

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

Criminal Appeal No.S-147 of 2020
Criminal Appeal No.S-148 of 2020
Criminal Appeal No.S-149 of 2020

Appellants: Muhammad s/o Yousuf and Sikandar s/o Ali Sher through Mr. Aijaz Shaikh, Advocate along with Mr. Kamran Baig, Advocate.

Respondent: The State through Mr. Shahid Ahmed Shaikh, A.P.G. Sindh.

Complainant: Muhammad Arif through Mr. Tarique Ali Narai, Advocate in Criminal Appeal No.S-149 of 2020

Date of hearing: 20.03.2023 and 27.03.2023.

Date of Decision: 06.04.2023.

J U D G M E N T

Amjad Ali Sahito, J. These are three criminal appeals filed by the appellants; out of which, two are offshoots of Criminal Appeal No.S-149/2020, therefore, I would like to dispose of all these three appeals together.

2. Through Criminal Appeal No.S-149 of 2020, the appellants have impugned judgment dated 17.09.2020, passed by the learned trial Court/1stAdditional Sessions Judge/MCTC, Shaheed Benazirabad in S.C. No.443/2019, Crime No.10/2019 for the offences under sections 302, 147, 148, 149, 114, 337-H (ii) PPC registered at PS Ali Abad, whereby the appellants were convicted and sentenced for offence punishable under section 302(b) PPC and sentenced them to rigorous imprisonment for life and to pay compensation to the tune Rs.200,000.00 [Rupees two hundred thousand only] each to the legal heirs/walis of deceased Muhammad Anwar, failing which they shall suffer simple imprisonment for one year more. The appellants were also convicted for acting in rash and negligent manner and

firing shots so as to endanger life and personal safety of complainant Muhammad Arif son of Qadir Bux Paryo under section 337-H (ii) PPC and sentenced them to rigorous imprisonment for three (03) months with fine to the tune of Rs.30,000.00 [Rupees thirty thousand only] each and in case of default in payment of fine, the accused shall undergo S.I. for one month. While co-accused Ali Sher was acquitted of the charge by the learned trial Court.

3. Through Criminal Appeal No.S-147 of 2020, the appellant Sikandar has impugned judgment dated 17.09.2020, passed by the learned trial Court/1st Additional Sessions Judge/MCTC, Shaheed Benazirabad in S.C. No.395/2019, Crime No.12/2019 for the offences under sections 23 (1) (a)/25 Sindh Arms Act, 2013, registered at PS Ali Abad, whereby he was convicted and sentenced R.I. for three years with fine of Rs.10,000.00 [Rupees ten thousand only] and in case of default, he shall undergo S.I. for six months more.

4. Through Criminal Appeal No.S-148 of 2020, the appellant Muhammad has impugned judgment dated 17.09.2020, passed by the learned trial Court/1st Additional Sessions Judge/MCTC, Shaheed Benazirabad in S.C. No.394/2019, Crime No.11/2019 for the offences under sections 23 (1) (a)/25 Sindh Arms Act, 2013, registered at PS Ali Abad, whereby he was convicted and sentenced R.I. for three years with fine of Rs.10,000.00 [Rupees ten thousand only] and in case of default, he shall undergo S.I. for six months more.

5. The brief facts of the case as narrated in FIR No.10 of 2019 of P.S. Ali Abad lodged on 31.05.2019 by Muhammad Arif son of Qadir Bux Paryo are that about five years prior to the incident reported in instant FIR, traffic accident of Muhammad Razaque and Mehmood son of Yousuf with trailer truck occurred, in which Muhammad Razaque and Mehmood both expired. Ali Sher and his son in law Muhammad Paryo and others used to allege that the complainant and his uncles were involved in deaths of Muhammad Razaque and Mehmood; and stated that Ali Sher and others will take revenge. On 20.05.2019 at morning time the complainant along with his

