

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Amjad Ali Sahito

Criminal Appeal No.248 of 2020
Criminal Appeal No.287 of 2020

Appellants in
Crl.Appeal 248/2020 : Mst. Sehar Shams & Bilal Shams
Through Syed Mehmood Alam Rizvi,
Advocate.

Appellant in
Crl.Appeal 287/2020 : Syed Ali-ul-Hassan
Through Mr. Zulfiquar Ali Langah,
Advocate.

Respondent : The State
Through Mr. Siraj Ali Khan,
Addl. Prosecutor General Sindh.

Date of hearing : 3rd September 2020

Date of Judgment : 15th September 2020

J U D G M E N T

AMJAD ALI SAHITO, J.— Being aggrieved and dissatisfied with the judgment dated 11.03.2020 passed by learned Vth Additional Sessions Judge/Model Criminal Trial Court (Extension), Karachi East, in Sessions Case No.273 of 2018 arising out of the FIR No.14/2018 for the offence under sections 302, 109, 201, 202/34 PPC registered at Police Station Soldier Bazaar, Karachi, whereby the appellants Ali-ul-Hassan, Sehar Shams and Bilal Shams were convicted under section 302(b) read with section 109/34 PPC and sentenced them to suffer imprisonment for life each as a Taazir and to pay fine of Rs.10,00,000/- as compensation under section 544-A, Cr.P.C. to the legal heirs of deceased Ambreen Fatima. The benefit of section 382 Cr.P.C. was also extended in favour of the appellants and their sentences will run concurrently with other sentences if any.

2. The case of the prosecution as depicted in the FIR lodged by the complainant SIP Sarfaraz Aliyana is that on 09.12.2017,

accused Ali-ul-Hassan lodged FIR No.299/2017 under section 302/397 PPC at PS Soldier Bazaar, alleging therein that during street crime his wife Mst. Ambreen Fatima had received firearm injuries. The investigation of FIR No.299/2017 entrusted to the complainant SIP Sarfaraz Aliyana who during investigation came to know that before three months of the alleged incident accused Ali-ul-Hassan contracted a second marriage with Sehar Shams due to which there were differences between accused Ali-ul-Hassan and his first wife deceased Ambreen Fatima. As per medical record, the fire was made upon deceased Ambreen Fatima from the very near distance. It is further alleged that there is a police chowki near the place of incident at the distance of 24 feet and as per the Call Data Record collected by the complainant being Investigating Officer of FIR No.299/2017 at the night of alleged incident from 0030 hours to 0445 hours. He was also in contact with Bilal Shams, the brother of second wife Sehar Shams, therefore, being suspected upon them Bilal Shams and Sehar Shams were arrested under section 54, Cr.P.C. on 23.12.2017. On 24.12.2017 accused Ali-ul-Hassan was called at PS and was interrogated, who during interrogation admitted commission of murder of his wife deceased Ambreen Fatima from the pistol, which was provided to him by accused Sehar Shams. Accused Sehar Shams has also admitted fact that she has provided said pistol to accused Ali-ul-Hassan and said the pistol was brought to her brother Bilal Shams from his friend. She also disclosed that at about 5:00 A.M. she received the call of accused Ali-ul-Hassan, who disclosed that he had murdered his wife Ambreen Fatima. During interrogation, Bilal Shams also admitted such fact that at about 6:00 a.m. his sister Sehar Shams informed him that accused Syed Ali-ul-Hassan has murdered his wife, Ambreen Fatima, therefore, accused persons Syed Ali-ul-Hassan, Sehar Shams and Bilal Shams were arrested. During the investigation, the complainant SIP Sarfaraz Aliyana received spy information that pistol used in the commission of alleged incident owns a person, who was standing near Tomb of Jumman Shah Bukhari, hence he reached the pointed place and apprehended said person, who disclosed his name as Bilal Shams, from his possession pistol bearing

No.36920 along with one live round was recovered. During interrogation, accused Bilal Shams disclosed that he borrowed said pistol from his friend Danish and the same is licensed pistol of his father Gul Nawaz. He further disclosed that he provided said pistol to his sister Sehar Shams, who gave the same to accused Ali-ul-Hassan, who has murdered his first wife Mst. Ambreen Fatima from the said pistol. Thereafter, Investigating Officer contacted with the parents and brother of deceased Mst. Ambreen Fatima and disclosed such facts and asked to lodge FIR against accused persons, but they refused to become the complainant of this case, hence SIP Sarfaraz Aliyana lodged an instant FIR against the above-named accused persons on behalf of the State.

