IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Criminal Jail Appeal No. S- 81 of 2011

Appellant:	Abdul Fattah @ Fatoo Malik Through Mr. Bakhshan Khan Mahar Advocate.
Complainant:	Muhammad Moosa Through Mr. Alam Sher Bozdar Advocate
The State:	Through Mr. Zulfiqar Ali Jatoi Addl.P.G.
Date of Hearing:	26th June, 2019
Date of Judgment	08th July, 2019

J U D G M E N T

Adnan-ul-Karim Memon, J: Appellant Abdul Fattah @ Fatoo Malik has assailed the judgment dated 21.07.2011 passed by learned II-Additional Sessions Judge, Sukkur in Sessions Case No.89 of 2005 (Re- State v. Abdul Fattah alias Fatoo Malik and others), arising out of Crime No.130/2004, registered for offences under Sections 302, 324, 337-F(ii), 149, 34, PPC at Police Station Abad, District Sukkur, whereby the Appellant was convicted under Section 302 (b) read with Section 149, PPC and sentenced to suffer Rigorous Imprisonment for life as Ta'zir. He was further convicted under Section 324 PPC and sentenced to suffer Imprisonment for Seven years and to pay fine of Rs.25,000/-, in case of default in payment of fine, he shall suffer simple imprisonment for three months. He was further convicted under Section 337-F(ii) PPC and sentenced to suffer Rigorous Imprisonment for one year and to pay Daman to the tune of Rs.10,000/- in lump sum to PW-1 complainant/injured Muhammad Moosa. The Appellant was further

directed to pay compensation of Rs.100,000/- to the *walis'* of the deceased and in case of default thereof, he shall suffer Simple Imprisonment for three months. All the sentences were ordered to run concurrently and he was also extended Benefit of Section 382-B, Cr.P.C.

2. The prosecution has setup the case against the Appellant that on 22.12.2004, at about 05-45 p.m., he along with his accomplices namely Raja, Bheendo, Mumtaz and two unknown accused came at the hotel of Complainant, situated at Bachal Shah Miani Chowk Sukkur, they on the issue of non-payment of tea, abused son of Complainant namely Mukhtiar Ali and on his resistance, Accused Raja Mirani took out his dagger and stabbed it to Mukhtiar Ali on his intestines as well as on his left knee. During the scuffle Appellant also gave a knife blow to the Complainant on his left arm. Finally all the accused made their escape good by making aerial firing. Injured Mukhtiar Ali, while he was being taken to hospital, succumbed to the injuries in the way. Injured Muhammad Moosa, however was treated at the hospital. The aforesaid incident was reported at the Police Station Abad, District Sukkur on the second day i.e. 23.12.2004 at 0900 hours.

3. Investigating officer inspected place of incident on 23.12.2004 under Mashirnama, secured bloodstained earth and sealed into packet of cigarettes. He also secured bloodstained clothes of deceased Mukhtiar Ali under a separate Mashirnama. He arrested Appellant on 05.01.2005 and prepared such Mashirnama, interrogated the Appellant and secured bloodstained knife used in the aforesaid crime on 16.1.2005 under separate Mashirnama of Recovery. On completion of investigation, the charge sheet was submitted, by showing the accused namely Raja, Bheendo and Mumtaz as absconders. The absconding accused after due

process were declared proclaimed offenders and as such the case was directed to be proceeded with, in their absence as provided under section 512 Cr.P.C

4. The learned trial Court framed charge against the accused namely Abdul Fattah alias Fattoo Malik on 06.03.2006 but he did not plead guilty and claimed for trial. Thereafter co-accused Bheendo was arrested in the case and learned trial Court framed the amended charge on 15.12.2006 against both the accused who pleaded not guilty.

5. The prosecution in order to prove its case has examined seven witnesses. PW-1 Muhammad Moosa (complainant/injured eyewitness), PW-2 Deedar Ali (eyewitness), PW-3 Aitabar (eyewitness), PW-4 Inspector Ahsan Ali Bullo (Investigating Officer), PW-5 Dr. Heero (Medical Officer), PW-6 ASI Imamdin (Incharge Police Post Bachal Shah Miani) and PW-7 Dr. Muhammad Saleem (Medical Officer).

6. Thereafter, the learned trial Court recorded the statements of both the accused under section 342 Cr.P.C; however they neither wanted to produce witnesses in defence, nor examined them on oath in disproof of the prosecution case.

