

**JUDGMENT SHEET**  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,**  
**HYDERABAD.**

Criminal Jail Appeal No.D-129 of 2014  
Confirmation Case No.27 of 2014

Criminal Appeal No.D-24 of 2015

Criminal Jail Appeal No.D-25 of 2015

Criminal Jail Appeal No.D- 121 of 2019  
Confirmation Case No.22 of 2019

Present:-

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Amjad Ali Sahito

Appellants:                   **(1)** Mumtaz Ali (Criminal Jail Appeal No.D-129 of 2014 and Confirmation Case No.27 of 2014), **(2)** Ali Gohar (Criminal Jail Appeal No.D-121 and Confirmation Case No.22 of 2019) through Mr.Omparkash H.Karmani, Advocate.

**(3)** Fida Hussain in Criminal Appeal No.D-24 of 2015 & Criminal Jail Appeal No.D-25 of 2015 through Mr. Shabeer Hussain Memon, Advocate.

Complainant:               Gul Muhammad through M/s. Meer Ahmed Mangrio and Pervaiz Tariq Tagar, Advocates.

Respondent:                The State through Nazar Muhammad Memon, Additional Prosecutor General Sindh.

Date of hearing:           10.11.2021

Date of Decision:         10.11.2021

**J U D G M E N T**

**AMJAD ALI SAHITO, J.** This single judgment will suffice for disposal of the aforementioned appeals as all are arising out of the one and same crime No.42 of 2013, for the offence under section 302, 34 PPC registered at PS Tando Allahyar, i.e. the judgments dated 03.12.2014 and 27.06.2019 pronounced by

the learned Additional Sessions Judge/MCTC, Kotri. Through the impugned judgment dated 03.12.2014, appellants were convicted and sentenced; whereby appellant namely, Mumtaz Ali was convicted for the offence under section 302 PPC and sentenced to death as Ta'zir to be hanged two times by neck till he is dead with an order to pay compensation of Rs.2,00,000/- each to legal heirs of deceased Kamal Khan and Abdul Fatah Chandio; in default whereof, to suffer S.I. for six months more. The case of the appellant namely Fida Hussain was bifurcated and assigned case number as S.C No.247-A/2013 and through impugned judgment dated 03.12.2014, he was convicted under section 302 PPC and sentenced to suffer R.I. for life being juvenile with an order to pay compensation of Rs.2,00,000/- each to the legal heirs of both the deceased. Since the case appellant namely Ali Gohar was kept on dormant file and after his arrest, he was subsequently tried, as such, through impugned judgment dated 27.06.2019, he was convicted under section 302 (b) PPC and sentenced to death with an order that he shall be hanged by the neck till he is dead and shall pay compensation of Rs.2,00,000/- each to the legal heirs of both the deceased. The benefit of section 382-B Cr.P.C. was also extended to the appellants. The conviction of death to both the appellants namely Mumtaz Ali and Ali Gohar was subject to confirmation of death sentences, as such, the trial Court also sent such References bearing No.27 of 2014 and 22 of 2019 for confirmation of their sentences.

**2.** The facts of the case of prosecution are that complainant Gul Muhammad Mugheri lodged FIR on 19.02.2013 that he is in Pakistan Navy; some time ago, murders were committed and FIR No.500/2010 was lodged at the police station, Tando Allahyar against accused Qurban Ali, Sikandar Ali, Mst. Aziza and Mst. Pathani, which case was pending adjudication before the Court of Sessions Judge, Tando Allahyar and accused in that case, several times issued threats to the complainant party to withdraw from the case, else their other murders would be committed. Complainant moved applications to high-ups regarding such threats of accused. On 12.01.2013,