3. After completing the usual investigation charge sheet was submitted against the accused persons before the concerned Court.

4. The learned trial Court has framed the charge against the accused persons at Ex.2, to which they pleaded not guilty and claimed to be tried to vide their pleas Ex.2/A to Ex.2/D respectively. In order to establish the accusation against accused persons, the prosecution examined PW-1 complainant Sarfaraz Aliyana at Ex.3, who produced roznamcha entry No.15, FIR No.299/2017 as Ex.3/B, roznamcha entries No.30, 32, 23 and 26 at Ex.3/C to Ex.3/G respectively, mashirnama of arrest of accused Sehar Shams and Bilal Shams as Ex.3/H, roznamcha entry No.35 as Ex.3/I, mashirnama of arrest and recovery as Ex.3/J, roznamcha entries No.37, 10, at Ex.3/K and 3/L, site sketch at Ex.3/M, snaps of place of incident at Ex.3/N, Call Data Record at Ex.3/O, roznamcha entries No.20 and 24 at Ex.3/P and 3/Q, mashirnama of seizure of empty shell at Ex.3/R, roznamcha entries No.24 and 25 at Ex.3/S & 3/T, mashirnama of arrest of accused Bilal Shams and recovery at Ex.3/U, roznamcha entry No.31 at Ex.3/V, FIR No.311/2017 at Ex.3/W, mashirnama of site inspection at Ex.3/X, request letter for FSL AT Ex.3/Y, FSL Report at Ex.3/Z, request letter for FSL for the vehicle at Ex.3-A/1, letter to the chemical examiner at Ex.3/A-2, FSL report of the vehicle at Ex.3/A-3, Chemical Examiner's

report at Ex.3/A-4, charge sheet No.3/2018 at Ex.3/A-5, Order dated 16.01.2018 passed by the concerned Magistrate at Ex.3/A-6, FIR No.14/2018 at Ex.3/A-7, mashirnama of site inspection as Ex.3/A-8, mashirnama of re-arrest persons at Ex.3/A-9 & 3/A-10, mashirnama of seizure of two CD at Ex.3/A-11, roznamcha entry No.21 at Ex.3/A-12 and snaps of pistol and accused persons at Ex.3/A-13. PW-2 ASI Imtiaz Ali Shah was examined at Ex.4. PW-3 Inspector Akhtar Abbas, the first Investigating Officer of FIR No.299/2017 was examined at Ex.5, who produced mashirnama of site inspection at Ex.5/A. ASI Khateeb-ur-Rehman was examined as PW-4 at Ex.6. PW-5 Danish Nawaz was examined at Ex.7. PW-6 Syed Hassan Abbas Zaidi at Ex.8, who produced mashirnama of the dead body of deceased and inquest report at Ex.8/A & 8/B. WMLO Dr. Summaiya was examined as PW-7 at Ex.9, who produced a medico-legal certificate, postmortem report and cause of death certificate at Ex.9/A to Ex.9/C respectively. PW-8 Hassan Asghar was also examined at Ex.10. ASI Ishtiaq Lodhi being well conversant with handwriting and signature of I.O. Inspector Muhammad Yaqoob was examined at Ex.12, who produced charge sheet of the instant case at Ex.12/A. Thereafter, the prosecution closed its side vide statement at Ex.13. Statements of the accused persons were recorded under section 342, Cr.P.C. at Ex.14 to 17 respectively, wherein they denied the prosecution allegation levelled against them and stated to be innocent and prayed for justice. However, neither the accused persons have been examined themselves on oath under section 340(2), Cr.P.C. nor led any evidence in their defence.

