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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Crl. Appeal No.S-20 of 2012.
&
Crl. Appeal No.S-24 of 2012

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE

FOR REGULAR HEARING.

08.9.2015

Messrs Athar Abbas Solangi & Muhammad Hashim Soomro, advocates for appellant Muqeem Ghanghro in Crl. Appeal No.S-20 of 2012.

Mr. Asif Ali Abdul Razak Soomro, advocate for appellant Naveed Ghanghro in Crl. Appeal No.S-24 of 2012.

Mr. Shahzada Saleem Nahiyoon, A.P.G.

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For reasons to be recorded later on, Crl. Appeal No.S-24 of 2012, (Naveed Ghanghro v. The State) is allowed, whereas Crl. Appeal No.S-20 of 2012 (Muqeem Ghanghro v. The State) is dismissed. Accordingly, impugned judgment to the extent of appellant Naveed Ahmed Ghanghro is set aside; appellant is hereby acquitted from the charge; he shall be released forthwith, if not required in any other case.

Judge

(8P)

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.

Crl. Appeal No.S-20 of 2012.
Crl. Appeal No.S-24 of 2012.

Appellants in Crl. Appeal No.20/2012.	:	Muqeem son of Muhammad Ashraf Ghanghro, through Messrs Athar Abbas Solangi and Muhammad Hashim Soomro, Advocates.
In Crl. Appeal No.24/2012.	:	Naveed son of Muhammad Siddique Ghanghro, through Mr. Asif Ali Abdul Razak Soomro, Advocate.
Respondent in both appeals.	:	The State through Mr. Shahzado Saleem Nahiyoon, Assistant Prosecutor General.

Date of hearing : 08.09.2015. Date of Judgment : 08-09.2015.

JUDGMENT.

SALAHUDDIN PANHWAR, J.- The above two appeals arise out of one and same judgment and since common facts, evidence and questions of law are involved in both the appeals, therefore, the same are being decided by this single judgment.

2. Through captioned appeals, appellants have assailed judgment dated 1st March, 2012, passed by V-Additional Sessions Judge, Sukkur, Camp at Central Prison-I, Sukkur in Sessions Case No.101 of 2011, re: (Muqeem and others v. The State), whereby appellants were convicted under sections 302, 504, 109, 148, 34, PPC and sentenced to imprisonment of life with Penal Servitude.

3. Facts forming the basis of above case as unfolded in the FIR No.220/08, registered at Police Station Rattodero on 29.8.2008, are that on the said date complainant along with his nephew (deceased Deedar Ali) relative Muhammad Ramzan and Eidan departed in a white colour Corolla Car, Model 1986, from Rattodero to Larkana and when at 9:00 a.m, reached at Lashari Bus Stop near WAPDA Scarp Colony Ratodero, seven persons, namely, Muhammad

Ashraf, Muqeem, Samander, Naveed, Mehrab, Gulzar and Akhtiar all by caste Ghanghro, having pistols in their hands, got the car stopped by pointing their weapons and accused Muhammad Ashraf abused his nephew Deedar Ali and fired from his pistol at him which struck on his left flank and the bullet discharged from the pistol of Muqeem struck to Deedar Ali on left side chest below the left nipple, and Naveed fired upon deceased which caused injury on his left leg, while the bullet discharged from the pistol of Mehrab struck on his left leg and all the accused persons making firing upon the deceased escaped on the northern side. Complainant was taking the injured Deedar Ali to Larkana in the same car, who succumbed to the injuries in the way, then complainant brought the dead body at Taluka Hospital Ratodero and leaving the witnesses at the dead body came at P.S and lodged the above F.I.R stating that accused persons have committed the murder of his nephew Deedar Ali at the instance of Ali Nawaz Khan Ghanghro.

4. During the investigation accused Naveed, Akhtiar, Mehrab and Samandar were found innocent and were placed in the column-2 of the challan. They were produced before the Judicial Magistrate in custody. Record reflects that vide order dated 23.9.2008, the learned Judicial Magistrate formed the opinion that the prima facie offence u/s 109, PPC was not made out against accused Ali Nawaz, hence while discharging him took the cognizance of case including the cognizance against accused persons placed in column-2 and sent up the case accordingly.