the brother of the complainant namely Kamal Khan along with his friend Abdul Fatah Chandio came to Sessions Court, Tando Allahyar on a motorcycle for hearing of the case and Manzoor Ali Mugheri also came in Sessions Court, Tando Allahyar on the motorcycle but before that complainant saw accused Sikandar, Qurban, Mst. Aziza and Mst. Pathani along with Ali Gohar, Fida Hussain, Rustam and Ali Murad in Sessions Court, Tando Allahyar, Mst. Aziza, Mst. Pathani asked the accused above named loudly to murder complainant Kamal Khan, then neither the complainant would be there, nor case would be proceeded. On which complainant Kamal Khan informed to Sessions Judge, Tando Allahyar, who called police personnel for the protection of complainant, but police left the complainant party outside of court, directing them to go away and accused party would not say anything to them. Thereafter, Kamal Khan and his friend Abdul Fatah Chandio left on a motorcycle for Hyderabad, while complainant of this case along with Ghulam Sarwar and Manzoor Mugheri left on another motorcycle for Hyderabad behind Kamal Khan. The complainant Gul Muhammad along with Ghulam Sarwar and Manzoor stopped on a petrol-pump in front of Grid Station for fuel, where they saw accused Sikandar, Ali Gohar, Fida Hussain, Rustam, Mumtaz and Ali Murad going speedy suspiciously, hence, complainant Gul Muhammad on the mobile phone told his brother Kamal Khan to take care and save themselves, on which Kamal Khan raised a cry that accused had reached behind them and the phone was closed. Thereafter, the complainant and two PWs with him at once came on the main road and when at about 12.30 p.m. reached near PSO pump on the road and saw accused Ali Gohar and Mumtaz armed with weapons were riding on a motorcycle No.LPDC-2850 and on seeing them, the brother of complainant speeded up and tried to turn the motorcycle, but from behind one double cabin Datsun hit the motorcycle, due to which, Kamal Khan & Abdul Fatah became severely injured. All accused escaped leaving one motorcycle No.LPDC-2850. Thereafter, the police of Tando Allahyar also reached and took possession of the double cabin and its driver

with it. Complainant party brought injured to Civil Hospital, Tando Allahyar who were severely injured and on advice of the doctor, brought injured Kamal Khan to Civil hospital, Hyderabad where he succumbed to his injuries, whereas injured Abdul Fatah expired in Tando Allahyar hospital. The complainant came back to Tando Allahyar and told to police staff that after the funeral ceremony, the FIR will be lodged. On 16.01.2013 complainant met with SHO Tando Allahyar, who kept him on false hopes. Thereafter, the complainant moved an application before Sessions Court, Tando Allahyar and on the order of Honourable Sessions Judge dated 19.02.2013, FIR was lodged.

**3.** After usual investigation, challan against the appellants namely Mumtaz Ali, Fida Hussain co-accused Sikandar Ali and Ali Murad were submitted to the court against them, showing the appellant Ali Gohar and co-accused Rustam Ali as absconders; who were finally declared proclaimed offenders and ordered to be proceeded against under section 512 Cr.P.C. Later on co-accused Sikandar Ali and Ali Murad were released by the Investigating Officer on the plea of alibi. The case of appellant Fida Hussain being a minor having an age of hardly 16/17 years, was ordered to be tried separately according to the provisions of Juvenile Justice System Ordinance, 2000.

**4.** The learned trial Court framed the charge against the accused Mumtaz Ali, who pleaded not guilty and claimed trial. In order to establish its case, the prosecution examined complainant Gul Muhammad Mugheri, who produced certified true copy of FIR bearing crime No.500/2010, order dated 14.02.2013 of learned Sessions Judge, Tando Allahyar, FIR of crime No.42/2013, order dated 15.10.2012 of this Court; PW Manzoor Ali Mugheri, who produced his statement recorded under section 164 Cr.P.C.; PW Dr. Agha Abdul Nabi, who produced police letter, postmortem report of deceased Kamal Khan, PW ASI Muhammad Moosa Laghari, who produced memo of recovery of motorcycle, departure and arrival entry No.10, departure entry No.2, inquest report of deceased Kamal Khan,

