

## IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Nazar Akbar

Mr. Justice Zulfiqar Ahmad Khan

**Special Cr. Anti-Terrorism Jail Appeal No. 260 of 2019**  
**Special Cr. Anti-Terrorism Jail Appeal No. 261 of 2019**

Appellant in Spl. Cr. ATJA  
No.261 of 2019 : Nouman Ahmed son of Ghulam Mustafa  
through Mr. Habib-ur-Rehman Jiskani,  
advocate.

Appellant in Spl. Cr. ATJA  
No. 261 of 2019 : None present for the appellant.

State : Through Mr. Muhammad Iqbal Awan,  
Deputy Prosecutor General, Sindh.

Date of Hearing : 09.12.2020

### J U D G M E N T

**Zulfiqar Ahmad Khan, J:-** Appellants Muhammad Bilal son of Saleem and Nouman Ahmed son of Ghulam Mustafa were tried by learned Judge, Anti-Terrorism Court-XIII, Karachi in Special Case No. 2713 of 2016 [Crime No.495/2016, under sections 392/353/324/34 PPC read with Section 7 of ATA 1997] and accused Muhammad Bilal was further tried by the trial Court in Special Case No. 2713-A of 2016 [Crime No.496 of 2016, under section 23(I)(a) of the Sindh Arms Act, 2013]. On conclusion

of the trial, vide judgment dated 29.08.2019, the appellants were convicted and sentenced under section 265-H (ii) Cr. P.C. as under:-

Accused Muhammad Bilal son of Saleem was convicted as under:-

- a. For the offence under Section 392 PPC and sentenced to undergo R.I. for ten years with fine of Rs.25,000/-. In default in payment of such fine, he shall suffer R.I. for three months more.
- b. For the offence under section 324 PPC and sentenced to undergo R.I. ten years with fine of Rs.25,000/-. In default in payment of fine, he shall suffer R.I. three months more.
- c. For the offence under section 7(1)(b) of ATA, 1997 and sentenced to undergo R.I. for ten years with fine of Rs.25,000/-. In default in payment of such fine, he shall suffer R.I. for three months more.
- d. For the offence under section 23(i)(a) of Sindh Arms Act, 2013 and sentenced to undergo R.I. for seven years each with fine of Rs.20,000/-. In default in payment of such fine, he shall suffer R.I. for two months more.

Accused Nouman Ahmed son of Ghulam Mustafa was convicted as under:-

- a. For the offence under Section 392 PPC and sentenced to undergo R.I. for ten years with fine of Rs.25,000/-. In default in payment of such fine, he shall suffer R.I. for three months more.
- b. For the offence under section 324 PPC and sentenced to undergo R.I. ten years with fine of Rs.25,000/-. In default in payment of fine, he shall suffer R.I. three months more.
- c. For the offence under section 7(1)(b) of ATA, 1997 and sentenced to undergo R.I. for ten years with fine of Rs.25,000/-. In default in payment of such fine, he shall suffer R.I. for three months more.

All sentences were ordered to run concurrently. Benefit of Section 382-B, Cr. P.C. was also extended to both the accused.

2. Brief facts of prosecution case as alleged in the crime report No.495/2016 (Exh.11/A) are that complainant DSP Malik Mubarak lodged

FIR at P.S. Gulistan-e-Johar, Karachi, stating therein that on 04.12.2016 he alongwith his daughter and son namely Malik Samama went to Wafaqi Urdu University, Gulshan-e-Iqbal for NTS test of Mass Communication from his house in car bearing registration No. ASX-365, maker CT. Complainant left his daughter at Wafaqi Urdu University and he and his son awaited for her to return at Corner of NBP near Wafaqi Urdu University Karachi. He then went for purchasing some item of refreshment, when he returned back after buying the refreshment item and saw that two persons on motorcycle, who were snatching mobile phone Note-II of white colour from his son, thereafter, complainant shouted upon the accused, who on seeing such situation made straight firing upon him with intention to commit Qatl-e-Amd. He also fired in defence on which both accused sustained the bullet injuries and fall down on the ground, meanwhile police party headed by SIP Muhammad Anwar Qaimkhani of PS Aziz Bhatti arrived at spot and they apprehended them in injured condition. On inquiry accused disclosed their names as Muhammad Bilal s/o Saleem and Nouman Ahmed s/o Ghulam Mustafa. On personal search of accused Muhammad Bilal SIP secured one 30 bore pistol without number along with magazine containing 02 live bullets. On personal search of co-accused Nouman SIP secured snatched mobile phone Note-II and cash Rs.400/-, (which identified by the son of complainant to be his property), on demand of license accused failed to produce the same. Recovered arms and ammunitions sealed at spot in presence of mashirs. Accused also failed to produce valid documents of motorcycle, then SIP also seized the motorcycle u/s 550 Cr. P.C. SIP also secured 02 empties of 30 bore pistol and three empties of 9mm pistol and sealed the same at spot. SIP prepared the memo of arrest and recovery in presence of mashirs. Injured accused were shifted to JPMC for medical treatment. The complainant then appeared at PS and lodged the above FIR against the accused.

