IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Appeal No. S- 129 of 2011

Appellant	Abdul Rasheed Sahar son of Abdul Razzaque Through Mr. Habibullah G. Ghouri, Advocate.
Complainant	Dost Muhammad son of Murad Ali Through Mr. Saleem Raza Lakhar, Advocate.
Respondent	The State Through Mr. Sharafuddin Kanhar, A.P.G.
Date of hearing	**13.05.2019**
Date of Judgment	**11.07.2019**

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JUDGMENT

SHAMSUDDIN ABBASI, J:- Appellant Abdul Rasheed Sahar and four others were tried by learned Additional Sessions Judge-III, Dadu, in Sessions Case No.295 of 2006, arising out of Crime No.108 of 2006 registered at Police Station Thariri Mohabat, for offences punishable under Sections 302, 147, 148, 149, 504, PPC. By a judgment dated 28.10.2011 the appellant and co-accused Haji Liaquat were convicted under Section 302(C), PPC as Ta'zir and sentenced to undergo imprisonment for 25 years each and to pay a sum of Rs.50,000/- {Rupees fifty thousand} each towards compensation to the heirs of deceased under Section 544-A, Cr.P.C., in default whereof they were ordered to undergo simple imprisonment for six months more each. However, they were extended the benefit of Section 382-B, Cr.P.C. while rest of the three co-accused were ordered to be acquitted of the charge.

2. The facts giving rise to this appeal, briefly stated, are that on 30.06.2006 at 8:45 p.m. complainant Dost Muhammad lodged FIR at Police Station Thariri Mohabat, stating therein that there existed enmity between complainant party and Haji Liaquat and others over landed property. On the eventful day Amir Hamzo, brother-in-law of complainant went to the land for irrigating the paddy seed while complainant was present in house. It was about 7.15 pm when he heard some commotion, came out of the house and went towards the lands, meanwhile, Yousif and Shafqat Hussain also came there. They

saw Haji Liaquat, Abdul Razzak @ Dodo, Rasheed, Nazeer and Asghar, duly armed with guns, saying that they would not spare Amir Hamzo {brother-in-law of complainant} and within their sight Haji Liaquat and Rasheed fired at Amir Hamzo, who while sustaining firearm injuries fell down on the ground. The complainant party due to fear remained silent and as soon as the accused persons decamped from the scene of offence, they came towards Amir Hamzo and found him dead. There were firearm injuries on his chest and abdomen. The complainant then removed the dead body to Taluka Hospital, Mehar, through witnesses and himself appeared at police station and lodged FIR under Sections 302, 147, 148, 149, 504, PPC.

3. Pursuant to the registration of FIR, the investigation was conducted and during investigation accused Haji Liaquat was found innocent and I.O placed his name in column 2 of the challan sheet but learned Magistrate joined him and thereafter challan was submitted before the Court of competent jurisdiction under the above referred Sections against five accused including appellant, whereby they were sent up for trial.

4. Formal charge against accused was framed at Ex.7 to which they pleaded not guilty and claimed trial. At trial, the prosecution examined number of witnesses in order to substantiate their charge against accused. The learned DDPP through his statement exhibited photocopies of chemical report and expert opinion at Ex.21 and then closed the prosecution side vide his statement Ex.22.

5. Statements of accused under Section 342, Cr.P.C. were recorded at Ex.23 to Ex.27, wherein they denied the prosecution case and pleaded their innocence by stating that PWs being relatives of complainant are interested witnesses and on account of existence of old enmity, they have deposed falsely against them. The accused, however, opted not to make a statement on oath under section 340(2), Cr.P.C. and did not produce any witness in their defence.

6. The trial Court, on conclusion of trial and after hearing the respective parties, found appellant and co-accused Haji Liaquat

guilty of the offence charged with and recorded conviction and sentence as explained herein above while rest of the three accused namely, Abdul Razzak, Nazeer Ahmed and Asghar Ali were acquitted of the charge.

7. Feeling aggrieved by the conviction and sentence recorded by the trial Court vide impugned judgment dated 28.10.2011, the appellant Abdul Rasheed Sahar has preferred this appeal.