inquest report of deceased Abdul Fatah, letter to Medical officer for conducting postmortem of deceased Kamal Khan, arrival entry No.26, memo of clothes for deceased Abdul Fatah, memo of clothes of deceased Kamal Khan, memo of venue of incident; PW mashir Shahmeer Khan Balal produced memo of arrest of accused Sikandar Ali and Ali Murad, memo of recovery from accused Mumtaz Ali; PW PC Manzoor Ali Laghari was also examined, who produced his statement under section 161; PW mashir Ghulam Sarwar Chandio produced his statement recorded under section 164 Cr.P.C.; mashir Nisar Ahmed Chandio was also examined. PW SIP Muhammad Usman Hingorjo was examined and he produced an attested copy of arrival entry, attested copy of memo of the arrest of accused Fida Hussain, attested copy of departure entry at Police station Mahi Makol, attested copy of arrival entry at PS Tando Allahyar; PW Dr. Manzoor Ahmed Shah was examined, who produced postmortem report of deceased Abdul Fatah; PW Tapedar Muhammad Saleem Laghari was also examined, who produced a sketch of the venue of the incident; PW I.O SIP Afzal Ahmed Magsi and lastly Mr. Khalid Hussain Laghari, Judicial Magistrate, Tando Allahyar were also examined. The prosecution then closed its evidence side through the statement of learned DDPP.

**5.** Statements of appellant Mumtaz Ali under section 342 Cr.P.C, was recorded. In his statement, the appellant denied all the allegations leveled against him by the prosecution and claimed his innocence. The appellant neither examined himself on oath under section 340 (2) Cr.P.C. nor any witness in his defense; however, he produced true copies of the diary dated 12.01.2013 and 24.04.2013 respectively. After observing all the legal and requisite formalities, the trial court found the appellant guilty of the offence and pronounced the sentence as stated above.

**6.** After the conviction and sentence awarded to appellant Mumtaz Ali, appellant Ali Gohar was subsequently arrested; a charge against him was framed; the prosecution examined as many as 08 witnesses who produced numerous

documents. After the closure of the prosecution evidence side, the statement of accused Ali Gohar was recorded under section 342 Cr.P.C. in which he also denied the prosecution allegations and claimed his innocence. Neither he examined himself on oath in terms of section 340 (2) Cr.P.C. nor examined defense witness. Finally, after a full-dressed trial, he was also convicted and sentenced as stated above vide impugned judgment dated 27.06.2019.

**7.** In the trial court, the case of appellant Fida Hussain was tried separately as he was declared 'Juvenile'. The trial Court framed charge against him, recorded the evidence of prosecution witnesses and statements under section 342 Cr.P.C. of appellant Ali Gohar, in which, he denied the allegation of prosecution and claimed his innocence and neither he examined on oath nor led defense witnesses in his favour but produced attested copies of diaries dated 12.01.2013 and 24.04.2013 respectively. Finally, he was also convicted and sentenced in terms of the impugned judgment dated 03.12.2014 as stated above.

**8.** Learned counsel for the appellants after going through the entire prosecution evidence pointed out certain contradictions in the deposition recorded before the trial Court. They further contended that the deceased persons who were on motorcycles admittedly fell on the road while returning after being hit a double cabin vehicle; that no specific role has been assigned to the appellants by the complainant; that despite it being an admitted position the said double cabin vehicle was captured by the police along with its driver but neither the said vehicle has been shown as 'case property' nor its driver was associated in the instant crime; however, the complainant party due to previous litigations involved the appellants in the instant case of the road accident. According to them, the prosecution could not establish the allegations against the appellants through their evidence even the evidence of the complainant and his witnesses is not in the line which is very much contradictory with the medical evidence as medical evidence concerning the stand taken by the complainant does not

support him. The appellants in their statements on oath established their innocence and their evidence could not be shaken by the prosecution but the trial Court has ignored the same. They prayed for the acquittal of the appellants.

**9.** On the other hand, learned Additional Prosecutor General Sindh has supported the convictions and sentences awarded to the appellants by stating that there was litigation between the parties and the accused party tried to force complainant party to withdraw the earlier case pending against them but since failed, they committed the murders of both the deceased.

**10.** We have heard the arguments advanced and have scrutinized the entire material with the able assistance made before us.

**11.** Apparently, this case was a road traffic accident. On the day of the incident viz. 12.01.2013 deceased Kamal Khan was driving the motorcycle along with Abdul Fatah. They intended to take U-turn meanwhile, a double cabin vehicle came from Tando Allahyar side and hit the motorcycle, as a result both the deceased became seriously injured. The said vehicle and its driver was captured but neither the vehicle has been made a **“case property”** nor the driver made an **“accused”** in the instant case.

