

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Aftab Ahmed Gorar
Mr. Justice Amjad Ali Sahito

Criminal Appeal No.361 of 2018

Appellant No.1 : Faraz Ahmed Baloch S/o Muhammad Hanif
Through Mr. Javed Ahmed Qazi, Advocate

Appellant No.2 : Shafiq Ahmed Abro S/o Shafi Muhammad
Through Mr. Yousuf Moulvi, Advocate

Respondent : The State
Through M/s. Muhammad Ahmed & Mukesh
Kumar, Assistant Attorney Generals

Dates of hearing : 04.02.2019, 13.03.2019, 01.04.2019,
03.04.2019, 16.04.2019, 23.04.2019 &
29.04.2019

Date of order : ____ .05.2019

J U D G M E N T

AMJAD ALI SAHITO, J :- Being aggrieved and dissatisfied with the judgment dated 02.06.2018 passed by the learned Presiding Officer, Special Court (Offences in Banks) Sindh at Karachi in Case No.60 of 2013 arising out of the FIR No.39/2013 registered at Police Station FIA, CBC, Karachi, for the offence under sections 409, 420, 468, 471, 109 PPC, whereby both the appellants were convicted u/s.409 PPC and sentenced them to suffer R.I. for seven (07) years each and fine of Rs.15 lacs each and in default thereof, to suffer S.I. for one (1) year each more. The appellants were also convicted u/s.468 PPC and sentenced them to suffer R.I. for four (4) years each and fine of Rs.10,000/- each and in default thereof, to suffer S.I. for six (6) months more. The appellants were also convicted u/s.420 PPC and sentenced them to suffer R.I. for four (4) years each and fine of Rs.10,000/- each and in default thereof, to suffer S.I. for six (6) months more. The appellants were also convicted u/s.471 PPC and sentenced them to suffer R.I. for three (3) years each and fine of Rs.10,000/- each and in default thereof, to suffer S.I. for six (6) months more. However, all the sentences were ordered to be run concurrently.

2. Brief facts of the case are that complainant Nadeem Hamid, Branch Manager Askari Bank Ltd. Saddar Branch, Hyderabad made a complaint alleging therein that on 08.06.2011, an entry of Rs.1.500 million was posted in transfer mode by debiting head office account (main office account) on Larkana Branch having Branch Code 0082) and the funds were credited in a customer current Account No.0016010101175-1 titled Gul Wali Khan and Ahmed Khan maintained with their branch. The transaction was posted with advice No.5821214. On scrutiny, the voucher has not been found in the branch record and was missing. Their ID Department informed that the transaction of Rs.1.500 million was posted with the ID of Suhail Noor Officer clearing Department and was supervised with the ID of Nasir Mehmood the then Manager Operation Both denied the posting and supervision of the transaction. On 29.06.2011 cash amounting of Rs.1.480 million was withdrawn through cheque from account of Gul Wali and Ahmed Khan, the said cheque was posted by Shafiq Abro Cashier through his ID and was supervised with the ID of Nasir Mehmood, however, Nasir Mehmood informed that he had not supervised the cheque under his ID and his ID has been misused, copy of CNIC was not obtained by cashier and removed from the cheque. The said cheque was bearing forged signature of the customer. The customer Gul Wali Khan and Ahmed Khan also denied withdrawal of amount through cheque and informed that cheque had been misplaced somewhere of left in the branch during his visit in a branch in March 2011.

3. After compliance of Section 241-A Cr.P.C. vide receipt Ex.1, the charge against both the accused was framed on 02.05.2011 to which they pleaded not guilty and claimed to be tried to vide their pleas from Ex.2-A and Ex.2-B respectively.

4. After framing the charge, prosecution has examined PW-1 Tabish Rasheed at Ex.3, who produced seizure memo of documents at Ex.3/A, 9 original paid up cheques from Ex.3/A-1 to Ex.3/A-9, PW-2 Nadeem Hamid at Ex.4, who produced his complaint at Ex.4/A, seizure memo of documents at Ex.4/B, paid up cheques along with original cheque book as Ex.4/B-1 to Ex.4/B-6, another seizure memo of documents at Ex.4/C, AOF as Ex.4/C-1 coupled with other relevant documents from Ex.4/C-2 to Ex.4/C-9, attested photocopies