5. The learned trial Court, after hearing the parties and appraisal of the evidence, convicted and sentenced the appellants to vide judgment dated 11.03.2020. The convictions and sentences recorded by the learned trial Court have been impugned by the appellant before this Court by way of filing instant Criminal Jail Appeals.

6. Mr. S.Mehmood Alam Rizvi, learned counsel for the appellants in Criminal Appeal No.248/2020, has mainly contended that the impugned judgment is against the law and

facts of the case; that the present appellants are innocent and have been falsely implicated in this case; that there are major contradictions between the evidence of the prosecution witnesses; that no legal evidence is available on record to support the prosecution version and no conviction in these circumstances could have been awarded rather this was the fit case for acquittal of the appellants. He lastly contended that prosecution has miserably failed to prove its case against the appellants and thus, according to him, under the abovementioned facts and circumstances of the case, the appellants are entitled for their acquittal.

7. Mr. Zulfiqar Ali Langah, learned counsel for the appellant in Criminal Appeal No.287/2020, has supported the arguments advanced by the learned counsel for appellants in Crl. Appeal No.248/2020 and prayed for acquittal.

8. Conversely, Mr. Siraj Ali Khan, Addl. Prosecutor General Sindh while supporting the impugned judgment has contended that the prosecution has proved its case beyond any shadow of doubt against the appellants through cogent, circumstantial and medical evidence. He lastly prayed for dismissal of both the instant appeals.

9. I have heard the learned counsel for the appellants as well as learned Addl. Prosecutor General Sindh and have minutely perused the record with their able assistance. It reveals that the appellant Syed Ali-ul-Hassan lodged an FIR being Crime No.299/2017 at police station Soldier Bazar under section 397/34 PPC; wherein he has stated that he along with his wife Mst. Ambreen Fatima (deceased) aged about 40 years after taking dinner from Defence was coming to his home on white colour Cultus car when they reached street next to Qadri Masjid Parsi Colony suddenly two persons wearing jacket came to his car and asked him to take out whatever you have, on which he replied that he has no wallet and then they demanded the mobile phone, which fell due to sudden stopping of the vehicle, meanwhile, the robber, who was standing at his side fired from his pistol which hit on the head of his wife, he shifted her to hospital but she died on the way. The dead body was brought to the civil hospital

where the police of soldier Bazar also arrived. After completing the investigation, the learned XIIth Civil Judge & Judicial Magistrate, Karachi vide order dated 16.01.2018 disposed of the charge sheet filed by the I.O. by observing that the investigation officer failed to follow the procedure provided under the law. The I.O. has not filed a final report on FIR No.299/2017 under section 302/397/34 PPC. He further observed that at this stage whatever material collected by him cannot be discarded due to illegality committed by the I.O. hence, the charge sheet was not accepted. The I.O. was directed to file the final report in the FIR following the law. Further, he was not restrained for registration of the second FIR if prima facie case is made out. The I.O. of the case SIP Sarfraz Alyana lodged another FIR being Crime No.14/2018 on behalf of the State and stated that he was busy in the investigation of the case being Crime No.299/2017 for the offence under sections 302/397/34 PPC which was assigned to him and arrested the complainant/appellant Ali-ul-Hassan in respect of the murder of Mst. Ambreen Fatima. As per facts stated in the Court's order, appellants Ali-ul-Hassan and Mst. Sahar Shams had contracted Nikah before three months of the murder of deceased, as such, differences were going on between Ali-ul-Hassan and deceased Mst. Ambreen Fatima. Resultantly, Ali-ul-Hassan got a pistol from Mst. Sehar Shams two days earlier and Sehar Shams' brother Bilal Shams, who is employed in police, got the pistol from his friend Danish on the pretext of his sister's wedding. The police picket was at a distance of about 24 feet from the place of occurrence and the sketch of the place of occurrence and mobile phone record of Sehar Shams and Ali-ul-Hassan. He further states that bullet has been fired from the close range and recovered from the place of incident and there is no mark of the bullet on the vehicle. The motive, in this case, has been shown that appellants Ali-ul-Hassan, Mst. Sahar Shams and Bilal with their common intention and having gotten the pistol over interference of Mst. Ambreen Fatima in his newly married life jointly murdered Mst. Ambreen Fatima. Hence, the facts disclosed by the appellant in FIR No.299/2017 and two FIRs lodged by the complainant SIP Sarfraz Alyana on behalf of the State based upon the circumstantial evidence. On the one