3. After usual investigation, challan was submitted against the accused under the above referred sections. All the cases were amalgamated by the trial court under section 21-M of the Anti-Terrorism Act, 1997, vide order dated 04.03.2017 at Exh.04.

4. Trial court framed charge against the accused at Exh.05 in these cases, to which accused pleaded not guilty and claimed to be tried.

5. At trial, prosecution examined seven witnesses. Thereafter, prosecution side was closed.

6. Statement of accused Muhammad Bilal under Section 342 Cr. P.C was recorded at Exh.18, wherein the accused denied all the incriminating pieces of prosecution evidence brought against him on record and claimed false implication in these cases and stated that there was firing, he was on bus stop, police made fire upon him and he had not fired. In a question what else he had to say, he replied that he is labourer, he was on bus stop when police made fire upon him and he became injured and he is innocent and declined to give statement on Oath. Whereas statement of accused Nouman Ahmed under section 342 Cr. P.C. was also recorded, wherein the accused denied all the incriminating pieces of evidence brought against him on record and claimed false implication in the case and further stated that he received the injuries but not confirmed who made fire upon him. In a question what else he had to say, he replied that he is innocent and prayed for justice and declined to give statement on Oath.

7. Trial Court after hearing the learned counsel for the parties and assessment of evidence, by judgment dated 29.08.2019 convicted and sentenced the appellants as stated above. Hence these appeals.

8. From perusal of the memo of appeal it appears that the appellants have alleged that they are quite innocent and they have been falsely implicated in these cases by police with malafide intention and ulterior motive. It is also contended that the trial court erred in law and impugned judgment is based upon misreading, non-reading, misconceiving and non-appreciation of the evidence on record, as such, drawn wrong conclusion and convicted the appellants without highlighting the sufficient incriminating material against them on record for conviction, therefore, impugned judgment is not sustainable under the law; that the prima facie, the impugned judgment is defective and liable to be set aside as the same has been passed without jurisdiction as there is no charge of terrorism against the accused persons, hence they could not be convicted under the Anti-Terrorism Law by the trial Court; that it is admitted by PW-01 SIP Muhammad Anwar that no encounter took place between police and accused persons, hence Sections 324/353 Cr. P.C. are not applicable and the learned trial court tried the case without jurisdiction, hence the impugned judgment is liable to be set aside; that the reasons given by the trial Court to convict the appellant are speculative and artificial in nature, contradictory, non-corroborated with oral circumstantial, as such, the conviction is not sustainable under the law and the impugned judgment is violation of the principles laid down by the superior courts, therefore, liable to be set aside; that the trial court has failed to consider the many contradiction/improvements and other factors made by the complainant reflecting adversity on his credibility be sufficient to reject his testimony as a whole and the recoveries are foisted upon the appellants and so also, I.O. did not serve any notice under section 160 Cr. P.C. to any private/independent person; that the complainant has not mentioned in FIR as well as in memo of arrest about the color and model of his vehicle, which makes

his story doubtful and numbers of pistol were not mentioned in memo nor in FIR even the said pistol and empties were not sent to FSL which makes the whole prosecution story forged and fabricated and PW-06 Malik Samama admitted that police has not prepared documents in his presence at the place of incident. Learned trial court has failed to appreciate the fact that there was no reliable, trustworthy and confidence inspiring pieces of evidence available on record by the prosecution to base conviction, on the contrary the very impugned judgment, since suffers from inherent defects to which were not considered in the result the erroneous view taken by the learned trial court in fact has resulted in passing the impugned judgment, which in the circumstances merits to be annulled and/or struck down by this Court; that learned trial Court did not consider the improvements, discrepancies, and contradictions in the statements of PWs while deciding the cases, that appellants/accused were booked by the police in these cases falsely by foisting weapons upon them; that no specific role has been assigned to any of the appellants individually; that the learned trial Court has erred in holding that the prosecution has proved the case against the appellants while there was contradictory evidence which was not trustworthy due to material contradictions, hence conviction handed down to the appellants was illegal as the same is result of mis-reading of facts and evidence on record; that the appellants are innocent and have been falsely implicated in these fake and managed cases of encounter and alleged recovery of weapons by the police; hence be acquitted.