5. A formal charge was framed against the accused persons, to which they pleaded 'not guilty' and claimed their trial.

6. To substantiate its assertions the prosecution examined Dr. Shah Hussain Shah as Ex-11. He produced carbon copy of Lash Chikas form containing referred letter of the dead body as Ex-11/A and postmortem report as Ex.11/B. PW-2 complainant Roshan Ali stepped in the witness box as Ex-12 and produced FIR No.220/08 as Ex-12/A. PW-3 Eidan and P.W-4 Muhammad Ramzan were examined as Ex-13 & 14 respectively. PW-5 Abdul Aziz stepped in

the witness box as Ex-15. He was author of the FIR. PW- Arbab was examined as Ex-16. He produced memo of inspection of the dead body as Ex-16-A, Danistnama as Ex-16/B, memo of place of incident and recovery of the empty bullets as Ex-16/C. He further produced memo of arrest of accused Muqeem, Samander and Naveed as Ex-16/D, memo of arrest of accused Akhtiar and Gulzar as Ex-16/E, memo of arrest of accused Mehrab as Ex-16-F and carbon copy of the memo of production of unlicensed pistol by accused Muqeem as Ex.16/G. He produced sealed TT Pistol as article (A) and a cloth bag as Article B, wherefrom 3 live bullets were recovered. Pistol and bullet have been marked as Article C to F. He further produced a cloth bag (thelli) as Article G, wherefrom 5 empty bullets were recovered and have been marked Article H to L. PW-7 Abdul Shakoor stepped in the witness box as Ex-17. Inspector/I.O Ansar Ali Mithani has been examined as Ex-19 and he produced Huliya form of discharged accused Ali Nawaz as Ex-19/A, photocopy of roznamcha entry No.6,11 & 12 as Ex-19/B to 19/D. Mr. Ali Mardan, Junior Clerk of Judicial District Larkana has been examined as Court witness as Ex-21. He produced his application addressed to Civil Judge/J.M-I Ratodero as Ex-21. Then DDPP for the State closed the side.

7. Accused persons were examined u/s 342, Cr.P.C, who in their statements denied the allegations of the prosecution, however none examined himself on oath nor has led evidence in the defence. Accused Muqeem stated under section 342 Cr.P.C statement that neither any bullet was recovered from the Lashari Bus Stop nor any independent witness has been examined; neither car was inspected by the I.O nor the same has been produced in Court. He submitted that the driver of the car was not examined by the I.O nor he has come before the Court and evidence of the witnesses is at variance to each other. He submitted that the evidence of Doctor is also at variance with the case of prosecution and has been manifested by Doctor and the PWs. He stated that the incident was un-witnessed one. He denied his arrest as shown in the memo and stated that the pistol and bullets have been foisted upon him and it has been proved from the evidence of mashir Arbab that the property lying before the Court was not same as

mentioned in Ex.16/G. He stated that the witnesses were related and interested and hostile and they deposed falsely against him due to enmity. However, neither he examined himself on oath nor led any evidence in his defence.

8. Mr. Athar Abbas Solangi, learned counsel for the appellant in Crl. Appeal No.S-20 of 2012, has argued that four persons including appellant were attributed firearm injuries to deceased. On same evidence co-accused Mehrab has been acquitted by the trial Court but the appellants were convicted; medical evidence is not confirmatory with ocular account, as per ocular testimony accused caused one injury, whereas, medical evidence says about five injuries; witnesses have deposed that accused Muhammad Ashraf caused injury on flank of the deceased, Mehrab caused injury to deceased but such seat of injuries as mentioned by them is not affirmed by the Medical Officer number of injuries and no figure. Allegedly deceased was murdered while he was in the Car but such car was not taken as case property nor such mashirnama was prepared; per prosecution case deceased along with witnesses was going in taxi Car but prosecution is silent regarding the name of the taxi driver and detail of Car. Even he was not cited as witness; no blood was taken from the site, thus same was not referred for chemical examination; prosecution has failed to prove the motive; police diaries show that complainant disclosed to Investigating Officer that witnesses are reluctant to record their statements, accordingly, their statements were recorded with the delay of four days; on same set of witnesses case against Mehrab was not believed hence same evidence cannot be relied upon against other accused persons including appellants in peace meal; during investigation let off accused Mehrab, Samander, Naveed Akhtiar were joined by the Magistrate; case is not free from doubt hence appellants are entitled for acquittal. In support of his contention he has relied upon the cases of *Zafar Hayat v. The State* (1995 SCMR 896), *Ali Muhammad v. The State* (2007 YLR 894), *Ehsanullah v. The State* (2004 P.Cr.L.J 482), *Daniel Boyd v. The State* (1992 SCMR 196), *Muhammad Arif v. The State* (2004 YLR 33), *Muhammad Shahid Hanif v. The State* (2011 YLR 655).