8. It is contended on behalf of appellant that the witnesses are related, interested and inimical to the appellant as such they have deposed falsely; that the witnesses have contradicted each other on material points; that the learned trial Court has not properly appreciated the contradictions, discrepancies and improvements made by the prosecution witnesses; that the motive as set-up in the FIR has not been proved; that the learned trial Judge has not properly evaluated the evidence brought on record and based conviction without applying his judicial mind; that the case is of capital punishment and needs to be supported by ocular evidence coupled with corroboratory and medical evidence while recording conviction, which is lacking in the present case; that accused Liaquat was found innocent during investigation; that recovery of gun was effected after 12 days of his arrest and appellant was acquitted from the case of recovery of gun; that learned trial court acquitted co-accused on the same set of evidence; The learned counsel while concluding his submissions has prayed for setting-aside conviction and sentence recorded by the trial Court and acquittal of the appellant.

9. In contra, the learned APG, duly assisted by the learned counsel for the complainant, has submitted that the impugned judgment is based on sound reasoning; that specific role of firing has been attributed to the present appellant; that the motive as set-up in the FIR has been established; that there is no major contradictions; that prosecution witnesses have fully supported the case and they established their case beyond shadow of doubt; that the ocular version has been corroborated by medical and circumstantial

evidence. Lastly submitted that the impugned judgment does not suffer from any legal infirmity and require no interference by this Court and prayed for dismissal of appeal being devoid of merits.

10. I have given anxious consideration to the submissions of respective parties and perused the entire material available on record with their able assistance.

11. Admittedly all the PWs are related *inter-se*. The complainant is brother in law of deceased while PW Yousif Shah is also brother in law of complainant and PW Shafqat Shah is son of deceased but this fact alone is not sufficient to discard their evidence. The propriety of safe administration of justice demands care and caution while examining the evidence brought on record coupled with other corroborative evidence.

12. Motive behind the occurrence is stated to be a dispute of land between deceased Amir Hamzo and Liaquat. Complainant in his FIR has stated that there existed dispute between his relatives and Haji Liaquat and based on such dispute cases were also registered against each other, due to which Haji Liaquat and others were annoyed with deceased Amir Hamzo. It is a matter of record that complainant and both eye witnesses have never uttered a single word in their statements in respect of motive against accused; even complainant in his cross-examination has denied that he has mentioned in FIR that there were criminal cases registered between accused and deceased Amir Hamzo and they were not having talking terms with each other. It is a matter of record that complainant did not state a single word with regard to civil dispute between the parties, therefore, I am of the view that the prosecution has miserably failed to establish their case in respect of motive. On the contrary defence has established their case regarding murderous enmity between the parties as son and two other close relatives of accused Abdul Razzak were killed and close relative of complainant namely Sardar Shah was nominated as accused in those cases. It is pertinent to mention here that accused Sardar Shah was residing adjacent to complainant and prosecution witnesses not only admitted this fact but also admitted the relation of complainant with Sardar

Shah. No doubt enmity is double-edged weapon which cuts both sides but propriety of safe administration of justice demands to evaluate evidence on all aspects viz interested, related and inimical as well motive with care and caution. It is a well settled proposition of law that once prosecution has tried to establish motive then it is its responsibility to prove the motive. In the present case learned trial Court has observed that prosecution has failed to establish motive.

13. From a close look at the evidence brought on record by the prosecution, it seems that the incident is unseen and the story as set up in the FIR is doubtful on three aspects of the matter as discussed hereunder:-

{i} *The deceased Amir Hamzo was Head Constable in police department and the witnesses have admitted that there was a police post in their village and witnesses remained sufficient time at the place of incident to arrange a vehicle for shifting the dead body to Taluka Hospital for post-mortem but it is surprising rather astonishing that neither the complainant informed the Incharge, Police Post nor it is the case of the prosecution that police arrived at the place of incident, which is unusual and unbelievable behavior, otherwise normal response in a present situation was to inform nearest police post to get help but complainant approached police station, which was situated at a distance of 8/9 kilometer from the place of incident instead of getting help from police post situated in the village particularly when deceased was not a common man but was a Head Constable of police. It does not appeal to a prudent mind that a Head Constable was killed and police came at the place of incident on next day.*