hand, the appellant Ali-ul-Hassan claimed that during the robbery the bullet was hit to the deceased; whereas the second FIR of the same incident lodged by the SIP Sarfraz Alyana in which he has stated that wife was annoyed on the second marriage of Ali-ul-Hassan; hence, he has committed her murder. From the face of FIR being Crime No.14/2018, it is based upon the circumstantial evidence as to the eye witness Ali-ul-Hassan became accused of the case. The Magistrate has directed the I.O. of the case if he deems fit, he may register the second FIR in view of **Mst. Sughran Bibi v. The State (PLD 2018 Supreme Court 595)**; wherein the Hon'ble Supreme Court of Pakistan has held that:

“.....27. As a result of the discussion made above we declare the legal position as follows:

(i) According to section 154, Cr.P.C. an FIR is only the first information to the local police about commission of a cognizable offence. For instance, an information received from any source that a murder has been committed in such and such village is to be a valid and sufficient basis for registration of an FIR in that regard.

(ii) If the information received by the local police about commission of a cognizable offence also contains a version as to how the relevant offence was committed, by whom it was committed and in which background it was committed then that version of the incident is only the version of the informant and nothing more and such version is not to be unreservedly accepted by the investigating officer as the truth or the whole truth.

(iii) Upon registration of an FIR, a criminal "case" comes into existence and that case is to be assigned a number and such case carries the same number till the final decision of the matter.

(iv) During the investigation conducted after registration of an FIR, the investigating officer may record any number of versions of the same incident brought to his notice by different persons which versions are to be recorded by him under section 161, Cr.P.C. in the same case. No separate FIR is to be recorded for any new version of the same incident brought to the notice of the investigating

officer during the investigation of the case.

(v) During the investigation, the investigating officer is obliged to investigate the matter from all possible angles while keeping in view all the versions of the incident brought to his notice and, as required by Rule 25.2(3) of the Police Rules, 1934 "It is the duty of an investigating officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person."

10. In my humble view, before lodging of an FIR does not make a person an accused nor does a person against whom an investigation is being conducted by the police can strictly be called an accused. Such a person may or may not be sent up for trial. The information may be found to be false. In the instant case, I.O. of the case has rightly inserted the section 302 P.P.C and as per his/I.O view, the appellant/complainant Ali-ul-Hassan has committed the offence along with co-accused and they have been included accused in the charge sheet but after passing the order by learned Magistrate, he lodged the second FIR being Crime No.14/2018, though in the criminal procedure code there is no concept of registration of the second FIR. In view of above cited judgment, no separate FIR is to be recorded for any new version of the same incident brought to the notice of the investigating officer during the investigation of the case.

11. The case of the prosecution rests upon the circumstantial evidence i.e. recoveries of incriminating articles so also medical evidence with support of audio recording in the mobile. Now it is a settled proposition of law that capital punishment can be awarded on circumstantial evidence provided by circumstances constitute a chain and its link is not missing and their combine fact is that the guilt of accused established beyond any shadow of a doubt. The present case was involving the capital punishment and the entire evidence is based upon circumstantial evidence and the same is required to be considered with utmost caution and care.