9. On the other hand, Mr. Asif Ali Abdul Razak Soomro, learned counsel for the appellant in Crl. Appeal No.S-24 of 2012, contends that it is settled principle of law that slightest doubt is sufficient for awarding benefit of doubt in view of PLD 1995 Supreme Court (Tariq Bashir's case); manner of incident does not appeal to a prudent mind. Appellant Naveed on the day of incident was available in the Court in other case, where evidence of one witness was recorded. At this juncture, he emphasized that plea of alibi is successfully proved by the appellant and on this account he referred case diaries and copy of evidence produced as statement under section 342, Cr.P.C.

10. Conversely, Mr. Shahzado Saleem Nahiyoon, learned A.P.G contends that sufficient evidence is brought by the prosecution. All links to prove the case are connected; witnesses remained steadfast on all counts of prosecution case. Accused failed to shatter the evidence of witnesses in support of lengthy grilling by their counsel.

11. Heard parties and perused the record coupled with impugned judgment.

12. In the instant case, the factum of ***unnatural death*** of the deceased is not disputed nor can it be. However, since the status of the medical evidence is nothing more than that of *corroborative one* for purpose of shouldering the ocular account in respect of:

i) nature of injury and its locale;

ii) weapon allegedly used;

iii) probable time of incident;

The above view though being well settled needs no reference, however, reference, if any, can well be made to the case of '*Ghulam Qadir v. State* (2008 SCMR 1221)' wherein it is held that:

> 'So far as medical evidence is concerned, it is settled law that the medical evidence may confirm the ocular evidence with regards receipt of injuries, nature of the injuries, kind of weapons, used in

the occurrence but it would not connect the accused with the commission of the offence.'

Now, following above principle a reference to evidence of Medical officer describing the injuries, *being relevant* for such purpose, is made hereunder:-

1. *Lacerated punctured wound measuring ¾ x cm on left upper arm 3 inch above elbow joint anteriority with charring and blackening present (wound of entry).*
2. *Lacerated punctured wound 1 cm on posterior aspect of left upper arm (wound of exit)*
3. *Lacerated punctured wound ¾ cm, ¾ cm on left side of the chest 3 finger blow nipple. Charring and blackening positive (wound of entry).*
4. *Lacerated punctured wound 1 x 1 cm on left side of chest laterally (wound of exit)*
5. *Lacerated punctured wound measuring ¾ x ¾ cm on left lateral side of middle chest with charring and blackening positive. (wound of entry).*
6. *Lacerated punctured would 1 x 1 cm on right side of abdomen laterally (wound of exit)*
7. *Lacerated punctured would ¾ x ¾ cm over left upper thigh laterally charring and blackening positive (wound of entry)*
8. *Lacerated punctured wound 1 x 1 cm on left upper thigh medially (exit)*
9. *Lacerated punctured wound ¾ x ¾ cm on left middle thigh laterally. Charring and blackening positive (wound of entry)*
10. *Lacerated punctured wound 1 x 1 cm on left thigh medially (wound of exit).*

He further deposed that *the probable time between death and injuries was instantaneous while between death and postmortem was about 2 to 4 hours.* He also deposed that *the cause of death was intrinsic and intra abdominal hemorrhage and shock resulting from injury Nos.2, 3 & 4 which individually and collectively were sufficient to cause death in the ordinary course of life and* all the injures were ante mortem in nature and were caused by discharge from firearm. During course of cross-examination the fact of death being result of firearm was not shaken *however* it was made clear by medical officer that all the injuries were caused from the equal distance to Deedar Ali probably from the distance of one meter and majority of the injuries were caused

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on the left side of the deceased. Thus, I have no hesitation to stamp the findings of the trial court judge in respect of point No.1, so framed as:

> *'Whether on 29.8.2008 around 9.00 am deceased Deedar Ali was* ***died due to un-natural death*** *caused by the* ***fire arm injuries****?* .