{ii} *The abnormal behavior on the part of complainant and PWs. Admittedly, complainant was brother-in-law of complainant and PW Shafqat was his deceased and in their presence accused party killed deceased. No doubt accused party was shown armed with weapons and both the parties were residing in same village but none of the*

eye witnesses stated that they made any attempt to save the deceased; even PW Shafqat Shah being son of deceased neither attempted nor tried to save his father or to catch hold any of the accused. Such a conduct of blood relation eye-witnesses does not appeal to a prudent mind while in their presence the accused party challenged the deceased and started firing on him and despite their presence none of them resisted or tried their level best to save the deceased from the clutches of accused party, but no such action/reaction was arisen from the circumstances of the case to believe their statements as such the conduct of complainant and eye-witnesses is itself creating doubt in the case of prosecution. It does not appeal to the logic that by killing a person in presence of his close relatives, they did not attempt to save the deceased from the accused. This position caused a big dent to the prosecution case and also question marked their presence at the scene of offence. Reliance may well be made to the case of Sardar Ali v Hameedullah and others reported as 2019 P.Cr.L.J. 186, wherein it has been held as under:-

> *"The conduct of the complainant is also worth of to be looked into as it is story of the prosecution that the deceased Ahmad Khan was done to death through fire shots by the accused, yet at the relevant time no signs of resistance have been shown by the complainant in order to at least save his father from the grasp of assailants, rather he became a mere spectator, so, such kind of attitude of the complainant being sole eyewitness and real son of the deceased is beyond understanding of natural human conduct".*

Reliance is also placed on the case of Muhammad Farooq v. State reported as 2006 SCMR 1707 and reference is also made to the case of Dohlu v. State reported as 2002 P.Cr.L.J. 690.

Furthermore, it is the case of the prosecution that deceased was murdered within sight of complainant Dost Muhammad and eye witnesses Yousif Shah and Shafqat

Shah. Here the question arises why they were let off unhurt by the accused party particularly when none of them could escape alive and the accused party was well within knowledge that they would become witness against them in time to come. Such a behavior of accused party does not appeal to a prudent mind that when they could easily wipe out the entire evidence against them why they have not done so. Thus, I am of the humble view that the story set up by the prosecution in the FIR and the presence of complainant and the PWs at the scene of occurrence is extremely doubtful. Reliance may well be made to the case of Mst. Rukhsana Begum & others v Sajjad & others reported as 2017 SCMR 596, wherein it has been held that:-

> *"Another intriguing aspect of the matter is that, according to the FIR, all the accused encircled the complainant, the PWs and the two deceased thus, the apparent object was that none could escape alive. The complainant being father of the two deceased and the head of the family was supposed to be the prime target. In fact he has vigorously pursued the case against the accused and also deposed against them as an eye-witness. The site plan positions would show that, he and the other PWs were at the mercy of the assailants but being the prime target even no threat was extended to him. Blessing him with unbelievable courtesy and mercy shown to him by the accused knowing well that he and the witnesses would depose against them by leaving them unhurt, is absolutely unbelievable story. Such behavior, on the part of the accused runs counter to natural human conduct and behavior explained in the provisions of Article 129 of the Qanun-e-Shahadat, Order 1984, therefore, the court is unable to accept such unbelievable proposition".*

{iii} *The complainant and PWs have contradicted each other on material points. Complainant in his FIR has stated that at the time of incident he was present in his house when he heard commotion from the place of incident and he went there where PWs Yousif Shah and Shafqat Hussain also arrived, however, later on complainant and PWs have made improvements and stated in their depositions that they all were present in the house of complainant when they heard commotion from the place of incident and went*

to the place of incident together and saw the alleged incident. It has also been stated by PWs that after hearing commotion they reached at the place of incident within 3/4 minutes and in their presence accused party challenged the deceased and committed his murder. Here the question arises as to why the accused party waited 3/4 minutes for arrival of the complainant party at the place of incident and to commit the offence in their presence, which is unbelievable. Reliance may well be made to the case of Zafar v The State and others reported as 2018 SCMR 326, wherein it has been held as under:-