12. To prove the case, the prosecution examined Sarfraz Alyaan, investigating officer of crime No.299/2017 and

complainant of crime No. 14/2018, who in his examination-in-chief deposed that after registration of FIR being Crime No.299/2017 under section 397/34 PPC he has visited the place of incident and prepared such memo. During the investigation, he has added section 302 PPC, later on, he has arrested Mst. Sahar Shams and Bilal Shams under section 54 Cr.P.C. and finally the I.O. has arrested the appellant/complainant Ali-ul-Hassan Mst. Sahar and Bilal Shams in FIR No.299/2017 and prepared such a memo. He has also contacted all the legal heirs of deceased Mst. Ambreen Fatima but the brother of deceased namely Asghar denied to be a complainant and then he/I.O. became the complainant and lodged the FIR against the appellant. He has also prepared sketch memo, snaps of the place of incident. During the investigation, he has collected mobile data record and further interrogation the accused Ali-ul-Hassan disclosed that when he was shifting the dead body of deceased he threw the empty bullet in front of the national hospital and after keeping such entry of police station, he along with the accused left the police station after such the accused produced the same bullet to the I.O. of the case. The PW arrested the accused Bilal Shams and Mst. Sahar Shams after their arrest he has produced 30 bore pistol one live bullet during interrogation accused Bilal Shams disclosed that he has given a pistol to his sister Mst. Sahar Shams and she has given the same to Ali-ul-Hassan for committing the murder. Further, in his chief, he has disclosed that he tried to record the statement of accused Bilal Shams under section 164 Cr.P.C. but it could not be recorded. He has also got prepared the CDs of the statement of accused and handed over to the I.O. which he has produced at Ex.3-A/11. In his cross-examination, he admits that **“It is correct to suggest that the incident took place on 09.12.2017. It is correct to suggest that investigation was conducted by SIP Akhtar Abbas from 09.12.2017 to 21.12.2017. It is correct to suggest that during investigation conducted by SIP Akhtar Abbas nothing was come on record during the 12 days of investigation that the complainant/appellant Ali-ul-Hassan and his second wife Mst. Sahar Shams and brother-in-law Bilal Shams are involved in the said murder. It is correct to**

suggest that I received the investigation on 21.12.2017. During the investigation conducted by SIP Akhtar Abbas for the period of 12 days, no any empty or any bullet was recovered by him or any crime weapon. It is correct to suggest that no any eye witness of the incident came on the scene. It is correct to suggest that I also sent empties and bullet to the FSL in Crime No.311/2017 instead of investigation officer Inspector Abdul Rauf. It is correct to suggest that I recovered crime weapon and empties on 26.12.2017. It is correct to suggest that I sent to the FSL on 28.12.2017 in both crimes. It is correct to suggest that no any projectile bullet was recovered from dead body of the deceased. It is correct to suggest that empty bullets were not recovered from the place of occurrence.” He has also admitted that he recovered the empties from the footpath in front of Liaquat National Hospital on the pointation of accused Ali-ul-Hassa. He recovered the empties within five to seven minutes. He has also admitted that said empties were also recovered after 17 days of the incident. He has also admitted that based on phone call data he has involved the appellant Ali-ul-Hassan in the instant case. He has also admitted that he has not investigated any relative concerning their relationship prior to her death. He has also admitted that the first wife had also knowledge about the second marriage of appellant Ali-ul-Hassan and he has also admitted that **“It is correct to suggest that relation between appellant Ali-ul-Hassan and his first wife/deceased was very good after the second wife.”** In support of his contention, the prosecution examined PW-2 Imtiaz Ali Shah, who arrested appellants Mst. Sahar Shams and Bilal Shams. PW-3 Akhtar Abbas, who has visited the place of incident, conducted the investigation and sent the clothes and mobile phone to the chemical examiner. PW-4 Khatibur Rehman, who is also a police officer and in his presence, Ali-ul-Hassan was arrested. The most important PW was Danish, who has given the pistol to Bilal as per his deposition on 25.12.2017 accused Bilal who is his colleague as well as they were training at Razzaqabad Police Centre at about 0800 pm at 0830 pm came at his house and demanded one pistol from him. He knows that he has pistol of