9. Conversely, learned Deputy Prosecutor General argued that the prosecution has examined seven PWs and they have fully implicated the accused in the commission of offence. He further argued that police

officials had no enmity to falsely implicate accused in these cases and trial court has rightly convicted the accused. Learned Deputy Prosecutor General prayed for dismissal of the present appeals.

10. We have carefully heard the learned Counsel for both the parties and scanned the entire evidence available on record.

11. At the trial, prosecution examined PW-01 SIP Muhammad Anwar deposed that on 04.12.2016 he was on patrolling duty along with his subordinate. During patrolling he received information on wireless with directions to proceed to Wafaqi Urdu University, they saw two persons in injured condition. The person who was available there disclosed his name DSP Malik Mubarak, who was serving RFF Naval, one pistol was in his hand, one vehicle bearing ASX-365, Corolla black colour near them and further disclosed that he along with his son and daughter came to Wafaqi Urdu University for NTS Test and left the vehicle to bring eating items for his son, when he returned saw two boys on motorcycle, out of one had pointed pistol on his son. He then shouted on which accused made fire upon him with intention to commit Qatl-e-Amd. He also made a fire upon the accused from official 9mm pistol in defence and both accused become injured and fall down on the ground, meanwhile he along with his staff reached there, on inquiry accused disclosed his name Bilal son of Saleem and secured one pistol without number alongwith magazine loaded two bullets from his right hand. On demand of license accused failed to produce. From accused Nouman son of Ghulam Mustafa he secured one mobile Note while colour and cash Rs.400/- from his possession, which were identified by the son of the complainant to be his property and also secured 02 empties of 30 bore pistol and 03 empties of 9mm pistol from place of incident, sealed property at spot and prepared mashirnama of arrest and recovery in presence of

mashirs and shifted the accused persons to hospital for treatment. Accused was brought at P.S., where the duty officer registered the FIR on the statement of DSP Malik Mubarak bearing crime Nos.495 and 496 of 2016 on behalf of State, respectively. During his cross-examination he admitted that departure entry was not produced, he never returned back to P.S. and he had not seen alleged incident with his own eyes and place of incident is/was busy place and the same was at the distance of 100 yard from main gate of University, there was no other vehicle parked where vehicle of complainant was parked and the memo was prepared in sitting position inside the police mobile, further admitted that the description of recovered pistol as well as pistol of complainant were not mentioned in memo of arrest and recovery, so also the number of complainant's pistol was not mentioned in the memo of arrest and recovery and did not confirm whether accused sustained injury of 30 bore pistol or 9mm pistol, further admitted that no private person was cited as witness in this case and he had not served any notice under section 160 Cr. P.C. and the pistol available in the Court was broken butt, however, when he sent the said weapon for FSL, it was in normal condition and MB mentioned on the pistol and same was rubbed, and this fact was not mentioned in memo of arrest and recovery, further admitted that memo of place of incident was prepared on 06.12.2016, no entry was made in his presence by the I.O. when they left the P.S. I.O. had asked the private person to act as mashir but they refused, no notice was served by the I.O. upon them.

12. PW-02/HC Muhammad Iqbal admitted that he was not eyewitness of alleged incident, they secured three empties of 9mm pistol and 02 empties of 30 bore pistol but he did not know how many fires were shot by accused and complainant and accused were lying near by



vehicle and no bullet mark was visible on the vehicle so also no blood stained earth was collected by SIP Anwar, further admitted that butt of recovered pistol was broken and description of pistol was not mentioned in the memo of arrest and recovery.

13. PW-03 SIP Javed Akhtar, who was duty officer at PS Aziz Bhatti had written the whole story of complainant as per his verbatim.