> *"The conduct of the witnesses of ocular account also deserves some attention. According to complainant, he along with Umer Daraz and Riaz {given up PW} witnessed the whole occurrence when their father was being murdered. It is against the normal human conduct that the complainant, Umer Daraz and Riaz {PW since given up} did not make even an abortive attempt to catch hold of the appellant and his co-accused particularly when the complainant himself has stated in the FIR and before the learned trial Court that when they raised alarm, the accused fled away. Had they been present at the relevant time, they would not have waited for the murder of their deceased father and would have raised alarm the moment they saw the appellant and his co-accused standing near the cot of their father".*

Besides, the complainant has stated that they brought deceased Amir Hamzo on a cot from the place of incident to the vehicle viz Datsun to shift his dead body to hospital and the said cot was brought by PWs Shafqat Shah and Yousif Shah from his house but PW Shafqat Shah and Yousif Shah have deposed that they did not know as to who had brought the cot. These contradictions and discrepancies in the statements of witnesses give rise to a presumption that the complainant and P.Ws being closely related to the deceased have made false statements on account of their blood relationship. The ocular version is not trustworthy and is without independent corroboration, hence the testimony of the prosecution witnesses is not worthy of reliance in view of the peculiar facts and circumstances of the case. It would, therefore, not be safe

> *to maintain appellant's conviction on the basis of such evidence.*

14. Another intriguing aspect of the matter is that the police statements under Section 161, Cr.P.C. of witnesses were recorded after five days of the incident. In this context the investigating officer in his evidence has admitted that he recorded the statements of PWs under Section 161, Cr.P.C. on 05.07.2006 after the delay of five days but failed to furnish any plausible explanation in this regard. This fact, thus, rendered the case of the prosecution extremely doubtful. The delay of even one or two days without explanation in recording the statements of witnesses has been found fatal for the prosecution and not worthy of reliance by the august Supreme Court of Pakistan in the case of *Muhammad Asif v. The State* reported as 2017 SCMR 486 as under:-

> *"There is a long line of authorities/ precedents of this court and the High Courts that even one or two days unexplained delay in recording the statement of eye-witness would be fatal and testimony of such witnesses cannot be safely relied upon."*

15. Insofar as recovery of crime weapon from the possession of appellant and the positive report of ballistic expert is concerned, it is a matter of record that the appellant was arrested on 01.07.2006 whereas the gun alleged to have been recovered on 12.07.2006 after 12 days of his arrest, which makes the recovery doubtful. Furthermore, the appellant has been acquitted in the said case by the Court of competent jurisdiction. Record further reflects that the crime weapon has been shown recovered on 12.07.2006 and the same was received by the office of ballistic expert on 24.07.2006 i.e. after twelve days of its recovery without furnishing any plausible explanation. When the evidence of PWs has already been disbelieved against the appellant, in all probabilities, this recovery of weapon would hardly be of much significance in respect of guilt of the appellant in the present case. Even otherwise, it is settled by now that the recovery of empties etc. are always considered to be corroborative piece of evidence and such kind of evidence by itself is not sufficient to bring home the charges against the accused

especially when the other material put-forward by the prosecution in respect of guilt of the appellant has already been disbelieved. It has been affirmed by the Hon'ble Supreme Court in case cited as 2001 SCMR 424 *Imran Ashraf and 7 others v. The State* in the following manner:-

> *"Recovery of incriminating articles is used for the purpose of providing corroboration to the ocular testimony. Ocular evidence and recoveries, therefore, are to be considered simultaneously in order to reach for a just conclusion."*

Likewise, if any other judgment is needed on the same analogy, reference can be made to the case of *Dr. Israr-ul-Haq v. Muhammad Fayyaz and another* reported as 2007 SCMR 1427, wherein the relevant citation (c) enunciates:

> *"Direct evidence having failed, corroborative evidence was of no help. When ocular evidence is disbelieved in a criminal case then the recovery of an incriminating article in the nature of weapon of offence does not by itself prove the prosecution case.*

16. On the point of safe custody of crime weapon at police station, the prosecution has neither examined Head Moharrir nor produced any entry of Malkhana Register to substantiate safe custody of case property and its safe transmission to expert, hence I am of the considered view that the prosecution has miserably failed to establish the point of safe custody of case property through cogent and reliable evidence. Reliance may well be made to the case of *Ikramullah & others v The State* {2015 SCMR 1002}, wherein the principle for keeping case property in safe custody and proving its safe transit to the examiner was emphasized in the following terms:-