his father which was not in working condition and further he has stated that due to marriage ceremony of his sister, he wants to do the aerial firing, on which he told him that the pistol of his father is not in working condition then he told him that he would get it repaired and demanded the pistol along with its license due to good friendship with accused Bilal, he has given the pistol along with its license. On 26.12.2017 he came to know that Bilal Shams has been arrested in the offence having possession of an illegal weapon, thereafter he narrated the whole story to his parents. Later on, he came to know that brother in law of Bilal murdered his wife with the pistol of his father. The incident took place on 02.12.2020 whereas Bilal borrowed the pistol from him on 25.12.2017. In cross-examination, he admits that **“It is correct to suggest that the accused Bilal Shams did not come to my house prior to 25.12.2017”**. The prosecution examined Syed Hassan Abbas PW-6, who in his statement stated that on 09.12.2017 he was present in the house at about 02:00 AM when his relative namely Ali-ul-Hassan informed him that he along with his wife Mst. Ambreen Fatima was coming from Defence and when they reached Parsi Colony, during dacoity, his wife sustained the injury, therefore, he took his wife to Agha Khan Hospital on such information he went there and saw the dead body lying in the hospital, thereafter, they brought the dead body at the mortuary of Khooja Community situated at Nomaish Chowrangi. Regarding this incident, Ali-ul-Hassan informed the PS and on their direction, they brought the dead body of deceased to civil hospital Karachi for her postmortem such inquest was also prepared. In cross-examination, he admits that **“I am also aware of the household matters of Ali-ul-Hassan, who got married with Mst. Ambreen Fatima 14 years ago and from the said wedlock, two children were born. Since marriage, they were living happily with each other. One and half year before the incident, appellant Ali-ul-Hassan contracted second marriage with Mst. Sahar Shams and both wives of Ali-ul-Hassan were living separately. Both were passing very happy life with Ali-ul-Hassan. Since marriage, I have not heard any complaint from any of the wives of Ali-ul-Hassan regarding maltreatment. Both wives are also working**

in a same school. The school is owned by Ali-ul-Hassan. It is correct to suggest that police have wrongly involved Ali-ul-Hassan, his second wife Mst. Sahar Shams and Bilal Shams in this case”. In support of ocular evidence, the prosecution examined the women medical officer PW-7 Dr. Surayya, who stated that she was posted as Sr. WMLO at Civil Hospital, Karachi in morning shift. At about **11:40 am**, she received one dead body of Mst. Ambreen Fatima was aged about 40 years. She started the postmortem of deceased at **12:15 pm** and completed at **01:00 pm**. On examination, she found the following injuries:

Surface Wounds and Injuries:

- 1) Entry Wound over right temporal region with blackened zone around it. Approximated and stitched.
- 2) Exit Wound over the left parietal-temporal region, stitched after approximation, measuring 3 cm in length with irregular margins.

13. From the external of the dead body of deceased Mst. Ambreen Fatima, she opined that the cause of death of deceased occurred due to acute irreversible hemorrhagic shock caused by firearm projectile which led to massive Intracranial bleed and trauma to the contents (Brain) causing Cardio-Pulmonary failure and subsequent death. The time between injury and death was instantly and the time between death and postmortem was 10 to 12 hours.

14. Lastly, the prosecution examined PW-8 brother of the deceased namely Hassan Asghar, who in his examination in chief stated that his sister was married with appellant Ali-ul-Hassan and both were living happily. His sister had two children. On 09.12.2017 he has received a call from his relative that his sister received injuries, as such, he reached Agha Khan Hospital where he came to know that dead body of his sister/deceased has been shifted to cold storage. He did not lodge an FIR regarding the incident but appellant Ali-ul-Hassan lodged the FIR. Later I.O. of the case contacted them to proceed with the case but they refused that they do not want any proceeding in this case. Still, they are not willing to proceed with the case.