At this stage, I would also say that with reference to medical evidence the prosecution has also sought corroboration to the effect that:

> ***i) injuries were caused by fire-arm;***
>
> ***ii) injuries were caused from left side;***
>
> ***&***
>
> ***iii) injuries were caused from a close range;***

The above were *prima facie* established by the prosecution through medical evidence so it appears from the medical evidence of the doctor and document, so produced by him. However, this never helps relieving the prosecution from its bounden obligation to prove the charge through ocular account because it is the ocular account alone which ***'identifies'*** the one, *charged* to have killed or injured and not the medical evidence.

13. The *ocular account* hinges on the statement of complainant Roshan Ali and two eyewitnesses Muhammad Ramzan and Eidan, who all were examined. They all given the details of manner of the incident whereby attempting to establish their stand that on fateful date at 9.00 a.m they alongwith deceased and driver of the taxi were stopped by Ashraf, Naveed, Muqeem, Mehrab, Gulzar, Akhtiar and Samandar on the show of pistols. At this juncture, it is material to mention that presence of these witnesses was seriously questioned by the defence while attempting to colour the status of these witnesses as ***'chance witnesses'*** which question was ***however*** not accepted. Let me add here that **'chance witness'** would be one whose presence at a particular place is normally not believable which *I am of the view that* is not the case. The complainant PW is uncle of the deceased while related with other two witnesses and it was categorical

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claim of prosecution that on calling of deceased, they were accompanying the deceased in the Car. Thus, it was not the claim of these witnesses that they reached at spot at their own. Accompanying a related person is not an abnormal thing hence these witnesses *in fact* do not come within meaning of ***chance witnesses.*** The appearance of complainant at police station within a short span of time i.e. 2 or 2 ½ hours also eliminates chances of his being a **'chance witness'** which *otherwise* require ***coming of complainant from his house***, ***viewing spot*** and ***then knitting a story fitting with circumstances***.

14. Since it is already discussed that presence of a witness at spot does not necessarily require stamping his words blindly particularly when there has developed a trend in our society to widen the net. Now, proceeding further would require a reference to material portion from examination-in-chief of these witnesses, being material is as:

> **COMPLAINANT**
>
> '.....It was about 9.00 a.m we reached at the Lashari bus stop Rattordero where noticed 7 persons coming across. They all had pistols. I identified them as Ashraf, Naveed, Muqeem, Mehrab, Gulzar, Akhtiar, and Samandar. On the show of pistols, they got our car stopped. Ashraf came near to the car and opened the left side front door of the car and fired upon deceased Deedar with pistol on his left side flank. Accused Muqeem also fired upon deceased Deedar with pistol which hit on left side of his chest down the nipple. Naveed fired from his pistol which caused injury on left leg of Deedar Ali while the discharge of pistol of Mehrab also struck on the left side of his leg.
>
> **PW- Eidan.**
>
> '...I identified them as Muhammad Ashraf, Muqeem, Naveed, Mehrab, Gulzar, Akhtiar and Samandar. They all had pistols in their hands. They got our car stopped. Accused Muhammad Ashraf fired upon Deedar from his pistol. Thereafter, Muqeem fired upon Deedar with pistol on the left side of chest down the nipple and bullet fired by Naveed also hit and fired by Mehrab also hit to deceased..'
>
> **PW Muhammad Ramzan.**
>
> '... I identified them as Muhammad Ashraf, Muhammad Muqeem, Mehrab, Samander, Akhtiar, Gulzar and Naveed. Due to fear of the pistols, the car was stopped. Accused Muhammad Ashraf opened

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the door of front passenger seat and fired upon Deedar Ali which struck on his left flank. Accused Muqeem also fired upon Deedar Ali which also struck on the left side of his chest just down the nipple while bullet fired by accused Naveed struck to left leg of Deedar Ali and Mehrab fired upon deceased which struck on his left leg too.'