**12.** On 12.01.2013, PW/ASI Muhammad Moosa of PS Tando Allahyar was on patrol along with subordinate staff and received information through wireless that two persons have become injured due to a road accident and have been shifted to Civil Hospital, Tando Allahyar. After receiving such information, he reached Civil Hospital and saw two persons namely Abdul Fatah Chandio and Kamal Khan were injured. He issued a letter to the medical officer for their examination and certificate. Meanwhile, complainant Gul Muhammad brought the motorcycle bearing No.LAD-2850 at Civil Hospital, Tando Allahyar and handed it over to him. The said Gul Muhammad disclosed that the motorcycle belongs to accused Mumtaz Mugheri and others, upon which they were riding at the time of the incident, who after the incident left the motorcycle at the

place of incident. He prepared such a memo of recovery of motorcycle in presence of mashirs Nisar and Manzoor Ali Mugheri. It is important to note here that at about 1330 hours dated 12.01.2013 he/PW ASI Mohammad Moosa prepared the memo of Motorcycle produced by the complainant, whereas entry No.10 dated 12.01.2013 time 1345 produced by ASI Mohammad Moosa at Ex-11/B, i.e. in Sindhi language, as such, which in true translation reads as follow:-

*“Now I ASI Muhammad Moosa Laghari along with police constables under entry No.9 was on patrolling duty when orders through wireless were communicated to go and do proceedings towards Civil Hospital where injureds have come. So we reached at Civil Hospital where found road accidental injureds each Kamal Khan son of Ali Hassan by caste Mugheri, resident of Bangul Khan Mugheri, Taluka Qamber, District Shahdadkot and Abdul Fatah son of Mehar Faqeer by caste Chandio, resident of Village Nabi Laskhkar Khan Bagh Jagir, Taluka Qamber, District Shahdadkot, whom letter for treatment was given and said for further proceedings. Their relatives disclosed that now they would get treatment of injureds and would initiate further proceedings later. After keeping such entry in roznamcha, I ASI Muhammad Moosa along with police constables go for patrolling within jurisdiction.”*

**13.** From above it's clear that neither the complainant was present nor he had produced a motorcycle, the word relative of the injured is written in the said entry. He has also prepared an inquest report of the dead bodies and he has issued a letter to the medical officer for conducting post mortem of both deceased. After conducting postmortem the dead bodies were handed over to him and subsequently, he handed over to complainant Gul Muhammad for burial purposes. On the same day, he received the last wearing clothes of deceased Abdul Fatah as well as deceased Kamal Khan. He prepared such a memo. The said police officer has completed all proceedings on the same day on 12.01.2013 and thereafter, he remained mum and finally on 19.02.2013, complainant Gul Muhammad



appeared at the police station along with a Court order for registration of the FIR.

**14.** Section 174 Cr.P.C. provides that (1) The officer incharge of a police-station or some other police-officer specially empowered by the Provincial Government in that behalf, on receiving information that a person: (a) has committed suicide, or (b) has been killed by another, or by an animal, or by machinery, or by an accident, or (c) has died under circumstances raising a reasonable suspicion that some other person has committed an offence, shall immediately give information thereof to the nearest Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the Provincial Government, shall proceed to the place where the dead body of such person is, and there, in the presence of two or more respectable inhabitants of the neighborhood, shall make an investigation, and draw up a report of the apparent cause of death describing such wounds fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted. (2) The report shall be signed by such police officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the concerned Magistrate. In the instant case, the ASI completed all the formalities but neither did he inform the Magistrate nor prepared the memo of the place of the incident nor submitted any report to the concerned Magistrate about the incident. Even, he had not bothered to intimate to nearest Magistrate empowered to hold inquests or investigation. This is nothing but a total violation of section 174 Cr.P.C. Mala fide on the part of ASI Muhammad Moosa is very much available in this case as he has not prepared the memo of the place of the incident but when the complainant brought the motorcycle to the Hospital, he prepared the memo of receiving the motorcycle otherwise in such situation, people always rush towards the police station when the police station was at the distance of four kilometers. Though the complainant has to produce the motorcycle at the police station he has produced the same in