uncle Muhammad Anwar son of Muhammad Khan by riding on motorcycle and Rehmatullah son of Muhammad Khan along with Abdul Majeed son of Sultan Paryo by riding on another motorcycle left their village and reached their agricultural land in katcha area where they all remained busy in working and irrigating the land. After finishing work they all were returning, Muhammad Anwar was driving motorcycle while complainant was sitting behind him on same motorcycle. Rehmatullah and Abdul Majeed were riding on another motorcycle. It was about 10:00 p.m. in the night when they reached katcha path nearby land of Soomar Rahu and saw on lights of motorcycles that Ali Sher son of Khan Muhammad with empty hands, Muhammad son of Yousuf, Aziz son of Ali Sher both armed with 44 bore rifles, Sikandar son of Ali Sher armed with pistol, Shaman son of Muhammad Uris armed with repeater, all by caste Paryo residents of village Khan Muhammad Paryo were available on path and they all pointed their weapons towards complainant and others and asked them to stop. The complainant and others, due to fear, stopped their motorcycles. In the meanwhile, Ali Sher instigated all other accused for committing murder of complainant party. On such instigation, accused Muhammad and Aziz with intent to commit murder fired shots from their rifles on Muhammad Anwar who after sustaining fire arm shot injuries fell down. The complainant and others raised cries and beseeched the accused in the name of Holy Book. All the accused thereafter fired aerial shots raised slogans and decamped towards southern direction. After departure of accused the complainant and others saw that Muhammad Anwar had sustained fire arm shot injuries on chest, right shoulder, left arm and died within their sight. The complainant through phone call informed his relatives in village and P.S. Ali Abad, about the incident. Police arrived at place of incident, shifted dead body of deceased to Daulatpur Hospital where post mortem of deceased Muhammad Anwar was performed. The complainant thereafter remained busy in funeral and burial of deceased and lodged FIR of the incident on 31.05.2019 against the above named accused who on account of annoyance

mentioned above and owing to suspicion and on instigation of accused Ali Sher committed murder of Muhammad Anwar and fired aerial shots.

6. The appellants were arrested while name of accused Ali Sher was mentioned in column of accused released on Court bail and names of accused Aziz and Shaman were mentioned as absconders who were subsequently declared as Proclaimed Offenders. During course of interrogation by the Investigating Officer, allegedly the crime weapons were recovered from the appellants and such separate cases were registered against them. After investigation, the police has submitted Final Report before the concerned Court of Judicial Magistrate. Since the case is triable by Sessions Court; therefore, the learned Magistrate sent up the same to Sessions Judge, Shaheed Benazirabad, from where it was entrusted to the court of learned 3rd Additional Sessions Judge, Shaheed Benazirabad and then to the trial Court.

7. After completing all the requisite formalities, the charge was framed against all the accused. During trial, the prosecution examined as many as eight witnesses which include complainant, eye witnesses, Tapedar, the Medico Legal Officers and Investigating Officer. After examination of the prosecution witnesses.

8. PW-1, Dr. Madad Ali (Medical Officer) was examined vide Ex.6. He produced lash chakas form at Ex.6/A, receipt of returning dead body of Muhammad Anwar to ASI Raheem Bux at Ex.6/B and post mortem report at Ex.6/C; PW-2, PC Mukhtiar Ali at Ex.7, who produced copy of RC No.37 at Ex.7/A; PW-3, ASI Illahi Bux (Investigation Officer) at Ex.8, who produced daily diary entry No.12 at Ex.8/A, mashirnama of dead body at Ex.8/B, danistnama at Ex.8/C, lash chakas form at Ex.8/D, receipt of handing over dead body of deceased to complainant at Ex.8/E, daily diary entry No.14 at Ex.8/F, mashirnama of clothes of deceased at Ex.8/G, daily diary entry No.7 at Ex.8/H and FIR at Ex.8/I. Prosecution Witness No.4, SIP Tarique Hussain (Investigation Officer) was examined at Ex.9, who produced daily diary entry No.9 at Ex.9/A, mashirnama of place of incident, securing blood stained earth