7. The learned trial Court after hearing the parties passed impugned judgment dated 21.7.2011, whereby the Appellant was convicted and sentenced as mentioned in Paragraph-1 of this Judgment, whereas co-accused Bheendo was acquitted from the charge. Appellant being aggrieved by and dissatisfied with the aforesaid Judgment impugned the same before this court.

8. Mr. Bakhshan Khan Mahar, learned Counsel for the Appellant has argued that the impugned judgment is a result of misreading, non-

reading and mis-appreciation of evidence available on record; that the findings of the learned Court below are arbitrary and perverse, thus the impugned judgment dated 21.07.2011 passed by learned II-Additional Sessions Judge, Sukkur is liable to be set aside; that the Appellant has been convicted on the basis of sharing his Common Intention under section 149 P.P.C, which part of evidence is missing in the case, therefore, the conviction awarded to the Appellant under section 302(b) P.P.C, on the aforesaid basis cannot be sustained under the law; that the prosecution has failed to prove the case against the Appellant under section 302(b) read with section 149 P.P.C, from any corner; that the prosecution examined seven PWs who have given contradictory statements in their deposition, which is not inspiring confidence to award conviction to the Appellant under the aforesaid heads; that as per F.I.R and depositions of eye witnesses firing took place at the time of incident but no empties were found from the place of incident, which suggest that no incident took place as portrayed by the complainant, thus false implication of the Appellant cannot be ruled out therefore, conviction of life imprisonment cannot be awarded to the Appellant under the circumstances; that impugned judgment is full of errors on material aspects as well as on law; that PW-4 Inspector Ahsan Ali Bullo (Investigating Officer), failed to send the crime weapon (churry/dagger) recovered, to serologist for his expert opinion, this omission strikes at the roots of the case of the prosecution; that prosecution has withheld evidence of P.W. Intizar Ali and Javed Ali who have not been examined to corroborate the testimony of Investigating Officer and complainant, being Mashirs of Site inspection, recoveries and arrest; that the I.O. also failed to prepare the sketch of place of incident to ascertain the exact location of the crime scene and lying the body of deceased who was

allegedly killed by co-accused; that PW-5 Dr. Heero (Medical Officer), has shown the injury on the left arm of the complainant, whose injury is shown in the F.I.R on forearm, thus Appellant cannot be convicted under section 324 and 337 F(ii) P.P.C, on the aforesaid pleas of the prosecution; that PW-6 ASI Imamdin (In charge Police Post Bachal Shah Miani) has not supported the prosecution case and PW-7 Dr. Muhammad Saleem (Medical Officer) whose statement does not implicate the Appellant; that the case of the Appellant merits acquittal; that the prosecution story is concocted by the complainant; that on the same set of allegations the learned trial Court acquitted co-accused Bhindo, Therefore, recording conviction of the Appellant on the same evidence was absolutely unjustified. Learned counsel for the Appellant, in support of his contentions, has relied upon the cases of *Sajjan Solangi v. The State* (2019 SCMR 872) and *Ali Nawaz and others v. The State* (2011 YLR 623). He lastly prayed for setting aside the impugned judgment.

9. Mr. Zulfiqar Ali Jatoi, Additional Prosecutor General for the State assisted by Mr. Alam Sher Bozdar, learned Counsel for the Complainant controverted strenuously the contentions as agitated on behalf of the Appellant and supported the judgment impugned for the reasons enumerated therein with further submission that prosecution has established the guilt to the hilt who had facilitated and participated in an active manner in the commission of alleged offence; that the recovery so made on the pointation of the Appellant is relevant under Article 40 of the Qanun-e-Shahadat, 1984 thus conviction of the Appellant was justified; that the testimonies of the injured P.W. and eyewitnesses are impeccable which could not be even shattered in the cross-examination and has been fully corroborated by medical evidence, recovery of knife and sharing of common intention. In support of his contention, he has

relied upon the case law reported as *Mir Muhammad v. The State* (1995 SCMR 614), *Muhammad Akbar v. The State* (1995 SCMR 693) & *Jan Muhammad v. Muhammad Ali and 3 others* (2002 SCMR 1586). They lastly prayed for dismissal of the present Appeal.

10. I have heard learned Counsel for the Appellant and learned Additional P.G. for the State and learned counsel for the Complainant as well as perused the material available on record and case law cited at the bar.