of documents from Ex.4/D-1 to Ex.4/D-11, PW-3 Haji Khan vide Ex.5, PW-4 Sohail Noor Ali vide Ex.8, PW-5 Nasir Mehmood vide Ex.10, PW-6 Gul Wali Khan at Ex.14, PW-7 Muhammad Akram at Ex.15, PW-8 Pervaiz Muhammad at Ex.16, who produced copy of the FIR at Ex.16/A, opinion of handwriting expert as Ex.16/B-1 along with documents and specimen handwritings of accused Faraz Ahmed from Ex.16/B-2 to Ex.16/B-12. Lastly, PW-9 Inspector FIA Sohrab Ali at Ex.17. Thereafter, the prosecution closed its side vide statement at Ex.18. All the prosecution witnesses were cross-examined by the counsel for the accused persons.

5. The statements of the accused persons were recorded under Section 342(1) Cr.P.C. by the learned trial Court, in which they denied the allegations as leveled against them by the prosecution. However, the accused persons neither examined themselves on oath in disproof of the charge nor led any evidence in their defence.

6. The learned trial Court, after hearing the parties and on the assessment of the evidence, convicted and sentenced the appellants as stated above vide judgment dated 02.06.2018, which is impugned before this Court by way of filing the instant Criminal Appeal.

7. Mr. Javed Ahmed Qazi, learned counsel for appellant Faraz Ahmed Baloch mainly contended that the appellant is innocent and has falsely been implicated in this case; that the learned trial Court has relied upon the evidence of Handwriting expert but did not consider the signature affixed at Ex.4/C-3 which bears the signature of (PW-5) Nasir Mehmood; that allegedly on the basis of Handwriting Expert's report, the appellant was convicted by the learned trial Court without appreciating that whether the appellant is beneficiary or not; that nothing has been brought on record to connect the appellant with commission of offence; that on the day of incident the Operation Manager (PW-5) Nasir Mehmood was on duty and it was his duty to verify the cheque and after his verification the cheque was encashed by co-accused, hence present appellant has no concerned with alleged offence, nothing has been brought on record that the appellant had used ID of operational manger by making flying entry; that during departmental inquiry, Handwritings of all office bearers were sent to the Handwriting Expert Zaka A. Malik Associate but the

said Expert's report has not been produced by the complainant in his evidence about the findings of the Handwriting Expert; that the prosecution failed to examine Handwriting Expert Messer Zaka A. Malik & Associate; that in view of Article 59 of Qanoon-e-Shahadat, the expert must appear into the witness box to prove his credential, expertise etc; that neither in report mentioned his qualification, expertise and credential, nor report has been given in a universal prescribed standard format and substance to qualify on the face as an expert report; that in view of section 510 Cr.P.C. the Handwriting Expert has not exonerated from the appearance before the trial Court for adducing his evidence; that in view of Article 84 of Qanoon-e-Shahadat Order 1984 the learned trial Court has ample power to verify the signature at Ex.4/C-3 that whether the same bears the signature of appellant or not, but all are lacking in this case; that the charge against the appellant was framed for an offence under Sections 409, 420, 468, 471, 109 PPC but appellant has no concern with alleged fraud, cheating and embezzlement of funds. He lastly contended that the prosecution has miserably failed to prove its case against appellant Faraz Ahmed Baloch and thus, according to him, under the above-mentioned facts and circumstances, the appellant is entitled to his acquittal.

8. Mr. Yousuf Molvi, learned counsel for appellant Shafiq Ahmed Abro mainly contended that the incident took place on 28/29 June 2011 and with delay of about 1 year, complainant lodged the complaint before the FIA; that the entire case was based on the Handwriting Expert's report but the same was not produced before the trial Court; that the prosecution had to prove the misuse of ID of (PW-5) Nasir Mehmood and the same was used by appellant Faraz Ahmed Baloch in connivance with appellant Shafiq Ahmed Abro; that (PW-5) Nasir Mehmood is a real culprit and he himself used the ID and also put his signature on the back side of the cheque but the said signature was not sent for verification or to the Handwriting Expert to believe that who had signed the same; that during the course of inquiry or evidence, it appears that the cheque was presented before appellant Cashier Shafiq Ahmed Abro, who presented it for supervision to the Operation Manager Nasir Mehmood who had passed/cleared the said cheque and thereafter