the Hospital and such a memo was prepared by the said ASI. Further, he has issued a letter to the doctor for conducting a post-mortem of the deceased. From the perusal of the letter dated 12.01.2013, it shows the stamp of the police station is affixed; in which, it is written that deceased Kamal Khan during treatment has passed away and he has requested for his post mortem report but from the glance of the deposition of PW Dr. Agha Abdul Nabi, it tells that on the day of the incident, a dead body of deceased Kamal Khan was brought by police of PS Tando Allahyar for post mortem report. The time of the incident is written with a black ink pen whereas other writing on the post mortem certificate is written with a blue ink pen, which also creates doubt on the part of the doctor. Further, the time of arrival of the dead body of deceased Kamal Khan is 08.30 p.m. and finished at 10.30 p.m. In the Colum of postmortem, it is written that **“Information furnished by the police”**. The answer was **“That death has occurred due to accident” Ex-10/B.**

**15.** Things do not end here; PW Dr. Manzoor Ahmed Shah disclosed in his evidence that on 12.01.2013, he was posted as Senior Medical Officer at Civil Hospital Tando Allahyar; on the same day, he received a dead body of deceased Abdul Fatah along with police letter of PS Tando Allahyar for conducting post mortem and report, the letter was bearing DD No.A/12.01.2013 dated 12.01.2013. He started post mortem of deceased at 01.10 p.m. and finished at 03.30 p.m. In the said post mortem, he has disclosed that **“Information furnished by police Road Traffic accident”**. In the evidence of PW Muhammad Moosa claimed that when he reached the hospital, he saw two persons namely Abdul Fatah Chandio and Kamal Khan Mugheri were injured and he issued a letter to the medical officer for their examination and certificate. In cross-examination, Dr. Manzoor Ahmed Shah admitted that *“It is correct to suggest that in the column for the cause of death, I have mentioned the case of death as a road accident. It is correct that police arrived at the hospital and had seen the dead body of deceased Abdul Fatah.”* Post mortem certificate says that the

dead body of the deceased was identified by one Fida Hussain whereas, the claim of the complainant Gul Muhammad that he has brought both the injured Kamal Khan and Abdul Fatah, and Abdul Fatah expired on the way and Kamal Khan was referred for further treatment to Civil Hospital, Hyderabad. PW Dr. Manzoor Ahmed in his cross-examination has admitted that *“There is no mention in postmortem report that deceased during his life was referred to Civil Hospital, Hyderabad while in injured condition.”* PW Dr Agha Abdul Nabi nowhere in his evidence has disclosed that the deceased Kamal Khan was referred to Civil Hospital, Hyderabad for further treatment but simply disclosed that he has received the dead body of deceased Kamal Khan by the police of PS Tando Allahyar. From above it is clear that ASI Mohammad Moosa conducted a dishonest investigation and joined hands with the complainant party.

**16.** PW complainant Gul Muhammad to convert the road traffic accident in a murder case filed an application before the District Judge/Ex: Officio, Justice of Peace, Tando Allahyar bearing Criminal Miscellaneous Application No.09 of 2013 for registration of FIR against accused persons and same was allowed. After filing such an application, the report was called from the concerned SHO, in which he disclosed that the legal heirs of the deceased did not lodge the FIR when they were asked. However, police have got conducted the postmortem of the deceased in the hospital and they took the dead bodies for their burial purpose. They would come he will lodge FIR. The report further reveals that the complainant party did not appear to lodge the FIR. The order further disclosed that in the light of the report of SHO, post mortem report of deceased persons was called, which has been received. In the post mortem report, it is mentioned that as per information furnished by the police, it was the case of a road traffic accident. Finally, the application was allowed and the same was produced by the complainant in his evidence in S.C No.247/2013 *“The State v. Mumtaz Ali and others”* at Ex.07/B. After obtaining the letter the complainant appeared at PS and involved as many as six persons for murdering deceased Kamal Khan and Abdul Fatah. He further