11. PW-1 Muhammad Moosa in his deposition has deposed that on 22.12.2004, at evening time, appellant along with his accomplices namely Raja, Mumtaz, Bhindo and two unknown persons came at his Hotel. They were served with tea by his son Mukhtiar Ali. After they had tea, they were asked for the charges of the same. They refused to pay the same. Thereafter accused Raja took out dagger from the fold of his shalwar and stabbed Mukhtiar Ali on his intestines and knee of his left leg. In the meanwhile, Appellant took out knife and stabbed him on his left arm. He further deposed that two shots were also fired. His son succumbed to the injuries and on the next day, he lodged the F.I.R. However, he admitted in the cross examination that he suspected co-accused Bhindo alias Ayaz might be involved in the commission of offence. He further admitted that due to non-payment of charges of tea the incident took place and there was no previous hostility/enmity with the accused.

12. PW-2 Deedar Ali has deposed that he was sitting in the hotel of his father known as Moosa Hotel situated at Moosa Chowk Bachal Shah Miani. His father and brother Mukhtiar Ali were running the said hotel; many other customers were also there. His cousin Aitbar

Ali was also sitting in the hotel. Meanwhile, Raja Mirani, Abdul Fattah alias Fattoo and four unknown persons also came and sat in the hotel. They placed an order for tea. They were served as such, where-after they were asked about the charges of tea. Upon which, they refused the same. Accordingly fight took place. On hue and cry we also went out there. Accused Raja took out dagger from the fold of his shalwar and stabbed on the intestines of Mukhtiar Ali. Said accused repeated stab with dagger to Mukhtiar Ali, which hit him under the knee of his left leg. His father Muhammad Moosa came to rescue him. Upon which, appellant took out knife and stabbed it to the left arm of his father. Two unknown persons, however, fired shots so that no body went near to them. Two other unknown accused persons, besides accused Abdul Fattah alias Fattoo also maltreated his father. His father and brother fell down injured. The accused made their escape good. Both the injured were taken to P.P Bachal Shah Miani of P.S Abad wherefrom they were referred to Civil Hospital, Sukkur. Mukhtiar Ali succumbed to the injuries in the way. His father Muhammad Moosa was provided treatment at the hospital. However, in the cross examination, he admitted that accused Bhindo alias Ayaz was not among the perpetrators and there was no previous hostility/enmity with the accused. However he narrated another story in his 164 Cr.P.C statement dated 18.1.2005 by saying that accused Bhindo Mirani and Mumtaz Malik took out pistol and made aerial Firing, whereas he has deposed that two unknown person made aerial Firing.

13. PW-3 Aitbar Ali has deposed that on 22.12.2004 he was sitting in a hotel known “Moosa Hotel” situated at Bachal Shah Miani. The said hotel was running by his owner Muhammad Moosa and his

son Mukhtiar Ali. Both of them were present and running the hotel. It was about 3 to 4 p.m. all of sudden he heard hue and cry. PW Deedar Ali son of said Muhammad Moosa was also sitting with him in the hotel. He asked him that he should come out of the hotel and see what happened. They came out and saw that accused Raja stabbed with dagger to Mukhtiar Ali on his intestines and knee of his left leg. Muhammad Moosa came to rescue him. Upon which, Abdul Fattah alias Fattoo stabbed him with knife, which hit him on his left arm. They attempted to intervene. However due to firing made by the accused they could not succeed. Thereafter the accused went away. Mukhtiar Ali was seriously injured whereas Muhammad Moosa had also sustained the injury. Both of them were taken to PP Bachal Shah of P.S Abad, wherefrom both of them were taken to Civil Hospital, Sukkur. In the way Mukhtiar Ali succumbed to the injuries, however, Mukhtiar was provided treatment at hospital. However he admitted that Accused Bhindo alias Ayaz was not among perpetrators. He was sitting alone and not with the accused at the time of the commission of the offence. However, in the cross examination, he admitted that accused Bhindo alias Ayaz was not among the perpetrators and there was no previous hostility/enmity with the accused. However he narrated different version in his 164 Cr.P.C statement dated 18.1.2005.