and empty bullet and cartridge shells at Ex.9/B, sketch of place of incident at Ex.9/C, letter addressed to Mukhtiarkar for preparing sketch of place of incident at Ex.9/D, mashirnama of arrest of accused Muhammad and Sikandar at Ex.9/E, mashirnama of arrest and recovery of 44 bore rifle on pointation of accused Muhammad at Ex.9/F, daily diary entries No.9 & 10 at Ex.9/G, FIR No.11/2019 of P.S. Ali Abad at Ex.9/H, daily diary entry No.12 at Ex.9/I, mashirnama of arrest and recovery of 30 bore pistol loaded with 02 live bullets on pointation of accused Muhammad at Ex.9/J, daily diary entry No.14 at Ex.9/K, FIR No.12/2019 of P.S. Ali Abad at Ex.9/L, report of ballistic expert at Ex.9/M and report of Chemical Examiner at Ex.9/N; PW-5, Muhammad Arif (Complainant) was examined at Ex.10. PW-6, Abdul Majeed (Eye Witness) at Ex.11. PW-7, Ali Hyder (Tapedar) at Ex.12, who produced sketch of place of incident at Ex.12/A. PW-8, Shahmeer Khan (Mashir) was recorded at Ex.13. Thereafter, prosecution closed its prosecution side vide statement at Ex.14.

9. The appellants were given chance to explain about the prosecution evidence by recording their statement under Section 342 Cr.P.C, in which they denied all the allegations and said that they are innocent and case against them is registered due to enmity with local zamindar. However, they did not offer to be examined on oath and avoided to produce in defense witnesses. After hearing counsel for the appellants and prosecution, the trial Court pronounced verdict against the appellants as mentioned above.

10. Heard and perused the material available on record including the case law cited by the learned counsel.

11. Learned counsel for the appellants has argued that there is fifteen hours delay in lodgment of FIR without plausible explanation and admittedly the complainant lodged FIR after consultation; that admittedly no role is assigned to appellant Sikandar for causing any injury to deceased Muhammad Anwar or any PW but only booked with allegation of making aerial firing; that there are no independent mashirs of recovery of crime weapons from the surroundings of recovery place; that

there is delay of more than 12 and 17 days in sending of recovered empties from the place of incident and the same remained in police custody till the date of alleged recovery of crime weapons, as such, sending of crime weapons and empties together to the Ballistic Expert creates doubt on the part of prosecution; that the source of identification is stated to be light of motorcycles but mashirnama of place of wardat does not show any motorcycle lying on the place of incident or parked there and even such motorcycle had not been produced by the prosecution during trial; that the complainant was sitting behind the deceased on motorcycle at the time of incident surprisingly he did not receive any injury/scratch and even eye witness Abdul Majeed did not receive any injury; that the motive of incident as alleged by the complainant has not been proved. Learned counsel for the appellants contended that the impugned judgments are against the law and facts of the case and the prosecution has failed to provide its case beyond shadow of reasonable doubt. He prayed for acquittal of the appellants. In support of his contentions, learned counsel has relied upon cases of 'TARIQ PERVEZ v. THE STATE' [1995 SCMR 1345], 'BAKHTZADA v. THE STATE and others' [2013 YLR 230], 'ASAD REHMAT v. The STATE and others' [2019 SCMR 1156] and 'GHULAM SHABIR and others v. The STATE' [2020 P Cr.LJ Note 176].

12. On the other hand, learned A.P.G. Sindh as well as learned counsel appearing on behalf of complainant have supported the impugned judgments by contending that the appellants have found fully involved in the commission of a heinous offence; ocular, medical as well as circumstantial evidence brought on record by the prosecution which includes the recovery of empties, incriminating crime weapons duly testified by the Expert in positivity has fully supported the prosecution version against the appellants, therefore, the impugned judgments do not require any interference by this Court. They prayed for dismissal of instant criminal appeals.