disclosed that on the day of the incident, they were present in the Court and outside the Courtroom of Sessions Judge, Tando Allahyar Mst. Aziza and Mst. Pathani loudly asked their male members present there to kill Kamal Khan and such information was conveyed to the Sessions Judge, Tando Allahyar, who directed two police constables for the protection of the complainant/ deceased Kamal Khan and the matter was adjourned. He further deposed that the constables only accompanied them upto the main gate of Sessions Court; thereafter, he, Manzoor Ali and Ghulam Sarwar boarded on one motorcycle whereas his brother deceased Kamal Khan and his friend Abdul Fatah boarded on another motorcycle. When they arrived at the petrol pump for fuel, the deceased Kamal Khan and Abdul Fatah did not come on the petrol pump and proceeded further. Meanwhile, they saw six persons while boarding on three separate motorcycles crossed them. As soon as, the complainant saw these motorcycles, he immediately phoned his brother Kamal Khan and told him to take precautions because he noticed six persons behind him. He has also noticed that on three motorcycles the accused persons had dandas and stones and were pelting stones at deceased Kamal Khan and Abdul Fatah. The deceased Kamal Khan was driving the motorcycle and he accelerated his speed and in the meanwhile accused Mumtaz and Ali Gohar had driven the motorcycle just in front of them and deceased Kamal Khan diverted motorcycle to return but they fell on the ground. In the meanwhile accused Mumtaz pointed out a pistol at deceased Kamal Khan to commit his murder. However, in the meantime, one double cabin vehicle came from Tando Allahyar side and hit the motorcycle of Kamal Khan and Abdul Fatah. The accused persons left their motorcycle and ran away. It is unusual otherwise the people always run on motorcycles and not on their feet. In his cross-examination, the complainant Gul Muhammad has admitted that; ***“It is correct that there is no order in writing by Honourable Sessions Judge for police protection to deceased Kamal Khan. Voluntarily says; it was oral direction by Court. It is correct that no***

*attendance certificate had been issued by the Court of Honourable Sessions Judge, indicating my attendance in murder trial case. It is correct that I have not mentioned my own cell phone number or the cell phone number of my brother deceased Kamal Khan in FIR lodged by me in this case. It is correct that at present there is no mention in the FIR lodged by me that accused Ali Murad, Mumtaz, Rustam, Sikandar, Fida Hussain and Ali Gohar were armed with dandas and stones in their hands. It is correct to suggest that in the contents of FIR it is also not mentioned that accused Mumtaz and Ali Gohar had brought their motorcycle just in front of the motorcycle of deceased Kamal Khan. Voluntarily says; although I had stated these facts to police but the WHC had not mentioned in FIR. There is no mention in the FIR that accused Mumtaz had pointed his pistol at deceased Kamal Khan when Kamal Khan was on the ground when had fallen from the motorcycle. Voluntarily says; it is however mentioned in the FIR that accused Ali Gohar and Mumtaz had taken out their weapons... It is correct that I had moved an application to SSP Tando Allahyar in Sindhi language, a typed application that the police is not ready to register our case. It is correct that on 17.01.2013 I filed application u/s 22-A Cr.P.C. in the Honourable Sessions Court seeking directions for registration of FIR of this case. I don't remember, if I had not mentioned in application to SSP Tando Allahyar on 16.01.2013 and in my application u/s 22-A Cr.P.C. filed on 17.01.2013 that double cabin vehicle had hit both the deceased Kamal Khan and Abdul Fatah when they fell down. It is correct that it is not mentioned in the FIR lodged by me that the accused persons caused butts of weapons. It is correct that the registration number of motorcycle said to have been left by the accused was not mentioned by me in my application under section 22-A Cr.P.C. filed on 17.01.2013."The complainant has further admitted that*

***“It is correct that there was news published in daily newspaper ‘Kawish’ about the occurrence as an accident.”***

**17.** Whereas P.W Manzoor Ali Mugheri in his deposition stated that “When we arrived near the accused persons and made cries hakklas hence they fled away. In his cross examination he stated that *“It is correct that in my 164 Cr.P.C. statement I had assigned the dandas being equipped by accused Mumtaz Ali and Ali Gohar. It is correct that there is no mention of pistols and stones with which all the accused were armed in my 164.Cr.P.C statement...It is correct that I am not complainant nor a witness or mashir in the murder case against accused person Qurban, outcome of crime No. 500/2010 of P.S Tando Allahyar.”*