14. In deposition of PW-4 Ahsan Ali (Investigating Officer), he has deposed as under: -

> "On 23.12.2004, I was posted as S.I.O. Police Station Abad. On that date, FIR bearing Crime No.130/2004 U/S 302, 147, 148, 337-H(2) PPC of Police Station Abad was delivered to me for investigation by ASI Imamuddin Marfani of the said Police Station. The FIR was perused by me. It appeared that said ASI had completed usual formalities in respect of the dead body of deceased Mukhtiar Ali including referring it

for postmortem examination and report. **On the same date at 9:35, in presence of mashirs Intizar Ali and Deedar Ali I inspected the place of offence and prepared such memo on the spot which I produce as Ex.11-A and say it is same, correct and beard my signatures and signatures of the mashirs**. The place of offence was situated at Mohammad Moosa chowk Bachal Shah Miani. **I had secured blood and put in a packet of cigarettes and sealed it on the spot. On my return at Police Station, PC Saifullah delivered me blood stained cloths of the deceased, which I took into possession and sealed it in presence of mashirs, Intizar Ali and Javed Ali under a memo, which I produce as Ex.11-B and say it is same, correct and beard my signature**. On 30.12.2004, I recorded statements of PWs mentioned in the FIR. **On 5.1.2005 at 1700 hours near City point Sukkur in presence of mashirs Intizar and Javed Ali, I arrested accused Abdul Fattah @ Fatu under a memo, which I produce as Ex.11-C and say it is same, correct and bears my signature. On 16.1.2005 I interrogated accused Abdul Fattah @ Fatu in respect of knife, which he used in the commission of the offence. He disclosed to me that the said knife was hidden by him in the hedge of his house. He volunteered to lead me there. I accompanied by the accused and my subordinate staff PC Abdul Hafeez, HC Gada Hussain under roznamcha entry No.6 at 1420 hours, proceeded for to recover crime weapon viz knife on pointing out of accused. I associated Intizar Ali and Javed Ali to act mashirs. The accused led us towards the hedge of his house and there he took out the said knife. The same was taken into possession and such memo was prepared on the spot at about 1530 hours in presence of mashirs. I produce the said memo as Ex.11-D and say it is same, correct and bears my signature**. On 18.1.2005 I got recorded statements of witnesses namely Aitbar Ali and Deedar Ali U/S 164 Cr.P.C. before the Magistrate. On completing usual investigation, the charge sheet was submitted. Accused Abdul Fattah @ Fatu present in the court is same whereas remaining accused are absconding. The case property lying in the court is same."

15. In cross-examination, he has admitted that at the time of inspection PWs were not present. He further admitted that he was unaware about the report of Chemical Examiner. He further admitted that he has not produced any letter of sending the case property for chemical examination. He admitted that memo of seizure of blood stained cloths was prepared at the police station. He admitted that on production of witnesses by the Complainant their statements were recorded at police station. He admitted that he did not produce such entry for leaving the police station to arrest the accused who was not

previously known to him. He further admitted that the appellant was identified by PC Hafeez and WPC Muhammad Ali Mako.

16. In deposition of PW-5 Dr. Heero, he has deposed that he examined injured Muhammad Moosa and found one incised wound on left forearm ulna side measuring 2.5 cm x 1 cmx1 cm. said injury was described as Badihah caused with sharp cutting object. In cross examination he deposed that injured Muhammad Moosa was in senses at the time of arrival. However he was not admitted as indoor patient.

17. I have scanned the entire evidence and noticed that the Appellant has also been convicted in the aforesaid crime under section 302(b) read with section 149 P.P.C on the basis of sharing his common intention, if this being the position of the case, an important question of law arises in the present proceedings, which is as under:-

> ***Whether every member of an unlawful assembly, in respect of an offence committed in prosecution of common object/intention, is guilty of that offence?***

18. To appreciate the aforesaid proposition, it is expedient to have a look at the very object of word Common object/common intention.

19. Firstly to understand Section 34 P.P.C, which provides that acts done by several persons in furtherance of common intention: When a criminal act is done by several persons, in furtherance of common intention of all, each such person is liable for that act in the same manner as if it was done by him alone. Section 35 P.P.C also provides that when such an act is criminal by reason of its being done with a criminal knowledge or intention: whenever an act, which is criminal only by reason of its being with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such

knowledge or intention, is liable for the act in the same manner as if the act was done by him alone with the knowledge or intention. Section 37 P.P.C also provides that cooperation by doing one of several acts constituting an offence: When an offence is committed by means of several acts, whoever intentionally cooperates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence.

20. Term `act' contemplates a series of acts done by several persons, some perhaps by one of those persons and some by another but all in pursuance of a common intention. Criminal act meant unity of criminal behavior which resulted in something for which an individual was to be punishable, if it were all done by him alone in a criminal offence.