13. On careful perusal of material brought on the record it appears that the prosecution case solely depends upon the

ocular testimony adduced in the shape of evidence of complainant Muhammad Arif, eyewitness Abdul Majeed as well as Medical Officer, Investigating Officers and Tapedar. It has come in the evidence of complainant Muhammad Arif that on 30.05.2019, deceased Anwar was driving motorcycle and he was sitting with him while the other motorcycle was driven by eyewitness Abdul Majeed and Rehmatullah was sitting behind him and while they were returning from their lands, it was 10.00 p.m. night, they saw on light of motorcycle accused Ali Sher with empty hands, appellant Muhammad having 44 rifle, accused Abdul Aziz having 44 rifle, appellant Sikandar having pistol, accused Shaman having repeater were available on path. On the instigation of accused Ali Sher, accused Muhammad and Abdul Aziz fired straight shots upon deceased Anwar, which hit him on chest, arms and back, thereafter all accused by making aerial shots, chanting slogans went away. In his cross examination, complainant deposed that accused fired shots on them from front side at the distance of two feet or more. No damage was caused by bullets and pellets to the motorcycles of deceased and PWs. No injury was caused to complainant and witnesses. ***“The deceased and I were riding on motorcycle which was 5/6 feet ahead of motorcycle of other PWs. I identified the accused on light of motorcycle. Each of the accused at the time of assaulting us fired 5/6 shots. The accused were five in number. We were attacked by accused when we were sitting on motorcycles and attempting to alight from motorcycles. It is correct that no bullet injury was caused to any PW including me and no damage was caused by bullets and pellets to the motorcycles of deceased and PWs. Accused fired shots on us from front side. Accused fired shots on deceased from the distance of 2 feet or more”***. The complainant also admitted in his cross-examination that he has not informed police about the names of accused person, when he was informing police about incident through mobile.

14. The complainant disclosed in his evidence that ASI Illahi Bux and other 5/7 police constables reached at place of

incident at about 11:50 pm in the night. Wherein PW-03 ASI Illahi Bux deposed that on the day of incident viz. 30.05.2019 at about 2330 hours received call from the complainant Muhammad Arif that his uncle Muhammad Anwar has been murdered by people of his brotherhood. He proceeded to place of incident and prepared danistnama and laschakas, he produced the same as Ex. 8/C & 8/D, after completing all formalities he has shifted the dead body of the deceased to Taluka hospital Doultapur where postmortem was conducted. However, he has not prepared memo of place of incident nor has he collected empties from the place of incident. And after next day viz 31.05.2019 at about 1500 hours SHO of police station prepared memo of place of incident (Ex.9/B) and collected blood stained earth and five empties 44 bore rifle, two empties pistol and three empties of 12 bore from the place of incident. In cross-examination the complainant admitted that at the time of inspection of dead body ASI Illahi Bux have secured blood stained earth empty bullet and cartridge shells from place of incident on the night of incident. If I believe the version of the complainant that each accused have fired five shots then there must be 10 empties of 44 bore rifle, five empties of pistol and five empties of repeater but SHO of police station only collected 10 empties from the place of incident. Further if ASI Illahi Bux secured the blood stained earth and empties on the night of incident then from where SHO of police station collected the blood stained earth and empties. All the witnesses are not supporting to each other.

15. Things are not ended here the complainant deposed that accused Ali Sher raised hakal and instigated his son in law Muhammad and his son Abdul Aziz for committing our murder. Muhammad and Abdul Aziz both fired straight shots from their rifles on my uncle Anwar. Whereas PW-06/eye-witness Abdul Majeed in cross-examination deposed that ***“the deceased was got down from motorcycle and he was asked to run and thereafter accused fire shots on him. Accused fired shots on deceased from all four directions from the distance of 5/6 feet. The accused fired shots on deceased on front side***

and back side. The deceased was standing when he sustained fire shot injuries”.....Accused fired seven shots at place of incident and three shots were fired from repeater gun towards us. Motorcycle of deceased had not fell down at place of incident but it was available straight at place of incident”. The said PW also deposed that ASI Illahi Bux also collected blood strained earth and empties from the place of incident.