14. PW-04/Complainant DSP Malik Mubarak Ali deposed that on 04.12.2016 he along with his daughter went to Urdu University for her NTS Test. He along with his son was in the vehicle near the National Bank of Pakistan awaited for return his daughter. He left the vehicle for buying some light refreshment for his son he spent 20/25 minutes and obtained refresh item when he returned back towards vehicle he found that two persons, who were on motorcycle, were standing near his son. One accused was armed with pistol and co-accused had a mobile phone of his son. He was in civil dress and shouted upon them on which accused made fire upon him, he also made fire upon the accused in defence, to which both accused become injured and fall down on the ground, meanwhile police mobile arrived at scene. They apprehended both the accused along with pistols, on inquiry accused disclosed their names as Muhammad Bilal, who was armed with 30 bore pistol and co-accused disclosed his name Muhammad Nouman. During his cross-examination, he admitted that the engine and chassis numbers of his vehicle were not mentioned in his FIR and he did not disclose his vehicle number in his examination-in-chief nor colour of the car nor model of vehicle in memo of arrest and recovery and the place of incident is/was thickly populated area, there was no other car parked near his car, further admitted that his official pistol was not mentioned in the FIR or memo of arrest and recovery and he had not

produced license/permit of said pistol nor the said pistol was handed over to I.O. as case property and the accused were at the distance of 20 feet when firing took place in front for about two minutes, and accused made the straight firing upon him and he also made firing in his defence, he made three fires and accused made two fires and neither his son nor he sustained any injury in the firing, and his car was not damaged nor hit any bullet at the time of alleged incident and he had not disclosed the description of pistol, further admitted that it was not mentioned in the FIR and memo that on which part of body of accused sustained the firearm injury and he did not remember how many fire sustained the accused at spot and the memo of arrest and recovery was prepared on the road in standing position at spot where he parked vehicle and number of people about 200 gathered at place of incident and police had not obtained the signature of other people on the memo and statement of his son was recorded at PS Mobina Town on 06.12.2016 and mobile was not in sealed condition and he had not produced any purchase receipt of mobile in the Court nor produced before I.O. of the case and his signatures were not on the sealed cloth nor signature of his son and there was no signature of both i.e. complainant and his son on the sealed empties cloth.

15. PW-05 Farooq Ahmed, who operated the accused Bilal at JPMC, stated that he had not issued medico legal certificate of above injured and neither I.O. recorded his statement during investigation nor any document he had prepared at the relevant time.

16. PW-06 Malik Samama/son of complainant admitted that there were number of student and private persons available near place of incident and Admit Card of his sister was not handed over to I.O.

during the investigation and he did not remember how many fire made by his father and police had not prepared documents in his presence at place of incident and he had not stated the model or manufacturing company of his cell phone and police had not obtained his signature on sealing cloth and his mobile phone was not in sealed condition.

17. PW-07 Inspector Nusrat Hussain while reiterating the whole prosecution story admitted that he had made the entry while receiving the police papers of above crime and said entry was not produced and according to the contents of FIR the complainant used his own weapon in this crime but the same was not secured by him during the investigation nor secured any valid license of weapon and he had not secured any official documents from the complainant and number of pistol of complainant was not mentioned in the memo as well as in the charge sheet, empty and pistol of the complainant was not sent to FSL for analysis and report, further admitted that the chassis and engine and model of vehicle of complainant were not mentioned in the FIR as well as in the charge sheet and the vehicle of complainant was not case property and it was not mentioned in memo of place of incident regarding any bullet mark was visible on the spot or vehicle of complainant and he had not collected documents regarding the alleged test and he had not examined the daughter of the complainant nor cited as witness, further admitted that he had written a letter to Excise and Taxation Department regarding the verification of motorcycle but they did not submit the reply nor he took further efforts to ascertain who was the owner of the said motorcycle and chassis number was not available on the motorcycle and place of incident was busy place and no person from locality was cited as witness and no witness shown in the sketch and he did not

remember date on which he had recorded the statement of son of complainant, the son of complainant was about 18/20 years and he had not inquired regarding his CNIC nor its number and mobile phone was not sealed and description of mobile phone was not mentioned in the memo of arrest and recovery and denominations of notes were not mentioned in the memo and he was not in position to disclose the specific part of body where the accused sustained the injury and no blood stained earth was secured from the spot nor blood stained cloth of accused was secured by him and he had not confirmed from the University regarding the alleged test as stated by the complainant.