15. The incident took place on 09.12.2017 at 0200 hours inside Parsi colony near Qadri Masjid. The claim of the appellant

Ali-ul-Hassan is that after taking dinner from Defence when they reached at the place of incident two accused persons ask him whatever with you handed over to them also demanded the mobile phone, which was fell when he/appellant tried to grab the said phone, the robber fired upon appellant Ali-Ul- Hassan which hit to the deceased Mst. Ambreen Fatima, resultantly she became injured and shifted to the hospital. The I.O. of the case after the investigation has determined that the complainant of Crime No.299/2017 has murdered with the help of his first wife Mst. Sahar Shams and Bilal Sham.

16. It is the duty of an investigating officer to find out the truth of the matter under investigation. His object shall be to discover the facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person. The investigating officer has not performed his duty honestly but casually started the investigation. His duty was to discover the truth but he failed to collect the evidence against appellant Ali-ul- Hassan to connect him with the commission of the offence. The claim of the appellant Ali-ul- Hassan was that after taking dinner from the defense on the way deceased Ambreen Fatma Was murdered. First of all, it was the duty of the I.O to visit the place of incident to collect important evidence from the place of incident/ vehicle or to record statements of the local people. Then it was his duty to inquire from appellant Ali-ul- Hassan from where he had taken a dinner, to record the statement of the owner of the hotel and other staff members. The I.O of the view that the appellant Ali-ul- Hassan while sitting in the car fired upon the deceased but as per memo of the arrest of the accused person and physical search Ex-03/J **“fire shell could not recover from the place of occurrence and no any bullet shot mark was found at the vehicle bearing No. AVP-123.”** He/I.O also failed to collect empty shell from the car/place of incident to believe that the appellant Ali-ul-Hassan has murdered his wife hence the first link of the chain is missing in the case. The second claim of the appellant was that they have taken dinner from the hotel but postmortem report is silent that whether the food taken by the deceased has fully digested, semi-digested or half-digested. Dr Summaiya PW-7 deposed that

internal examination was not conducted, hence ocular evidence does not find support from medical evidence, hence another piece of chain is missing to connect the appellant with the offence. After registration of the FIR, the I.O. of the case has illegally detained Mst. Sahar Shams and Bilal Shams at the police station and their father lodged a human right petition being No.352/2017 before the District and Session Judge, Karachi East which was transferred to the Additional Sessions Judge, Karachi East, vide order dated 23.12.2017 Mr. Javed, Judicial Magistrate was appointed as Raid Commissioner, for conducting a raid at the police station. The raid was conducted but both the detainees were shown arrested under section 54 Cr.P.C. and finally, the appellants were booked in FIR No. 299/2017 and subsequently booked in the FIR being Crime No.14/2018. Such memo of arrest Ex-03/H prepared on 23.12.2017 whereas the incident took place on 09.12.2017 with a delay of 13 days.

17. Further, PW-5 Danish Nawaz in his deposition stated that on 25.12.2017 appellant Bilal, who is his colleague demanded the weapon/pistol from him, he informed that it was not in working condition but he told him that he will get the repair. Due to good friendship, he handed over to him the said pistol along with the license. On 26.12.2017 the I.O arrested appellant Bilal and recovered a pistol from him under a memo of arrest and recovery Ex-03/U, which was used in the commission of the offence. The said pistol along with empty was sent to the office of Forensic Division Sindh, Karachi, as per the report, the empties fired from the pistol is same, and the pistol is in working condition at the time of examination. Further, one 30 bore empty marked as “C” was fired from the 30 bore pistol in question. If the report is presumed as true and correct. The incident took place on 09.12.2017 whereas appellant Bilal borrowed the pistol from Danish Nawaz (PW-5) on 25.12.2017. After 15 days of the incident, then how he may have committed the offence on 09.12.2017. Once again the I.O of the case failed to connect the appellants with the crime weapon, hence another link is missing.