**18.** So far recovery of motorcycle from the place of incident is concerned, P.W ASI Muhammad Moosa has admitted in his cross examination by deposing that *“It is correct that in entry No. 10 of the rozanamcha, there is no mention of the recovery of motorcycle”*. He also admitted that complainant has not reported before him that the accused persons were seen by him while causing danda blows pelting stones on the deceased. He also deposed that witness Ghulam Sarwar in his 161.Cr.P.C statement has not stated that the accused persons were causing blows with butts, brick pieces and stones to Kamal Khan and Abdul Fatah, who were lying on the ground/road. So far the stance taken by complainant that on their arrival the accused fled away, this witness in his deposition stated that *“it is correct that it is not stated by P.W Ghulam Sarwar that during the time accused were causing blows to Kamal Khan and Abdul Fatah, the Police of P.S Tando Allahyar had arrived there and on seeing them accused fled away leaving one of their motorcycle”* PW/ASI admits that *“I could not recover any piece of brick/stone from wardat”*.

**19.** The above mentioned tarnished ocular account produced in this case by the prosecution has failed to receive any independent corroboration but in order to strengthen the case, the prosecution has examined PW P.C. Manzoor Ali, who deposed that; “On 12.01.2013, he was proceeding to Matiari from Tando Allahyar on the motorcycle, when he reached near

Hussain Petrol Pump he saw from the distance of about 25 yards that one motorcycle was standing on the road on which two persons boarded, out of whom one was having pieces of bricks and another was having Pistol. He also noticed another motorcycle on which two persons boarded, they were proceeding from Tando Allahyar to Hyderabad. The persons having pieces of bricks started throwing it upon the persons who were going towards Hyderabad side, as a result, they turned their motorcycle to save themselves but ***their motorcycle hit to the wall of road and they were bleeding. As such, he along with others have taken both the injured to Civil Hospital, Tando Allahyar. On 12.03.2013 police recorded my statement.***” The claim of said P.C. that he has shifted the dead body along with other persons but PW Dr. Agha Abdul Nabi deposed that the deceased Kamal Khan was brought by the police through letter whereas; Dr. Manzoor Ahmed deposed that the dead body was identified by one Fida Hussain and same was received through police letter.

**20.** From the entire scenario of the instant case, the presence of the appellants at the place of the incident is doubtful and the witnesses made improvements in their statements dishonestly to strengthen the prosecution case. The prosecution has to establish the case against the accused beyond the shadow of doubt but in the instant case, irrespective of illegalities, as well as contradictions, pointed above, when the factual matrix of the case is judged by considering the ocular evidence keeping the medical evidence in juxtaposition, the case against the appellants appears to be not free from doubt. In the instant case, the prosecution also failed to arrest the driver of the double cabin vehicle nor made it the case property, as it has come on record due to it hitting the deceased, they have lost their lives. Even, the prosecution also could not collect the data of phone either of the complainant or of the deceased Kamal Khan concerning their conversation; this data becomes necessary when the case has different versions, which either road accidental case or offensive on the part of the accused. The false implication has to carry such irreparable stigma

throughout the life of the accused and its shadow on his next generation leave dark impressions. It would not be out of place that people make the false accusation for having a feeling of enmity towards someone being jealous, getting rid of some one, taking revenge; such people after making false accusation busy with their matters but the person against whom false accusation has been made falls into disgrace and infamy for the rest of his life when such person is not involved in the commission of offence with which he is alleged. Further, in the instant case, the FIR is lodged by the complainant Gul Muhammad with the delay of one month, for which no plausible explanation has been furnished by him for lodging the FIR with such a long delay and thus, possibility regarding deliberation before the lodgment of FIR could not safely be ruled out for consideration. Reliance is placed in the case of **'NAZIR AHMED v. The STATE' [2018 SCMR 787]**, whereby Hon'ble Supreme Court of Pakistan has held as under:-