From the above portions, it is quite clear that witnesses of ocular account though named all seven accused persons but attribution of role of causing firearm injuries is against four accused persons only i.e. Muhammad Ashraf (absconding), convict/appellant Muqeem, convict/appellant Naveed and acquitted accused Mehrab. The allegation against appellant/convict Naveed is one and same as that of against acquitted accused Mehrab and acquittal whereof has not been challenged by the prosecution or complainant. Three other accused persons, though named in FIR, were also acquitted.

15. At this juncture, I feel it quite proper that question o*f **Falsus in Uno Falsus in Omnibus*** was involved in the case, so, before discussing the ocular account, I would like to *first* discuss the application of two well-known legal maxims i.e. ***'Falsus in Uno Falsus in Omnibus' & 'Sifting the grain from chuff'.*** The former insists that one set of evidence *if found* unbelievable for one set of accused, then same be not believed for other set of accused. True, that the ***safe administration of justice*** demands that benefit of doubt in such eventuality be extended to the accused where the **Court** finds a witness is not deposing ***whole*** truth and the veracity of such a witness does come under cloud. The particular culture and trend so developed in our country regarding widening of the net so as to implicate the active male members of enemy side with ***real culprits*** , though being regrettable, yet let the room for ***latter maxim*** to replace the ***former***. I am guided in my such conclusion with the case laws reported as:-

Muhammad Raheel @ Shafique v State (PLD 2015 SC 145)

'....and , thus, their acquittal may not by itself be sufficient to cast a cloud of doubt upon the veracity of the prosecution's case against the appellant who was attributed the fatal injuries to both the deceased. Apart from that the principle of falsus in uno falsus in omnibus **is not applicable in this country** on account of various judgments rendered by this Court *in*

the past and for this reason too acquittal of the five co-accused of the appellant has not been found by us to be having any bearing upon the case against the appellant.

Irfan Ali V. State (2015 SCMR 840)

'19. True that *Falsus In Uno Falsus in Omnibus* principle has not been acted upon by the Courts in this country and.....**.**

Sarfraz alias Sappi and 2 others v. The State (2000 SCMR 1758).

'The proposition of law in criminal administration of justice namely whether a common set of ocular account can be used for recording acquittal and conviction against the accused persons who were charged for the same commission of offence is an over-worked proposition. Originally the opinion of the Court was that if a witness is not coming out with a whole truth his evidence is liable to be discarded as a whole meaning thereby that his evidence cannot be used either for convicting accused or acquitting some of them facing trial in the same case. ***This proposition is enshrined in the maxim falsus in uno flasus in omnibus but subsequently this view was changed and it was held that principle enshrined in this maxim would not be applicable and testimony of a witness will be acceptable against one set of accused though same has been rejected against another set of accused facing same trial.***

16. There can be no denial to the fact that while evaluating the evidence in ***Criminal Administration of Justice***, the Courts were under an ***undeniable*** legal and moral obligation to be at peak of its ***judicial conscious*** even in every criminal case. However, the ***replacing*** of former maxim with ***latter*** insists that the Courts should pay some extraordinary care while believing words of same person for one set of accused which *otherwise* was disbelieved for other set of accused. This demands seeking ***strong***, ***independent*** and ***unimpeachable*** corroboration from other pieces of evidence coupled with possibility of ***existence*** of certain facts but on the scale of legal logic only for which the Courts are very much competent to presume ***the existence of certain facts*** as is permitted by Article 129 of the Qanun-e-Shahdat Order, 1984 which reads as:-

'Art.129. Court may presume existence of certain facts.---The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of **natural**

events, human conduct and **public and private business,** in their relation to the facts of the particular case—'

I am fortified in such conclusion with lights, showered through the case laws of honourable Supreme Court, reported as:

Iftikhar hussain v. State 2004 SCMR 1185

'**It is true that principle of falsus in uno falsus in omnibus is no more applicable** as on following this principle, the evidence of a witness is to be accepted or discarded as a whole for the purpose of convicting or acquitting an accused person, therefore, keeping in view prevailing circumstances, the Courts for safe administration of justice follow the principle of appraisal of evidence i.e sifting of grain out of chaff i.e if an ocular testimony of a witness is to be disbelieved against a particular set of accused and is to be believed against another set of the accused facing the same trial, **then the Court must search for independent corroboration on material particulars as has been held in number of cases decided by the superior Courts**.