the payment of Rs.14,80,000/- was made to the presenter; that the limit of passing a cheque for the Cashier is only Rs.5 lacs but since the disputed cheque was more than Rs.5 lacs, therefore, for its supervision it was sent to (PW-5) Nasir Mehmood, being an Operation Manager, the same was passed by him and on the back side of the cheque bears the signature of (PW-5) Nasir Mehmood; that in cross-examination (PW-5) Nasir Mehmood admitted that he was on leave from 13.06.2011 to 27.06.2011 and said cheque Ex.4/C-3 was received on 28.06.2011 and passed on 29.06.2011 hence; it is proved that on the day of incident (PW-5) Nasir Mehmood was on duty and he has signed the same and subsequently the appellant made payment to the presenter; that during the departmental/internal inquiry, appellant Shafiq Ahmed Abro was warned by the bank otherwise no evidence is available on record to connect the appellant with the commission of offence. He lastly prayed for his acquittal.

Both the learned counsel for the appellants in support of their contentions have relied upon the cases (1) *Muhammad Umar and another vs. The State (PLD 1968 Karachi 875)*, (2) *Rehmat Ali Ismailia vs. Khalid Mehmood (2004 SCMR 361)*, (3) *Subedur Fazal Hussain vs. Qazi Muhammad Bashir and 12 others (PLJ 1982 (AJK) 162)*, (4) *Qazi Abdul Ali and others vs. Khawaja Aftab Ahmed (2015 SCMR 284)*, (5) *Land Acquisition Collector Sargodha and another vs. Muhammad Sultan and another (PLD 2014 SC 696)*, (6) *Abdul Qadir vs. The State (2015 P.Cr.L.J. 235)*, (7) *Mir Fayaz Ahmed vs. The State (2010 P.Cr.L.J. 1832)*, (8) *Malik Muhammad Iqbal vs. The State (1987 P.Cr.L.J. 247)*, (9) *Eskandar Ali vs. Mst. Alhamra Begum and others (PLD 1969 Dacca 214)*, (10) *S. Hifazat Hussain vs. The State (1987 P.Cr.L.J. 363)*, (11) *Nasim Ahmad vs. The State (1992 MLD 620)*, (12) *Qasim Ali Malik vs. The State & 2 others (2012 P.Cr.L.J. 124)* and (13) *Tariq Pervez vs. The State (1995 SCMR 1345)*.

9. Conversely, Mr. Mukesh Kumar Khatri, learned Assistant Attorney General for Pakistan appearing for the State while supporting the impugned judgment has contended that the prosecution has established its case against both the appellants from oral as well as documentary evidence; that there is no denial that accused persons have not committed any fraud with bank or private

persons; that PW-5 Nasir Mehmood used to remain ill due to his health problem under which fraudulent flying entry was made thereafter accused Faraz Ahmed Baloch filled cheque Ex.4/C-3 with his own Handwriting and put false signature of (PW-5) Nasir Mehmood and accused Shafiq Ahmed Abro facilitated him for encashment of the said cheque; that during course of departmental investigation Handwriting and signature of the accused Faraz Ahmed Baloch were sent to Handwriting expert, who had opined in affirmative. He lastly prayed for dismissal of the instant appeal.

10. We have heard the learned counsel for the parties and have minutely perused the material available on record with their able assistance. The case of the prosecution is that on 28.06.2011, an amount was credited in the joint account of Gul Wali Khan and Ahmed Khan in the sum of Rs.15 lac from MO account of the bank. On 29.06.2011, an amount of Rs.14,80,000/- was withdrawn from the said account. On further inquiry, it reveals that the said flying entry of Rs.15 lac was initiated by Sohail Noor Ali, who was posted in Clearing Department and the said entry was supervised by the then Operation Manager Nasir Mehmood. During the course of the inquiry, both have denied from the said entry and its supervision. During the course of the departmental investigation, sample of Handwriting and signature of all the concerned staff was taken and sent to the expert which was hired by the department namely Messer Zaka A. Malik Associate. The findings of the Handwriting Expert suggested that the fraudulent cheque was written by Faraz Ahmed, the office of the Accounting Department hence, on the basis of that inquiry, the appellant Faraz Ahmed was booked in this case. The allegation against appellant No.2 Shafiq Ahmed Abro that being a Cashier he had paid the cheque amount of Rs.14,80,000/- otherwise no finding was against him that he has committed fraud or embezzlement with the bank. The prosecution examined his witnesses during trial the evidence was brought against appellant Faraz Ahmed Baloch was that he has written alleged cheque of Rs.14,80,000/-, role of the appellant Shafiq Ahmed Abro was that when cheque of Rs.14,80,000/- was presented before him, he had sent the same to the Operation Manager Nasir Mehmood for its supervision and after supervision of the Operation Manager Nasir Mehmood, the said