18. The role of the I.O., in this case, is very shocking while recording statement under section 342 Cr.P.C. the appellant Sahar Shams

produced the order dated 23.12.2017 passed by learned Additional Session Judge-VIII, Karachi wherein the learned Judge appointed a Judicial Magistrate to conduct the raid at police station soldier Bazar against illegal detention of appellants Bilal and Mst. Sahar Shams. When the raid was conducted, both the detainees were not found at the police station and subsequently, their arrest was shown on the very same day i.e. 23.12.2017 by I.O./SIP Sarfraz Alyaan under section 54 Cr.P.C. and finally, they both were booked in this case. In his deposition, he admits that he tried to record the statement of accused Bilal under section 164 Cr.P.C. but it could not be recorded. He has collected the CDs but neither he has produced the CDs nor transcript of the said CDs but only he has produced the memo of recovery of CDs Ex-03-A/11, even nothing has been brought on record that who has recorded that CDs or conversation between the accused persons where they all stated that they have murdered the deceased. Hence, another link of this chain is missing. The prosecution also relied upon the CDR record which shows that after the incident, the appellant Ali-ul-Hassan contacted with his second wife which is a bit natural that he would inform his first wife about the incident, when the appellant being a complainant of FIR NO.299/2017 remained at the police station or in hospital, he was in contact with the wife which does not link that the appellant with the connivance of his wife murdered his second wife, otherwise no direct evidence was brought on the record to connect the appellants with the offence. Furthermore, the I.O. has secured the empties shell on 26.12.2017 with the delay of 17 days of the incident from the footpath of a double road in front of Liaquat National Hospital which is impossible that in all those days, neither it was pressed/pushed from its place nor removed from the footpath but remained intact and he has secured the same and sent to FSL along with a pistol, which report opines that the said empty was fired from the said pistol, which is nothing but seems to be a managed story. Hence another link of this chain is missing. The prosecution also failed to prove the motive of the incident, as alleged in the second FIR by complainant Sarfraz Aliana. According to the standard proof required to convict a person on circumstantial evidence, the circumstances relied upon in support of the conviction must be fully established and the chain of evidence furnished by the circumstances must be so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused. The circumstances from which the conclusion of the guilt is to be drawn have not only to be fully established but also that all

the circumstances to establish should be conclusive and consistent only with the hypothesis of the guilt of the accused and should not be capable of being explained by any other hypothesis is except the guilt of the accused and when all the circumstances cumulatively have taken together should lead to the only irresistible conclusion that the accused alone are the perpetrators of the crime, wherein the prosecution has to provide all links in chain an unbroken one where it's one end touches the dead body while the other neck of the accused. In the present case, so many links are missing in the chain and the evidence of prosecution witnesses is not found inspiring confidence and trustworthy for recording conviction against the appellants.

19. The upshot of the above discussion is that the prosecution has miserably failed to bring home the guilt of the appellants/accused persons beyond reasonable doubt and it is settled proposition of law that for giving benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubts if there is a single circumstance which creates reasonable doubt about the guilt of the accused, then the accused will be entitled to the benefit In this respect, reliance can be placed upon the case of **MUHAMMAD MANSHA v. THE STATE** reported in **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 the accused, then the accused would be entitled to be 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 one innocent person be convicted”. Reliance in this behalf can be made upon the cases of Tarique Parvez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Mohammad Akram v. The State (2009 SCMR 230) and Mohammad Zaman v. The State (2014 SCMR 749).”

20. It is well-settled principles of criminal administration of justice that no conviction can be awarded to an accused until and unless reliable, trustworthy and unimpeachable evidence containing no discrepancy in the prosecution story. I am of the view that in the present case, the prosecution story overwhelmed under the thick clouds of doubt and the learned trial Court has not evaluated the evidence in its true perspective and thus

arrived at an erroneous conclusion by holding the appellants guilty of the offence. The conviction and sentence awarded to the appellants by V-Addl. Sessions Judge, Karachi East vide order dated 11.03.2020 are hereby **set aside**. Resultantly, the appeals No.248/2020 and No.287/2020 are **allowed**. The conviction and sentence awarded to the appellants namely; Mst. Sahar Shams, Bilal Shams and Syed Ali-ul-Hassan are **set aside**. They are acquitted of the charge by extending the benefit of the doubt. Appellants are directed to be **released** forthwith, if not required in any other custody case.

JUDGE