21. After having gone through the provision as contained in section 34 P.P.C, in my considered view the following are the prerequisites of the section 34 before it could be made applicable:--

> ***"(a) It must be proved that criminal act was done by various persons.***
>
> ***(b) The completion of criminal act must be in furtherance of common intention as they all intended to do so.***
>
> ***(c) There must be a pre-arranged plan and criminal act should have been done in concert pursuant whereof.***
>
> ***(d) Existence of strong circumstances (for which no yardstick can be fixed and each case will have to be discussed on its own merits) to show common intention.***
>
> ***(e) The real and substantial distinction in between `common intention' and `similar intention' be kept in view:***

22. On the aforesaid proposition of law, my opinion is supported by the decisions rendered by the Hon'ble Supreme Court in the cases of *Irfan Ali v. The State* (2015 SCMR 840), *Mst. Sughra Begum and another v. Qaiser Pervez and others* (2015 SCMR 1142), *Muhammad Mansha v.*

The State (2018 SCMR 772), *Altaf Hussain v. The State* (2019 SCMR 274) and *Shaukat Ali v. The State* (PLD 2007 Supreme Court 93).

23. Touching the merits of the case, I have noticed that the learned trial Court, while passing the impugned Judgment has ignored the factual aspects of case apparent on the face of record, which cast doubt over the prosecution story on the premise that the Appellant has been convicted on the basis of sharing his Common Intention, though he did not cause any injury to the deceased Mukhtiar Ali and the main accused who caused dagger blow to the deceased is still at large. Furthermore, the learned trial Court has failed to consider the factual position of the case that there was no pre-arranged plan to commit the criminal act pursuant to the pre-arranged plan to attract section 149 P.P.C, therefore, the conviction awarded to the Appellant on the aforesaid basis cannot be sustained under the law and maintained on this score alone. It is further noted that the prosecution examined PW-1 Muhammad Moosa (complainant/injured eyewitness) who has given contradictory statement in his deposition, which is not inspiring confidence to award conviction to the Appellant and deposed that the accused made aerial firing but on inspection by I.O. no empties were found, he also admitted that accused Bhindo alias Ayaz was not among the perpetrators and there was no previous hostility/enmity with the accused, he also admitted that due to non-payment of charges of tea the incident took place, therefore, false implication of the Appellant cannot be ruled out. I have also noticed that PW-2 Deedar Ali son of complainant (eyewitness), PW-3 Aitabar nephew of complainant (eyewitness) have contradicted each other in their respective deposition, they also admitted that accused Bhindo alias Ayaz was not among the perpetrators and there was no previous hostility/enmity with the accused, therefore, conviction of life

imprisonment cannot be awarded to the Appellant under the circumstances. It is further noted that PW-4 Inspector Ahsan Ali Bullo (Investigating Officer) sent the crime weapon (churry/dagger) purportedly recovered, after lapse of 11 days from the custody of Appellant, to serologist to ascertain whether this was the same crime weapon used in the crime or otherwise, this omission strikes at the roots of the case of the prosecution and bespeaks volumes about the dishonest and false claim of the prosecution witnesses. In cross-examination, he has admitted that at the time of inspection PWs were not present. He further admitted that he was unaware about the report of Chemical Examiner. He further admitted that he has not produced any letter of sending the case property for chemical examination. He admitted that memo of seizure of blood stained cloths was prepared at the police station. He admitted that on production of witnesses by the Complainant their statements were recorded at police station. He admitted that he did not produce such entry for leaving the police station to arrest the accused who was not previously known to him. He further admitted that the appellant was identified by PC Hafeez and WPC Muhammad Ali Mako. Another visible feature, striking in nature, is that the recovery memo with regard to the discovery/recovery of knife at the instance of the Appellant has been attested by the P.W. Intizar Ali and Javed Ali who have not been examined to corroborate the testimony of I.O, regarding arrest, recoveries and inspection memo, therefore, even this evidence of recovery cannot be held to be a corroboratory one from an independent source. It is worth to note that Investigating Officer also failed to prepare the sketch of place of incident to ascertain the exact location of the crime scene and lying of the body of deceased who was allegedly killed. The deposition of PW-5 Dr. Heero (Medical Officer) shows that he found one

incised wound on left forearm ulna side measuring 2.5 cm x 1 cmx1 cm. said injury was described as “Badihah” caused with sharp cutting object. In cross examination he deposed that injured Muhammad Moosa was in senses at the time of arrival. However he was not admitted as indoor patient thus Appellant cannot be convicted on the aforesaid pleas of the prosecution. PW-6 ASI Imamdin (In charge Police Post Bachal Shah Miani) has not implicated the appellant and PW-7 Dr. Muhammad Saleem (Medical Officer) whose statement does not implicate the Appellant as well. I have also noticed that basic ingredients of offence under section 324 P.P.C are missing i.e. the nature of act done, the intention and knowledge of the offender and circumstances. The impugned judgment is full of errors on material aspects as well as on law. Therefore, I am of the view that the prosecution has failed to prove the case against the Appellant beyond shadow of doubt.