cheque was cashed. During the course of the inquiry, Operation Manager Nasir Mehmood denied from the signature on the cheque as Ex.4/C-3 by saying that his ID was often used by Faraz and Javed. The prosecution examined PW-2 Nadeem Hamid Branch Manager, Saddar Branch who in his evidence deposed that Gul Wali Khan and Ahmed Ali were maintaining a joint account in the bank. On 28.06.2011 an amount was credited in the joint account of Gul Wali Khan and Ahmed Ali in the sum of Rs. 15 lac from MO account of the bank. On 29.06.2011, an amount of Rs.14,80,000/- was withdrawn from the said account. On inquiry, it reveals that said flying entry of Rs.15 lac was initiated by Sohail, who was posted in the Clearing Department and the said entry was supervised by then Manager Operation Nasir Mehmood. During the course of the inquiry, both have denied the generation and supervision of the said entry. On inquiry from appellant Shafiq Ahmed Abro, Cashier of the Cash Department, who admitted that the said cheque of Rs.14,80,000/- was presented before him and after supervision of the operation Manager, he had paid the said cash but Nasir Mehmood, Operation manager was denying from the supervision of the said entry. During the course of the inquiry, Operation Manager Nasir Mehmood admitted that his ID was shared by Faraz and Javed. In cross-examination on behalf of appellant Faraz, he admitted that after inquiry he (Nadeem Hamid) and Nasir Mehmood, Operation Manager were terminated from the service. He further admitted that Nasir Mehmood has denied recovery of the cheque book from his drawer. He further admitted that **“I had stated that the cheque book was secured from the drawer which was occupied by him but drawer which being used by him and earlier used by PW Nasir Mehmood was not perfect towards his lock and keys”**. In cross-examination on behalf of appellant Shafiq Ahmed Abro, he admitted that disputed cheque was more than Rs.5 lac and if it is more than Rs.5 lac then its supervision will be made but he denied that on the day of the passing of cheque in the sum of Rs.14,80,000/-, Nasir Mehmood was on duty or on leave. He further admitted that **“it is correct to say that internal inquiry, the accused was warned by the bank”**. He has also produced a letter to FIA in which he has sent the sample of handwriting of all concerned staff along with a cheque for Expert’s

opinion. He has also produced disputed cheque Ex.4/C-3 and on the back of the cheque bears the signature of (PW-5) Nasir Mehmood though he denied from the said signature being false one but the case of the prosecution is that the said cheque was written by co-accused Faraz and supervised by the then bank manager Nasir Mehmood. In support of his contention, the prosecution examined PW-3 Haji Khan, who stated that by virtue of IBCA amount of Rs.15 lac were debited from the fund of Head Office M.O account and was credited in the account of Gul Wali Khan, a customer of the bank. After the credit of the said amount, a cheque in the sum of Rs.14,80,000/- was presented for encashment which was cleared. On inquiry, it reveals that the said IBCA in the sum of Rs.15 lac was illegal and fraudulently funds were transferred in the account of Gul Wali Khan from where the said amount was withdrawn. The ID was used by Sohail Noor Ali and the said entry was supervised by then Operation Manager and the said cheque was presented before co-accused Shafiq Ahmed Abro, who presented it for supervision before the Operation Manager and passed the said cheque thereafter the payment was made to the presenter. In cross-examination for appellant Shafiq Ahmed Abro, he admitted that charge sheet was given to him and the penalty was imposed for non-payment of one year increment and stopped wage of three years promotion. The prosecution also examined (PW-4) Sohail Noor, he submits advice was launched by using his ID and thereafter what happened, he does not know. In cross-examination for appellant Faraz, he admitted that he has shown his doubt on Raheel Rauf, CT Incharge that he might have used his ID. In cross-examination for Shafiq Ahmed Abro, he admitted that since the fraudulent use of his ID was disclosed, during the course of the audit through earlier to that he had not submitted any complaint against the use of his ID. The prosecution also examined the most important witness (PW-5) Nasir Mehmood the then Operation Manager posted at Saddar Branch, Hyderabad, who deposed that on 28.06.2011 a cheque in the sum of Rs.14,80,000/- was processed through his ID and the said cheque was posted in the system and passed and paid on 29.06.2011. The transactions of every cheque are reconciled on every 15 days and the said entry of Rs.14,80,000/- was not reconciled/made and verified through the

