relied upon with regard to the other co accused unless they are corroborated by corroboratory evidence coming from independent source and shall be unimpeachable in nature but that is not available in the present case.”

34. In the case of *TARIQ vs. The STATE* (2017 SCMR1672), the

Honourable Supreme Court has held as under:-

“2. We have heard the learned counsel for the appellant and learned Additional Prosecutor General and also perused the available record. In the FIR 15 accused were nominated to be present at the place of occurrence; out of them 12 were armed with "Sotas" who allegedly caused multiple injuries on the person of Muhammad Ashraf deceased. The Doctor also observed multiple bruises on the back of Muhammad Ashraf deceased. Besides 12 accused, 03 other accused were also nominated who were present at the place of occurrence with fire arm weapon and allegedly fired ineffectively. The eye-witnesses even during trial gave the same role to all the 15 persons but the trial Court without distinguishing the role of accused persons during the occurrence, acquitted all the other accused persons except the appellant, Mehdi and Imran. Although the case of all the said accused was at par so far their role during the occurrence is concerned, but they were acquitted merely upon the opinion of the Police regarding their innocence which otherwise was inadmissible and irrelevant. The acquittal of the remaining accused persons fully establishes that the evidence of the eye-witness of ocular account was disbelieved to the extent of said accused persons. Surprisingly, no appeal against their acquittal was filed either by the complainant or the State. So the conviction of the appellant can only be sustained if there is independent corroboration to the said witnesses who had been disbelieved to the extent of majority of the accused which presently is lacking because the motive asserted by the prosecution indicates that there was enmity of murder between the parties and the said enmity, being double edge, could be reason for false implication of the appellant. So far as the medical evidence is concerned the Doctor had observed multiple bruises on the back of chest of the deceased and the said injuries were also attributed to the accused persons who had been acquitted by the trial Court and medical evidence was also supporting the witnesses so far as the role of acquitted accused is concerned. It is not known as to which bruise out of multiple bruises were caused by the appellant but the learned trial and High Court have stretched the evidence in favour of the prosecution against the settled principle of appraising the evidence. The alleged recovery of "Sota" is also not helpful to the prosecution as it was not stained with blood. The trial Court and even the High Court relied upon the statement of Mehdi co-convict, recorded under section 342, Cr.P.C. in which he admitted that all the accused persons had caused injuries to Muhammad Ashraf deceased. The said confessional statement appears to have been recorded on some understanding of Mehdi with the complainant party. The connivance of said Mehdi with the complainant party for making said confessional statement under section 342, Cr.P.C. was subsequently exposed, as he was acquitted by the trial Court on the basis of compromise. The order of the learned Additional Sessions Judge dated 28-07-2009, has been placed on record by the learned counsel for the appellant through Criminal Misc. Application No.261-L/2017, so no reliance can be placed on such maneuvered confessional statement of Mehdi accused, against the appellant. Even Imran co-accused

was also let free by the complainant party on the basis of compromise. The acquittal of all the other accused, having the similar role as of the appellant, on the same evidence, also entitles the appellant to same treatment. Both the courts below have not considered this important aspect of the case because there is no independent corroboration to the ocular account which has already been disbelieved to the extent of majority of the accused persons especially the acquittal of Anaar, Manzoor and Atta Muhammad, who had also been specifically attributed injuries on the right side of back of Muhammad Ashraf deceased. The evidence which has been disbelieved by both the Courts below to the extent of majority of the accused cannot be made basis for conviction of the appellant unless corroborated by independent piece of evidence which is completely lacking in this case. Consequently, this appeal is allowed, conviction and sentence awarded by the trial Court and upheld by the High Court is set aside and the appellant is acquitted of the charge. He shall be released from Jail forthwith if not required to be detained in any other case.”

35. So far the recovery of the pistol alongwith magazine and five live bullets from accused Sikander on 11.11.2008 and empties recovered from the place of incident on 29.10.2008 are concerned, the same were sent to the Ballistic Expert with inordinate on 15.12.2008. Delay in sending of the pistol and empties to the Ballistic Expert have not been explained. There was no evidence that the pistol and empties were kept in safe custody in the Malkhana for such long time at Police Station. Even I.O failed to verify defence theory that accused Patang was under treatment at LUMHS since 15.12.2007 to 20.02.2008. thereafter he was become permanent disable from right arm.

36. Appellants Pahar and Patang have been sentenced to death. Prosecution has failed to bring on record the reliable and trustworthy evidence for maintaining the sentence in the offence of capital punishment. There are several circumstances in the case which have created serious doubts in the prosecution case. Trial court had also failed to record the finding with regard to the defence plea. Learned Counsel for the appellants has rightly pointed out several defects committed by the trial court during trial in which time of incident has not

been correctly mentioned. Same error has been committed by the trial court in the timings while recording statements of accused under section 342, Cr.P.C. Judgment, which has been passed by the trial court in casual manner and is not elaborate and didn't contain the reasons. It is settled principle of the law that several circumstances are not required for extending benefit of doubt. In case a single circumstance which creates serious doubt in the prosecution case 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. In this regard, reference can be made to the case of Tariq Pervez vs. The State (1995 SCMR 1345), wherein following observation has been made by the Honourable Supreme Court:-

“It is settled law that it is not necessary that there should many circumstances creating doubts. If there is a single circumstance, which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right.”

37. For the above stated reasons we have come to the conclusion that the prosecution has failed to prove its case against the Appellants. Therefore, Cr. Appeal No.D-292 of 2012 filed by appellants Pahar and Patang is allowed. Conviction and sentence recorded by the trial court vide judgment dated 10.10.2012 are set aside. Appellants Pahar and Patang shall be released forthwith if they are not required in some other case. Reference No.14/2012 for confirmation of death sentence made by the trial court is answered in negative.

38. So far Criminal Acquittal Appeal No.D- 327 of 2012 filed by appellant / complainant Mazhar Iqbal against respondents is concerned, in view of above stated reasons, we hold that the same has become infructuous and accordingly is dismissed. Respondents Sikandar and Khadim Hussain are present. Their bail bonds stand cancelled and surety discharged.

JUDGE

JUDGE

A.H.