> *"In the case in hand not only the report submitted by the Chemical Examiner was legally laconic but safe custody of the recovered substance as well as safe transmission of the separated samples to the office of Chemical Examiner had also not been established by the prosecution. It is not disputed that the investigating officer appearing before the learned trial court had failed to even to mention the name of the police official who had taken the samples to the office of the Chemical Examiner and admitted no such police official had been produced before the learned trial Court to depose about safe custody of the*

> *samples entrusted to him for being deposited in the office of the Chemical Examiner. In this view of the matter the prosecution had not been able to establish that after the alleged recovery the substance so recovered was either kept in safe custody or that the samples taken from the recovered substances had safely been transmitted to the office of the Chemical Examiner without the same being tampered with or replaced while in transit".*

17. A bare perusal of the impugned judgment reflects that the learned trial Court while convicting the appellant and co-accused Liaquat took note that the prosecution has failed to prove its case against co-accused Abdul Razzak, Nazeer Ahmed and Asghar Ali beyond shadow of reasonable doubt and recorded their acquittal, on the same set of evidence, by extending them the benefit of doubt. The relevant observations are given below:-

> *"Since, there is only specific role against accused Rasheed and Liaquat Ali for causing fire arm injuries to the deceased Amir Hamzo Shah, and there is no specific role against remaining accused, in FIR, there are also contradictions in the FIR, and evidence of PWs as such "FIR shows that accused only fires and not mentioned in the FIR that they fired in air, but the complainant and PWs have stated that they fired in the air" nor there is any evidence that, remaining accused Nazeer, Razzaque and Asghar came at the place of incident with their common object to commit murder of deceased so also there is no evidence of prior meetings of mind of accused and according to the contents of FIR and evidence of complainant and eye witnesses that accused Asghar, Razzaque and Nazeer were armed with guns, but it is surprising that they have not caused any injury to deceased and if they had intention to commit murder of deceased they might use guns and fire upon the deceased, because there was no body to restrain them from committing murder of deceased or use of their weapons. It is trend in our society that, all family members and relatives of the accused party are usually involved in the case to satisfy enmity, hence false implication of the accused Razzaque, Asghar and Nazeer in this case cannot be ruled out, therefore, prosecution failed to prove part and specific role of aerial firing and commission of other overt act has not been proved against the accused Nazeer, Abdul Razzaque and Asghar and there is also distinguishable from the case of co-accused Rasheed and Liaquat, therefore, while taking guidance from case law reported in PLD 2005 Karachi 177, I am of the view that the prosecution has failed to prove this point against accused Asghar, Nazeer and Abdul Razzaque……The upshot of my above discussion is that the prosecution has miserably failed to prove its case against accused, Abdul Razzaque, Asghar and*

> *Nazeer beyond shadow of reasonable doubt, therefore, while relying upon a case law reported in PLD 2005, Karachi, 177, I am of the view that accused Abdul Razzaque, Asghar and Nazeer are entitled for giving benefit of doubt, and it is settled law that when any doubt is created the benefit of that shall always goes in favour of the accused, therefore, accused Abdul Razzaque, Nazeer and Asghar, are acquitted under section 265-H)i), Cr.P.C. by giving benefit of doubt.*

On the other hand, while convicting the appellant, the learned trial Court recorded following reasons:-

> *"While prosecution has successfully proved the case against accused Liaquat and Rasheed for committing the murder of deceased Amir Hamzo Shah, but witnesses have not deposed the motive of offence, so also the Qisas in this case is not applicable, because the proof as required by Section 304, PPC for punishment of death as Qisas is not available and accused have only fired one shot each upon deceased, and not repeated the fire, the accused Liaquat and Rasheed are convicted U/S 265-H(ii), Cr.P.C. for committing offence punishable U/s 302(C) PPC and sentenced to suffer imprisonment for 25 years as Tazeer, and so also to pay compensation of Rs.50000/- each {Fifty thousand} payable to the heirs of the deceased under section 544-A, Cr.P.C. In case of default in payment of compensation they shall suffer S.I. for 6 {six} months more. The benefit of section 382{B} Cr.P.C. is also awarded to accused".*