*"3.....An FIR in respect of the incident in question had been lodged after about three hours and forty minutes and, thus, a possibility regarding deliberation before lodging of the FIR could not safely be ruled out of consideration."*

**21.** In the instant case, co-accused Sikandar Ali and Ali Murad were released by the Investigating Officer after investigation and the complainant did not challenge their release. We are also fortified with the decision in the case of **'MUNIR AHMED and others v. The STATE and others' [2019 SCMR 2006]**, whereby the Hon'ble Supreme Court has held as under:-

*"Notwithstanding the magnitude of loss of lives, the totality of circumstances, unambiguously suggest that the occurrence did not place in the manner as is alleged in the crime report; argument that number of assailants has been hugely exaggerated, as confirmed by the acquittals of the co-accused with somewhat identical roles, though without specific attributions, is not entirely beside the mark and in retrospect calls for caution. It would be unsafe to maintain the convictions. Consequently, Jail Petitions are converted into appeals and allowed; impugned judgment is*



set aside; the appellants are acquitted from the charge and shall be released forthwith, if not required in any other case.”

**22.** It is a settled proposition of law that the prosecution is bound to prove its case beyond a shadow of a doubt. If a reasonable doubt arises in the prosecution case, the benefit of the same must be extended to the accused not as grace or concession, but as a matter of right. Likewise, it is also a well-embedded principle of criminal justice that it is not necessary that there must be so many doubts in the prosecution case if there is a reasonable doubt arising out of the prosecution evidence pricking the judicious mind, the same would be considered sufficient for giving its benefit to the accused. In this respect, reliance can be placed upon the case of '**MOHAMMAD MANSHA V. THE STATE**' [2018 SCMR 772]:-

***“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 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 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).”***

**23.** For what has been discussed above, the instant appeals were **allowed** vide short order, dated 10.11.2021, and these are the reasons for our short order, which reads as under:-

***Heard arguments. For the reasons to be recorded, later on, Criminal Jail Appeal No.D-129 of 2014 filed by appellant/convict Mumtaz Ali against the impugned judgment dated 03.12.2014 passed by learned Additional Sessions Judge Kotri in Sessions Case No.247/2013 (re-The State versus Mumtaz Ali & others) emanating from Crime No.42/2013 under Sections 302, 34 PPC, registered at P.S. Tando Allahyar whereby he was***

**convicted for an offence under Section 302 PPC and sentenced to death as Ta'zir and to pay compensation of Rs.200,000/- each to legal heirs of deceased Kamal Khan and Abdul Fatah Chandio, is allowed.**

**Criminal Jail Appeal No.D-24 of 2015 filed through advocate and Criminal Jail Appeal No.D-25 of 2015 filed through jail by appellant/convict Fida Hussain against the impugned judgment dated 03.12.2014 passed by learned Additional Sessions Judge Kotri in Sessions Case No.247-A/2013 (re-The State versus Fida Hussain) emanating from Crime No.42/2013, under Sections 302, 34 PPC, registered at P.S. Tando Allahyar whereby he was convicted for an offence under Section 302 PPC and sentenced to suffer RI for life being juvenile and to pay compensation of Rs.200,000/- each to legal heirs of deceased Kamal Khan and Abdul Fatah Chandio, are allowed.**

**Criminal Jail Appeal No.D-121 of 2019 filed by appellant/ convict Ali Gohar against impugned judgment dated 27.06.2019 passed by learned Additional Sessions Judge (MCTC) Jamshoro @ Kotri in Sessions Case No.247/2013 emanating from Crime No.42/2013, under Sections 302/34 PPC, registered at P.S. Tando Allahyar whereby he was convicted and sentenced to death and to pay compensation of Rs.200,000/- each to LRs of deceased Abdul Fatah and Kamal Khan, is allowed.**

**As a result of above, impugned judgments dated 03.12.2014 and 27.06.2019 respectively in respect of appellants are set-aside. The above-named appellants are acquitted of the charge. They shall be released forthwith if not required in any other custody case. Consequently, confirmation Cases No.27/2014 of appellant Mumtaz Ali and No.22/2019 of appellant Ali Gohar are replied in negative and accordingly disposed of.**

**JUDGE**

**JUDGE**