Irfan Ali V. State (2015 SCMR 840)

'**19.** True that *Falsus...* a witness is divisible, however, **pre-condition is that evidence of the same set of witnesses may be rejected against some of the accused and it can be relied upon with regard to the other set of the accused,** ***provided it is getting strong independent corroboration from unimpeachable source*** while recording conviction on a capital charge.

17. Now, I would proceed further on said touchstone. It is manifest that the allegation of firing of fatal shot is attributed against the appellant Muqeem and absconding accused Ashraf, which normally is done by a blood-related person while reporting the matter of murder, because substitution of real culprit is a rare phenomenon but widening of net, *as already discussed,* is a developed trend. The motive was also pleaded and established against them only, for which trial court rightly held while penning that:

'He deposed that Muhammad Ashraf brother of Abdul Wahab used to issue threats to his nephew that a false case has been registered against him, therefore he would murder him. Before proceeding ahead, I went to mention here that as per statement of Roshan, **Abdul Wahab is brother of Muhammad Ashraf (an absconding of this case who is father**

> **of accused Muqeem),** This statement of complainant Roshan Ali has not been challenged in the cross examination by learned counsel for the accused persons, therefore, I draw my inference that this description of the relationship **between Abdul Wahab and absconding accused Muhammad Ashraf and accused Muqeem has been accepted by the other side** and **this proves the motive behind the murder of deceased Deedar Ali.**

18. The recovery of the crime weapon is also from the appellant/convict Muqeem which is also another corroborative piece of evidence. Thus, it would suffice to say that ocular account against the appellant Muqeem regarding causing fatal shot injury to the deceased stands corroborated from ***'medical evidence', recovery, motive*** and even on the count of existence of fact that a blood-related shall not *normally* attribute fatal injury to an innocent. Thus, I do not find substance in the appeal of the appellant Muqeem nor there has appeared any material non-reading or misreading of the evidence to extent of conviction, awarded to the appellant Muqeem.

19. Whereas, I am not inclined to stamp the view of the learned trial Court Judge whereby he acquitted accused Mehrab while convicted appellant Naveed. To make my view clear, the relevant portion from judgment of trial Court is referred hereunder:

> 'Considering the space of the open door of Corolla car 86, it is unbelievable that four persons would be able to shot their bullets at the target from this small space. I have discussed hereinabove that there was no time for complainant to cook a story of murder inside the car considering the expected medical evidence, **but it cannot be ruled out that he has not made some exaggeration by increasing the number of the assailants.** Testimony of a witness is acceptable against one set of accused..... **In this case accused Muhammad Ashraf (absconding) his son Muqeem have been attributed the role of firing at vital parts of the deceased Deedar Ali. Accused Naveed and Mehrab have been depicted causing injury at the left leg of deceased.** It is pertinent to mention here that there is an agreement between statement of witnesses regarding the **order of the assailant**. ..... They with their one voice have deposed that accused Ashraf, Muqeem, Naveed and Mehrab fired but the place available on opening the door does not permit four assailant to shoot at the target ..... Two injuries have been found on the left leg of the deceased Deedar Ali which are near to each other, and leads to inference that Naveed had repeated the fire from his pistol, and Mehrab has been added in the group of the assailants' **so I do not accept the statement of complainant and the witnesses true regarding accused Mehrab.**

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From above it appears that the learned trial Court judge while convicting was influenced with ***'order of the assailants, given by witnesses while considering the number of injuries'***. I cannot stand with such a conclusion because a blood-relation would take care in naming the **real culprit and role played by him** but when the question is of widening of the net, the narration of order of the assailants is immaterial. but the court shall have to stick with the precaution i.e. to seek ***strong***, ***independent*** and ***unimpeachable*** corroboration from other pieces of evidences coupled with possibility of ***existence*** of certain facts but on the scale of legal logic only.