16. The complainant and his eye-witness also disclosed that they along with police and relatives numbering 100 or 150 people tracked foot print marks of accused from place of incident, which found to have passed through various villages and ended up at national highway road near Kareem Abad. They consumed about half an hour in tracking foot print marks of accused. The complainant voluntarily deposed that he consulted his elders for lodging FIR. Eyewitness Abdul Majeed has also deposed almost same evidence as deposed by complainant. ASI Illahi Bux who ascribed an entry bearing No.12 of daily diary has deposed during cross examination that **“It is correct that according to daily diary entry No.12 [Ex.8/A], the informant (complainant) disclosed that his uncle Anwar has been murdered by people of brotherly by firing shots. It is correct that names of accused, place and time of incident are not mentioned in daily diary entry No.12.”**

17. The Medical Officer in his evidence found following injuries on deceased:-

1. Fire arm lacerated punctured wound 1 cm x 1 cm at middle 1/3rd of left upper arm deep to muscle margins are inverted. (Wound of entry).
2. Fire arm lacerated punctured wound 1.5 cm x 1.5 cm at proximal 1/3rd of left upper arm near axilla deep to muscle margins were averted. (Wound of exit).
3. Fire arm lacerated punctured wound 1.5 cm x 1.5 cm on left side of chest near axilla deep chest cavity with inverted margins. (Wound of entry).
4. Fire arm lacerated punctured wound 1 cm x 1 cm at middle 1/3rd of left forearm deep to muscle inverted margins. (Wound of entry).
5. Fire arm lacerated punctured wound oval shaped 2.5 cm x 1.5 cm at distal 1/3rd of left forearm deep to muscle margins were averted. (Wound of exit).

6. Fire arm lacerated punctured wound 1 cm x 1 cm at right side of chest cavity medial to right nipple margins were inverted. (Wound of entry).
7. Fire arm lacerated punctured wound 1 cm x 1 cm at right shoulder deep to muscle margins were inverted and black. (Wound of entry).
8. Fire arm lacerated punctured wound 1.5 cm x 1.5 cm at proximal 1/3rd on right upper arm deep to muscle margins were averted. (Wound of exit).
9. Fire arm lacerated punctured wound 1 cm x 1 cm at right side of back of the chest below right scapula deep to chest cavity margins were inverted. (Wound of entry).
10. Fire arm lacerated punctured wound 1 cm x 1 cm at left side of back of the chest below left scapula deep to chest cavity margins were inverted. (Wound of entry).

18. In cross-examination PW-01 Dr. Madad Ali deposed that *“It is correct that two kinds of fire arms were used for inflicting injuries on deceased. According to post mortem report injury No.2 was communicated with injury No.1 on deceased. According to post mortem report injuries No.3, 4, 6, 7, 9 & 10 on deceased were entry wounds. I have not recovered any pallet or bullet from these injuries during post mortem. I have not taken out viscera from body of deceased. According to lash chakas form four through and through injuries are mentioned and in post mortem report I noticed seven entry and three exit wounds on deceased. Some injuries on deceased were available on back of deceased and others were from front side of deceased. Some injuries on deceased might have been inflicted when deceased was standing and other injuries were inflicted while the deceased has been lying down.”*

19. If it is believed that the accused fired a shot to the deceased at the distance of 2/3 feet then there must have been blackening marks on the area of injury of the deceased, but no such marks of blackening were found on the dead body and even the M.L.O has not found any blackening and charring on the body of deceased Muhammad Anwar. As per Modi’s Medical Jurisprudence and Toxicology (21st Edition) at page 354, if any fire is made from the distance of 01 to 02 feet, then the blackening occurs. In this context, the reliance is placed upon the case of ***Muhammad Zaman v. The State (2014 SCMR***

749), wherein the Hon'ble Supreme Court of Pakistan has held that:-

“Firearm entry wound “Blackening” – Scope-Blackening was found, if a firearm like a shotgun was discharged from a distance of not more than 3 feet”.