24. I have also noticed that the learned trial Court has wrongly held in the impugned judgment that the accused formed an unlawful assembly in furtherance of common object/intention; that during the transaction accused Abdul Fattah alias Fattoo attempted to commit Qatal of PW-1 complainant/injured Muhammad Moosa by causing him injury “Badihah” with knife and further that the accused Abdul Fattah alias Fattoo not only attempted to commit Qatl of PW-1 complainant/injured Muhammad Moosa but also he is guilty of offence of murder of deceased Mukhtiar Ali.

25. I am of the view that the basic recovery of crime weapon is doubtful as discussed in the preceding paragraph; hence conviction could not be awarded and maintained on the premise of sharing common object/intention, under Section 302 (b) read with Section 149, PPC.

On the aforesaid proposition, I am fortified by the decision rendered by the Hon'ble Supreme Court in the case of *Sajjan Solangi v. the State* (2019 SCMR 872).

26. In the light of above discussion and the case law referred to herein above, I am of the view that the case of the Appellant merits plain acquittal on the premise that the basic ingredients of offence under section 324 P.P.C are missing i.e. the nature of act done, the intention and knowledge of the offender and circumstances. I am of the view that the benefit of slightest doubt must go to an accused. The eyewitnesses had not given the trustworthy evidence in respect of the Appellant. Once a single loophole is observed in a case presented by the prosecution, much less glaring conflict in the ocular account and medical evidence or for that matter where presence of eyewitnesses and recovery is not free from doubt, the benefit of such loophole/lacuna in the prosecution case automatically goes in favour of an accused. An important aspect of the case is non-appearance of the Mashirs of recovery, which is fatal for prosecution. Further if any incriminatory material related to the case was recovered or any fact was discovered in consequence of the information conveyed by the accused person after a delay of 11 days, the information so received cannot be relied upon without caution. I have noticed that neither the crime weapon, nor blood stained earth or cloths of deceased were sent to the serologist to procure a positive result about the articles and would also raise question about the recovery of alleged articles.

27. I have further noticed that on the same set of allegations the learned trial Court acquitted co-accused Bhindo, whereas Appellant was convicted which is not a fair decision on the part of learned trial Court

for the simple reason that when co-accused was acquitted, the question of common object/intention goes away, then conviction of the Appellant for offences under Section 302 (b) read with Section 149, PPC would not be sustainable. The aforesaid material aspects of the case creates doubt in the prosecution case for the reason that witnesses have not been believed with regard to the involvement of one co-accused Bhindo. Then, ordinarily, they cannot be relied upon qua the other co-accused unless their testimony is sufficiently corroborated through strong corroboratory evidence, coming from unimpeachable source, which is a deeply entrenched and cardinal principle of justice. Therefore, recording conviction of the Appellant on the same evidence was absolutely unjustified.

28. In the light of above facts and circumstances, I do not approve the reasoning of the learned trial Court.

29. In the light of depositions of the aforesaid eyewitnesses, I am of the view that prosecution has failed to bring home charge against the Appellant. It is a well settled principle in Criminal Jurisprudence that it is not necessary that there should be more than one circumstance creating doubt in the prosecution case. On the contrary, even a single circumstance raising doubt can discard the entire prosecution evidence. I am fortified by the Hon'ble Supreme Court's decision rendered in the case of *Hashim Qasim and other Vs. The State* (2017 SCMR 986).

30. In view of the above discussion, I am not in agreement with the conclusion, recorded by learned Trial Court in the impugned judgment dated 21.07.2011, to the extent of Appellant. Therefore, the conviction and sentence awarded to the present Appellant through

the impugned Judgment dated 21.07.2011 passed by learned II-Additional Sessions Judge, Sukkur in Sessions Case No.89 of 2005 arising out of Crime No.130/2004 registered for offences under Sections 302, 324, 337-F(ii), 149, 34, PPC at Police Station Abad, District Sukkur, are set-aside. The instant Jail Appeal is allowed 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.

JUDGE

Nadir/-