20. In my opinion, the case of the appellant Naveed is on better footing from that of acquitted accused Mehrab because the plea of *alibi* of appellant Naveed starts from the very date of tragedy as he had made such application on the very date of incident to the Court of Civil Jude & J.M-1, Ratodero, where he was present in relation to hearing of criminal cases, pending against him at such time. It is also to be kept in mind that day of incident was ***Friday*** as it shall appear from portion of statement of PW Dr. Syed Shah Hussain shah :

> 'On 29.8.2008 I was posted at Taluka Hospital Ratodero. **On 29.8.2008 there was Friday** and I had to join my duties at 12.00 noon....'

It is not possible for an accused to arrange an independent witness (like court official) of his presence at 8.00 am, then to participate in alleged murder and then to safely come back to attend calls of his two pending cases on a day of ***Friday,*** However, it is also a matter of record that even this plea was accepted by the Investigating officer (Inspector Ansar Ali), who in his chief stated that :

> *"I also examined the Court staff regarding his plea of alibi.'*

He (Inspector Ansar Ali) in his cross-examination further stated that:

> *'It is correct that during investigations I received evidence of defence witnesses thnat accused Naveed was present in the compound of Court of Civil Judge & J.M Rattodero, at the time of occurrence.'*

Here, it is material to mention that though the prosecution examined PW Ali Mardan (Jr. Clerk in court) to disprove the plea of *alibi,* but examination of such a witness would suggest otherwise. The relevant portion of the examination-in-Chief is referred to make this aspect clear:

> *'In the year 2008, I was serving as Jr. Clerk in the Court of 1-Civil Judge& J.M Ratodero.* **On 29.8.2008, I came at my office at Civil Courts building Ratodero. It was about 8.00 a.m. I saw accused Naveed standing in the veranda of the building**. *I went inside my office.'*

21. This unchallenged piece of statement of the prosecution witness itself supports the plea of the appellant Naveed. This was sufficient for extending benefit of doubt to the appellant Naveed, because for giving benefit of doubt it is not necessary that there should be many circumstances, creating doubts. A single circumstance, creating a reasonable doubt in a prudent mind about guilt of accused makes him entitled for acquittal, not as a matter of grace but as of right. Reference, if any, can well be given to *Muhammad Akram v. The State* (2009 SCMR 230). I would further insist that to earn acquittal while raising a defence plea the accused is only required to show that there is a reasonable possibility of his innocence and *in no way* the standard of proof is similar to that as expected of the prosecution which must prove its case beyond any reasonable doubt. Reference can be made to the case of *Mehboob ur Rehman v. State* (2013 SCMR 106), wherein it is held that:

> 6. The ....**This would therefore mean that at the earliest opportunity the appellant had insisted upon his plea of alibi before the police authorities and also stated as much in his statement under section 342 Cr.P.C before the learned trial Court**.
>
> In this regard **it is well settled that the accused while raising a defence plea is only required to show that there is a reasonable possibility of his innocence and the standard of proof is not similar to that as expected of the prosecution which must prove its case beyond any reasonable doubt**. ***Consequently where a witness (in this case strangely for the Prosecution) has introduced certain documents in evidence which would substantiate the appellant's plea of alibi, then the onus would shift to the Prosecution to disprove the same which as noted above was not done..***

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State v. Misbahuddin Farid (2003 SCMR 150)

'...wherein it was held that if, on analysis of the evidence, the Court is of the opinion that there is a reasonable possibility that the defence put forward by the accused might be true, this opinion reacts upon the whole cased and in consequence thereof accused is entitled to the benefit of doubt on the ground that the prosecution has not proved its case beyond reasonable doubt.

In view of above discussion, I am quite firm to hold that the prosecution failed in proving the charge against the appellant Naveed beyond reasonable doubt, hence conviction awarded to him cannot legally sustain.

22. These are the reasons of short order dated 08.9.2015, whereby these appeals were disposed of as under :

"For reasons to be recorded later on, Crl. Appeal No.S-24 of 2012, (Naveed Ghanghro v. The State) is allowed, whereas Crl. Appeal No.S-20 of 2012 (Muqeem Ghanghro v. The State) is dismissed. Accordingly, impugned judgment to the extent of appellant Naveed Ahmed Ghanghro is set aside; appellant is hereby acquitted of the charge; he shall be released forthwith, if not required in any other case."

Judge
8/10/2015

*M. Yousuf Panhwar/***