20. In medical terminology, if a firearm is discharged very close to the body or in actual contact subcutaneous tissues over an area of two or three inches around the wound of the entrance are lacerated and the surrounding skin is usually scorched and blackened by smoke and tattooed with un-burnt grains of gunpowder or smokeless propellant powder. The adjacent hairs are singed and the clothes covering the part of the body are burnt by the flame. At a distance of one to three feet, small shots make a single aperture with irregular and lacerated edges corresponding in size to the bore of the muzzle of the gun, as the shot enter as one mass, but are scattered after entering the wound and cause great damage to the internal tissues. The skin surrounding the wounds is blackened, scorched and tattooed, with unburnt grains of power. In the present case nothing has been brought on the record that the skin surrounding the wound was blackened, scorched and tattooed. In this context, the reliance is placed on the case of ***‘Nazir Ahmed v. The State’ [2018 SCMR 787]***, wherein the Hon'ble Supreme Court of Pakistan has held that:-

“4.....instead of providing support to the ocular account the medical evidence produced by the prosecution had gone a long way in creating dents in the case of the prosecution.....”

21. The complainant party claimed that the appellant had fired upon the deceased from distance of 2/3 feet. No blackening was found on the dead body. From the perusal of evidence of complainant, eyewitness and medical officer, it is very relevant to mention that when the complainant and eyewitness identified accused then what was the need to track foot print marks of the accused. Further, when the accused made straight firing upon deceased from front side, how the complainant, who was sitting on motorcycle behind the

deceased, did not receive any injury or scratch though as per medical evidence there are three exit injuries found on the person of deceased. Even the clothes of complainant remained safe to have blood of deceased. On the point of recovery of empties two different stories have been disclosed by the witnesses. All these factors do not appeal to the prudent mind and obviously when the complainant party has identified the accused then the exercise of tracking foot print marks is unnecessary which leads to observe that either they were not present at the time of incident coupled with fact that they did not receive single injury despite the accused were armed with deadly weapons and deceased was found to have sustained ten injuries but blood was not found on the clothes of complainant and admittedly lodgment of FIR is with consultation after about eleven hours of the incident or the appellants are not involved in the commission of offense. Even no role of causing fire shots on appellant Sikandar is attributed. The incident is stated to have been seen on the light of motorcycles but mashirnama of place of wardat does not show any motorcycle lying on the place of incident or parked. The I.O SIP Tariq Hussain also deposed in his cross examination that he had not seen motorcycles during his inspection of place of incident. In the FIR, neither color, model, registration numbers of motorcycles is mentioned nor the said motorcycles were produced by the prosecution during trial; hence, the presence of the witnesses at the place of incident is doubtful.

22. Turning to the motive as set up by the complainant in his FIR [Ex.08/I], about five years prior to the present case an accident with troller occurred in which Abdul Razaque and Imam Din cousin of Ali Sher died. After death of above person accused person used to issue threats of murder to the complainant and his uncle. But no documentary evidence has been brought on the record about previous enmity even the complainant was at the mercy of accused person but they have not caused any injury to him, hence, the prosecution failed to prove the motive setup in the FIR. I am of the view the complainant party has failed to disclose the real cause of the

occurrence, hence, the real cause of occurrence remained shrouded in mystery. In this context, reliance is placed on the case of *'Mst. Nazia Anwer vs. The State' [2018 SCMR 911]* wherein the Hon'ble Supreme Court of Pakistan has held that;

'.....I have, thus entertained no manner of doubt that the real cause of occurrence was something different which had been completely suppressed by both the parties to the case and that real cause of occurrence had remained shrouded in mystery.