record. The inquiry was continued for about six (6) months but the said inquiry proved about it through Head Office referred the matter to FIA. The handwriting of whole staff was obtained by the Head office and sent to the Handwriting Expert and the office received a report from the Handwriting Expert whereby the Handwriting of the accused Faraz being matched with the handwriting mentioned on the disputed cheque. After receipt of such Handwriting report, Regional Manager forcefully obtained his resignation and has settled his dues. In cross-examination, he admitted that during the inquiry, his service was dismissed by the Regional Manager. He further admitted that he used to share his ID with Faraz and Javed Sario. He further admitted that he was on leave from 13.06.2011 to 27.06.2011 and during those days and in his absence, his ID was shared with Javed and he admitted that the disputed cheque was received on 28.06.2011 and passed on 29.06.2011. He denied that disputed cheque book was secured from the drawer of his table but voluntarily deposed that after 10 days from the disposal of his service, the said cheque book was recovered from the drawer of PW-4 Nadeem Hamid. In cross-examination for appellant Shafiq Ahmed Abro, PW-5 Nasir Mehmood admitted that **“it is correct to say that on 28 and 29, he was on duty. The entry of 1.5 million used in the system pertaining to Sohail Noor Ali and his ID while using for supervision”**. He further deposed that **I see cheque Ex.4/C-3 (disputed cheque) and say that on back of it bears my forged signature. The** prosecution also examined Gul Wali Khan (PW-6) who was maintaining his account in Askari Commercial Bank, Saddar Branch Hyderabad in his evidence deposed that in the month of September 2011 the Branch Manager of bank namely Nadim Hamid inquired him through telephone that how amount of Rs.15 lac was credited in his account in June 2011 and also told him that the same amount was also withdrawn from his account then he has traced his cheque book which was not traceable and his cheque book was also not available in his office. He informed to Manager about non-traceability of his cheque book. After pursuing of Photostat of the cheque book, he informed the official that it bears his false signature. In cross-examination, he admitted that he came to know about missing of cheque book after the encashment of cheque from his account duly informed him by the Manager. PW-1

and PW-7 have not implicated both the appellants in their evidence. The prosecution examined PW-8 Pervez Ahmed, SI FIA, to whom inquiry was entrusted and he has narrated the same story disclosed by the other PWs. He further submitted that handwriting and signature of accused Faraz are available on the cheque. He produced the opinion of a Handwriting expert as Ex.16/A as well as specimen signature of Handwriting of accused on documents. In cross-examination for appellant Shafiq Ahmed Abro, he has denied the signature of operation Manager Nasir Mehmood on the back side of the cheque as Ex.4/C-3. He further admitted that **“it is correct to say that signature on the reverse side along with the admitted signature of Nasir Mehmood was not sent for comparison to Handwriting Expert”**. He further admitted that all the concerned officials Nadeem Hamid, Tabish Rasheed, Javed Ali, Mansoor Ahmed, Akhtar Ali, Sohail Noor Ali, Haji Khan, Nasir Mehmood, Raheel Rauf, Isra Tasleem Masroor, Ahmed Adnan Shaikh, Shafiq Abro, Noman Aziz, Muhammad Hussain and Faraz Ahmed were penalized by the bank during course of inquiry. He further admitted that CNIC copy of the presenter was obtained but later on found missing. He also admitted that **“it is correct to say that every entry made from other bank used to be in knowledge of branch manager and operation manager”**. In cross-examination, he also admitted that **“it is correct to say that incident took place due to sharing of password and ID. It is correct to say according to the regulation, SBP Bank officials are not expected to share their IDs and Passwords”**. In cross-examination on behalf of accused Faraz, he admitted that **“it is correct to say that cheque book Ex.4/B-6 was recovered from the drawer of Operation Manager after two and half months. He further admitted that PW Sohail Noor in his statement recorded under Section 161 Cr.P.C. shown doubt that Raheel Rauf CD Incharge might have used his ID”**.