18. As stated above besides the appellant and co-accused Liaquat, three other persons were also indicted in this case three of whom namely, Abdul Razzak, Nazeer Ahmed and Asghar Ali were acquitted by the learned trial Court. Such order of acquittal was neither assailed either by the complainant or the State and as such their acquittal attained finality. It is well settled by now that if a set of witnesses is disbelieved to the extent of some accused the same cannot be believed in respect of remaining accused facing the same trial without there being any independent and strong corroboration. Upon scrutiny of the material available on record, I find no corroboration to maintain conviction and sentence of the appellant particularly when he is facing the charges of capital punishment. At this juncture, the principle of *falsus in uno-falsus in omnibus* is applicable in view of the facts and circumstances of the

present case. The Hon'ble apex Court has rendered a landmarked judgment dated 04.03.2019 passed in 238-L of 2013 on the principle of *falsus in uno-falsus in omnibus* and ruled as under:-

> *"A court of law cannot grant a license to a witness to tell lies or to mix truth with falsehood and then take it upon itself to sift grain from chaff when the law of the land makes perjury or testifying falsely a culpable offence".*

19. It is a cardinal principle of administration of criminal justice that prosecution is bound to prove its case against accused beyond shadow of any doubt. If any reasonable doubt arises in the prosecution case, the benefit thereof must be extended to the accused not as a matter of grace or concession but as a matter of right. Likewise, it is also well-embedded principle of criminal justice that there is no need of so many doubts in the prosecution case rather any reasonable doubt arising out from the prosecution evidence, pricking the judicious mind, is sufficient for acquittal of the accused. Rule for giving benefit of doubt to an accused has been laid down by the Hon'ble Supreme Court in the case of *Muhammad Mansha v. The State (2018 SCMR 772)* wherein it has been ruled as under:-

> *"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 the accused, then the 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 that ten guilty persons be acquitted rather than one innocent person be convicted". Reliance in this behalf can be made in 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)."*

20. It is also by now well settled that the accused must always be presumed to be innocent and the onus of proving the offence is on the prosecution. All that may be necessary for the accused is to offer some explanation of the prosecution evidence against him and if this appears to be reasonable even though not beyond doubt and to be consistent with the innocence of accused, he should be given the benefit of it. The proof of the case against

accused must depend for its support not upon the absence or want of any explanation on the part of the accused but upon the positive and affirmative evidence of the guilt that is led by the prosecution to substantiate accusation. There is no cavil with the proposition and judicial consensus seems to be that "if on the facts proved no hypothesis consistent with the innocence of the accused can be suggested, the conviction must be upheld. If however, such facts can be reconciled with any reasonable hypothesis compatible with the innocence of the accused the case will have to be treated as one of no evidence and the conviction and the sentence will in that case have to be quashed. Rule of Islamic Jurisprudence has been laid down in the judgment rendered by the Hon'ble Supreme Court of Pakistan in *Ayub Masih's case* (PLD 2002 SC 1048), wherein the apex Court ruled that:-

> *"It is also firmly settled that if there is an element of doubt as to the guilt of the accused, the benefit of the doubt must be extended to him. The doubt, of course, must be reasonable and not imaginary or artificial. The rule of benefit of doubt, which is described as the golden rule, is essentially a rule of prudence, which cannot be ignored while dispensing justice in accordance with law. It is based on the maxim, "It is better that ten guilty person be acquitted rather than one innocent person be convicted". In simple words it means that utmost care should be taken by the Court in convicting an accused.* ***It was held in "The State v Mushtaq Ahmed (PLD 1973 SC 418)*** *that this rule is antithesis of haphazard approach or reaching a fitful decision in a case. It will not be out of place to mention here that this rule occupies a pivotal place in the Islamic Laws and is enforced rigorously in view of the saying of Holy Prophet (P.B.U.H) that the mistake of Qazi (Judge) in releasing a criminal, is better than his mistake in punishing an innocent".*

21. The final and eventual outcome of the entire discussion is that the prosecution has failed to discharge its onus of proving the guilt of the appellant beyond shadow of reasonable doubt. Accordingly, this appeal is allowed, the conviction and sentence recorded by the learned trial Court vide judgment dated 28.11.2011 are set-aside and the appellant is acquitted of the charge by extending him the benefit of doubt. The appellant be set free forthwith, if not required to be detained in any other case.

JUDGE