18. It is the case of the prosecution that the complainant, who is/was serving as DSP, fired upon the culprits in self-defence from his official weapon 9mm pistol and in result thereof both the culprits were injured from whom one 30 bore TT Pistol was allegedly recovered at the spot. It is further clear from the record that the alleged official weapon which was used by the DSP, has not been sent for FSL nor the details of the said weapon has been produced by the complainant, through which it could be ascertained that the said weapon was officially allotted to the complainant and, more particularly, his weapon has also not been made as case property by the I.O., which admission of the complainant can be seen from his testimony that he had not produced license/permit of said pistol nor the said pistol was handed over to I.O. as case property. Another crucial aspect of the matter is that 30 bore TT Pistol allegedly recovered from the accused Bilal has also not been sent for FSL. According to prosecution, accused fired upon the complainant from the allegedly recovered 30 bore TT Pistol but there is no record whether that TT Pistol has been sent for FSL or not, which creates serious doubt in the prosecution case. No evidence of modern devices to that extent has been produced by the prosecution before the trial court.

Mashirnama of recovery also does not disclose the descriptions and number of recovered TT Pistol as well as pistol of complainant, and such contradiction/infirmity has also created serious doubt in the prosecution case.

19. Further dent in the prosecution story can be seen from the testimony of I.O. Nusrat Hussain (PW-07) who admitted that the weapon used by the complainant in this crime had not been secured by him during the investigation nor secured any valid license of weapon and also had not secured any official documents from the complainant and the number of pistol of the complainant was also not mentioned in the memo as well as in the charge sheet and the said weapon has not been sent to FSL and he has also not made the vehicle of the complainant as case property nor the mobile phone allegedly snatched by the accused persons from the son of the complainant. I.O. even failed to confirm from the University regarding the NTS Test of complainant's daughter nor her Admit Card has been obtained. I.O. also failed to cite any independent witness despite the fact that many people were available at the place of incident, which fact has also been admitted by complainant and his son that police had not obtained the signature of the students and private persons on the memo who were available at the spot. I.O. further failed to collect the blood stained earth from the spot nor blood stained cloth of accused were secured. PW-01 SIP Muhammad Anwar, who was duty/patrolling officer at the time of incident, also confirmed that he had not seen the alleged incident with his own eyes.

20. We are unable to rely upon the evidence of the police officials and complainant with regard to police encounter for the reason that the accused Muhammad Bilal fired upon the complainant and his son but no injury/scratch was caused to the complainant, his son and their car

neither any wall of the vicinity nor any passerby was hit by the firing of said accused, which fact has also been admitted by the I.O. of the case and more particularly, the place of incident was very populated area. Non-production of the arrival and departure entries of police station also cut the roots of the prosecution case. Accordingly, the prosecution has failed to bring home guilt to the accused as the evidence furnished at the trial is full of factual, legal defects and is bereft of legal worth/judicial efficacy. Therefore, no reliance can be placed on the same, in all fairness.

21. Prosecution failed to prove that appellants assaulted or used criminal force to police officials to deter from discharge of their duty. Appellants conviction under section 324, PPC was without any evidence. From the prosecution evidence available on record, offence had no nexus with the object of Anti-Terrorism Act, 1997 as contemplated under sections 6 and 7 of the Anti-Terrorism Act, 1997. Therefore, evidence available on record makes it clear that encounter had not taken place. Above stated circumstances created doubt about the very commencement of the encounter.

22. We have perused the prosecution evidence. The incident was of day time and I.O. had sufficient time to call the independent persons of the locality for making them as mashirs of recovery but despite the fact that the place of incident is/was a populated area, he failed to do so and as per statement of I.O. he did not issue notice under section 160 Cr. P.C. to any private person of the locality during inspection of place of wardaat. In these circumstances, in our considered view that it was the duty of the prosecution to have examined an independent and responsible persons of the locality. Investigation Officer has admitted that at the time of inspection of place of incident he could not cite any

independent persons, who were available there. The above prosecution story shows glaring contradictions/ambiguity. This fact has totally been ignored by the learned trial Court while passing the impugned judgment.