23. These all material contradictions pointed out above in the evidence of prosecution witnesses discarded the veracity of their statements and presence at the place of incident, which are sufficient to render the entire case of the prosecution to be highly doubtful. In this context, reliance is placed upon the case of *"Zaffar v. The State' [2018 SCMR 326]*, wherein the Hon'ble Supreme court Of Pakistan has held that;

'Having discussed all the aforesaid aspect of the case, it has been observed by us that, medical evidence, motive, recovery and for that matter absconding of appellant are merely supportive/corroborative piece of evidence and presence of eyewitnesses at the place of occurrence at the relevant time has been found by us to be doubtful, no reliance can be placed on the supportive/corroborative piece of evidence to convict the appellant on capital charge.'

24. In another case of *'Mst. Shazia Parveen v. the State' [2014 SCMR-1197]*, wherein the Hon'ble Supreme Court of Pakistan has held that;

"4. Such related witnesses had failed to receive any independent corroboration inasmuch as there was no independent evidence produced regarding the alleged motive, alleged recovery of rope was legally inconsequential and the medical evidence had gone long away in contradicting the eyewitnesses in many ways. The duration of the injuries and death recorded by the doctor in the postmortem examination report had rendered the time of death allegedly by the eye witness quite doubtful, the stomach contains belied the eyewitnesses regarding the time of occurrence".

25. More so, the empties allegedly recovered from the place of incident were not sent for expert opinion promptly but kept till the incriminating weapons were allegedly recovered and then jointly sent after 17 days which received by the office of Incharge Forensic Science Laboratory Forensic Division Hyderabad on 18.06.2019 [Ex.09/M]. In this regard, the Honourable Supreme Court of Pakistan has held in Asad Rehmat's case [supra] that ***“Though the casings tallied with the gun, however, these were dispatched on a date subsequent to appellant's arrest and thus this piece of evidence also lost its significance.”*** The motive of the crime is stated by the complainant old enmity and revenge of an incident occurred five years back to the instant incident, which, however, has not been proved by the prosecution.

26. So far recovery of crime weapons from the appellants is concerned, as per evidence of SIP Tariq Hussain, the appellants volunteered to produce crime weapons, the private mashirs were already available at PS placed their role as mashirs but departure of private mashirs from PS for recovery of crime weapon from appellant Sikandar has not been mentioned in entry No.12 of daily dairy as well as arrival entry No.14. No case for committing of murder of deceased against the appellants is proved by the prosecution and even the alleged recovery of incriminating weapons has not been proved.

27. On same set of evidence, the learned trial observed that the prosecution has failed to bring home guilt of accused Ali Sher beyond reasonable shadow of doubt and he was acquitted of the charge but convicted and sentenced the appellants. However, as result of what has been discussed above, the prosecution has also failed to prove its case beyond reasonable shadow of doubt against the appellants. It is well settled principle of law that for giving benefit of doubt to an accused, it is not necessary that there should be many circumstances creating doubts but 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. It is also well known maxim that, “*it is better that ten guilty persons be acquitted rather than one innocent person be convicted*”. In this respect, reliance can be placed upon the case of ‘**MOHAMMAD MANSHA v. The STATE [2018 SCMR 772]**’, in which the Hon'ble Supreme Court of Pakistan has held as under:-

“Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, “it is better that ten guilty persons be acquitted rather than one innocent person be convicted”. Reliance in this behalf can be made upon the cases of Tariq 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).”

28. In view of above facts and circumstances, the learned Trial Court has failed to appreciate the evidence and material brought by the prosecution against appellants. Consequently, I while giving the benefit of the doubt acquit them from the charge. Resultantly all these three captioned criminal appeals are **allowed** and impugned judgments are set-aside. The appellants are **acquitted** from the charges. The appellants are confined in Jail. They shall be released forthwith, if they are not required in any other custody case.

JUDGE