11. The case of the prosecution was that the cheque was written by Faraz and was encashed by co-accused Shafique Abro, hence, they have committed offenses for which they charged. On 27.6.2011 a cheque Ex-4/C-3 was presented before the Cashier, he had sent the same to the Operation Manager, who supervised the same and cash amount of Rs.14,80,000/- was paid to the presenter. From the

perusal of the back side of the cheque, appears signature of the Operation Manager Nasir Mehmood, but he has denied that the said signature is fake one. The procedure adopted by the departmental inquiry officer that he has obtained handwriting from all concerned staff and received report that the cheque was written by appellant Faraz, mere filing of the cheque does not constitute an offence to involved the appellant Faraz with the commission of offence, here the case of prosecution was that when disputed cheque was presented before the cashier/appellant Shafiq he has sent to the operational manager (Nasir Mehmood) the cheque was verified by him and on the back side of the cheque he put on his signature and on the basis of verification, the cheque was encashed. The IO of the case failed to send the signature of the operational manager Nasir Mehmood to handwriting expert to verify his signature with admitted signature that which one is his genuine signature, as he has denied the signature by saying its fake one, in cross-examination I.O of the case admitted that **“it is correct to say that signature on reverse side cheque along with admitted signature of Nasir Mehmood was not sent for comparison to handwriting expert.”** In cross-examination, PW-2 Nadeem Hamid admitted that **“We had also enquired from Shafiq Ahmed Abro, Cashier of Cash Department who had admitted that the said cheque of Rs.14,80,000/- was presented before him which he, after supervision of the Operation Manager, had paid the said cheque but still Operation Manager Nasir Mehmood was denying the said facts of the supervision of the said entry.”** In cross-examination on behalf of accused Shafiq Ahmed Abro, he admitted that **“I do not know on the day of passing of cheque in the sum of Rs.14,80,000/-, Operation Manager Nasir Mehmood was on duty or leave. It is correct to say that in an internal inquiry, the accused was warned by the bank.”** In cross-examination on behalf of accused Faraz Ahmed Baloch, (PW-2) Nadeem Hamid, Branch Manager admitted that after departmental inquiry he and Nasir Mehmood were terminated from the service. Further, he admitted that **“It is correct to say that Nasir Mehmood had denied recovery of cheque book from his drawer. He has also admitted that I have stated that the cheque book was secured from the drawer which was occupied by him**

(Nasir Mehmood, Branch Manager) but the same being used by him and earlier used by Operation Manager Nasir Mehmood was not perfect towards his lock and keys.” In view of evidence of PW-2 Nadeem Hamid, nothing has been brought on record to connect the Cashier Shafiq Ahmed Abro with the commission of offence and being a Cashier, his duty was only that whenever any cheque was presented before him and if the amount was more than Rs.5 lac then for its supervision he had to send it to the Bank Manager and the same was supervised by the then Manager Nasir Mehmood, hence, nothing has been brought on record to connect the appellant Shafiq Ahmed Abro with the commission of offence. Further the flying entry of Rs.15 lac was initiated by Suhail Noor Ali who was posted in clearing department the said entry was supervised by branch manager Nasir Mehmood, the account holder was called who informed that he had forgotten his cheque book in branch and subsequently the cheque was secured from the drawer of operational Manager Nasir Mehmood, he was terminated from his service.

12. The overall discussions involved a conclusion that the prosecution has failed to bring the guilt against the appellants beyond any reasonable doubt and it is the well-settled principle of law that for creating a shadow of a doubt, it is not necessary that there should be many circumstances. If a single circumstance creates reasonable doubts in the prudent mind, then its benefit is to be extended in favour of the accused not as a matter of grace or concession but as the matter of right. The reliance in that context is placed on the case of **Muhammad Masha v. The State (2018 SCMR 772)**, wherein the Hon'ble Supreme Court of Pakistan has held that:

“4... Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of accused, then accused would be entitled to the benefit of such doubt, not as a matter of grace and concession but as a matter of right. It is based on

the maxim, “it is better than ten guilty persons be acquitted rather than one innocent person be convicted”. Reliance in this behalf can be made upon the cases of Tariq Pervez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 Others v. The State (2008 SCMR 1221), Muhammad Akram v. The State (2009 SCMR 230) and Muhammad Zaman v. The State (2014 SCMR 749).”

13. In this case, the learned trial Court has not evaluated the evidence in its true perspective and thus, arrived at an erroneous conclusion by holding that the appellants were guilty of the offence. Consequently, the instant appeals are allowed. The convictions and sentences awarded to the present appellants are set-aside and they are acquitted of the charge by extending them the benefit of the doubt. The appellants, who are in jail custody, shall be released forthwith if they are no more required in any other custody case.

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