23. Omissions are always fatal to the case of the prosecution; I.O. has not secured any empties at the time of site inspection nor he found any bullet mark at the place of incident. We have come to the conclusion that prosecution has failed to prove its case against the appellants beyond any reasonable doubt for the reasons that prosecution case appears to be highly unnatural and unbelievable. Lapse on the part of the police is clear and admitted. Wisdom behind sealing the weapons at the place of incident is to eliminate the possibility of manipulation of evidence after the recovery of the crime weapons. Sealing of weapons is essential, particularly in cases when it is alleged that weapon was used in the commission of crime and empties were allegedly secured from the *vardat*. In the circumstances at hand evidence of police officials does not appear to be trustworthy thus required independent corroboration, which is lacking in this case. Reliance is placed on the case reported as **PLD 2004 Supreme Court 39 (*The State vs. Muhammad Shafique alias Pappo*)**, in which the Honourable Supreme Court has observed as under:-

“13. It has been established by the evidence of Muhammad Saeed Abid C.W. that the respondents were neither the owners of said house nor tenants. It being so, it is very hard to believe that they were occupying it B and were living therein. Learned High Court specifically noted that despite the fact that it was known to the prosecution that the house belonged to aforesaid witness, yet, no evidence was collected to show that the respondents were in its possession. Neither Chowkidar nor labourers nor neighbours were joined by the investigating agency to demonstrate that ever any of them was seen entering or coming out from it. The alleged recoveries of explosive substances, weighing about 30 k.gs. a kalashnikov with 25 live rounds loaded in the magazine from under the mattress of respondent Abdul Jabbar and a wooden box from under said bed of respondent Muhammad Shafique, containing 10 detonators 10 igniters, a T.T pistol loaded with six live rounds, do not inspire confidence, as so C much could not be concealed under said mattresses. Besides, Mashir of recovery namely, Muhammad Usman, as rightly held by High Court, was stock witness of the prosecution, as in the cases related to F.I.Rs. Nos. 58, 59, 61, 62, 68 of 1998 and 16 of 1999 he was cited as

prosecution witness of recovery. It is a strong circumstance, which creates doubt about credibility of this witness, particularly when other witness Mushir Abdur Rehman was not examined.”

24. No doubt, the Sindh Arms Act, 2013 is enacted to curb the proliferation of arms and ammunitions and punishment for possession of any fire arm is extended to 14 years and with fine and rule for safe administration of criminal justice is “the harsher the sentence the stricter the standard of proof”, therefore, for the purpose of safe administration of criminal justice, some minimum standards of safety are to be available so as to strike a balance between the prosecution and the defence and to obviate chances of miscarriage of justice on account of exaggeration by the investigating agency. Such minimum standards of safety are even otherwise necessary for safeguarding the fundamental rights of the citizens regarding life and liberty, which cannot be left at the mercy of police officers without production of independent evidence. It is therefore held that it would be unsafe to rely upon the evidence of police officials without independent corroboration which is lacking in this case. Hence, no sanctity can be attached to the prosecution case.

25. In view of the above stated reasons, we have no hesitation to hold that there are several circumstances/infirmities in the prosecution case as highlighted above, which have created reasonable doubt about the guilt of accused. The concept of benefit of doubt to an accused person is deep-rooted in our Country. For giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is a circumstance, which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right. In the case of **Muhammad Mansha vs. The State (2018 SCMR 772)**, the Hon’ble Supreme Court has observed as follows:-



“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 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).”

26. In presence of such lacunas in the prosecution case we are of the considered view that the conclusion drawn and reasons advanced by learned trial Court do not show fair evaluation of evidence, which is not in accordance with the settled principles in criminal cases, therefore, impugned judgment is a result of erroneous and unreasonable lines of reasoning and merits interference by this Court to erase the effect of miscarriage of justice.

27. From the above discussion, it is evident that the investigation and inquiry carried out is neither satisfactory nor free from *malice* and the appellants' implication in these cases is not free from doubts. They thus could not be left at the mercy of Police. The review of the impugned judgment shows that essential aspects of the case have slipped from the sight of the learned trial Court which are sufficient to create shadow of doubt in the prosecution story.

28. For the above stated reasons, we have reached to an irresistible conclusion that prosecution had utterly failed to prove its case against the appellants and trial court failed to appreciate the evidence according to settled principles of law. False implication of the appellants could not be ruled out. Resultantly, these appeals were allowed and conviction and sentence recorded by the trial Court vide judgment dated 29.08.2019 were set aside and appellants were acquitted of the charges.

Appellants were ordered to be released forthwith if they were not required in any other custody case.

29. These are the reasons for our short order dated 09.12.2020.

JUDGE

JUDGE

Dated:     .06.2021

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