

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

**Crl. Appeal No.D-61 of 2018
Crl. Reference No.D-08 of 2018**

Present:-

**Mr. Justice Zafar Ahmed Rajput
Mr. Justice Shamsuddin Abbasi.**

Appellants: 1. Abdul Hafeez alias Hafeez Kakepoto
2. Mukhtar son of Mohammad Bachal Kakepoto
through Mr. Athar Abbas Solangi, Advocate.

Respondent: The State through Mr. Ali Anwar Kandhro,
Additional Prosecutor General.

None for the complainant.

Date of Hearing : 26.02.2020.

Date of Judgment : 20.07.2020.

J U D G M E N T.

SHAMSUDDIN ABBASI, J.- Appellants Abdul Hafeez alias Hafeez Kakepoto son of Abdul Rehman Kakepoto and Mukhtiar son of Mohammad Bachal Kakepoto, faced trial in Sessions Case No.204 of 2017, Re: The State v. Hafeez Kakepoto & others, arising out of Crime No.24/2017 of P.S Garhi Yasin, u/s.302,337-H(2), 148, 149, PPC and found guilty as such they were convicted and sentenced to death twice for causing Qatl-i-Amd of deceased Nizamuddin and Gulab Brohi and to pay a sum of Rs.500,000/- each (total Rs.10,00,000/-) as compensation to the legal heirs of both deceased, in default whereof the same was ordered to be recovered from the accused/appellants as land revenue arrears in terms of Section 544-A, Cr.P.C, with further conviction and sentence for three years u/s 148, PPC as well as one month imprisonment u/s 337-H(2), PPC; however, subject to the confirmation of death sentence by this Court vide impugned judgment dated 17.10.2018, passed by the learned Additional Sessions Judge-III, Shikarpur, which the appellants have challenged through this appeal.

2. Concisely, the facts of the prosecution case as gleaned from the FIR are that on 20.05.2017 at 1.00 pm complainant Mst. Rani Khatoon wife of Kareem Bakhsh Brohi lodged FIR at P.S. Garhi Yasin, stating therein that there was longstanding enmity between them and Kakepoto community, which was settled in a private faisla. On 17.05.2017 her brother Gulab Khan Brohi, who was a constable in Police Department at Kashmore District, came to his village on leave and on 18.05.2017 he left for Garhi Yasin town for joining his duties and she (complainant) along with her maternal cousin (masaat) Mst. Ameeran and relatives Mst. Zulekhan and Noor Bibi also went to Garhi Yasin town for domestic work and they all met at the shop of Allahdino Soomro near Dakhan Octroi Post and were chitchatting with each other, where their relative Nizamuddin Brohi, who was also constable in Police Department, met complainant's brother Gulab Khan and they were having deliberations; meanwhile at about 11.30 am accused persons, namely, 1) Manzoor, 2) Ibrahim, both armed with Kalashnikovs, 3) Hafeez armed with pistol, all three on one motorcycle, 4) Akber, 5) Haqnawaz, both armed with Kalashnikovs, 6) Ghulam Hussain armed with pistol, all three on another motorcycle, 7) Ghulam Nabi, 8) Mukhtiar son of Bhagio, both armed with Kalashnikovs, 9) Mukhtiar son of Mohammad Bachal, armed with pistol, all three on third motorcycle, 10) Sarwar, 11) Wahab, armed with Kalashnikovs, 12) Ishaq armed with pistol, all three on fourth motorcycle, 13) Sabir, armed with pistol, all by caste Kakepoto, and three barefaced unidentified persons on two other motorcycles, armed with Kalashnikovs, emerged there and started aerial firing in order to create terror, whereupon people available there started running here and there; then accused Manzoor and Ibrahim fired with Kalashnikovs upon Gulab Khan, hitting at his left and right side armpits and he fell down on the ground by raising cry; then accused Akbar and Haqnawaz fired upon PC Nizamuddin Brohi, hitting at mid and upper part of left arm, who also fell down by raising cry. The complainant and P.Ws raised cries, whereupon the accused persons fled away while firing in the air. The complainant and P.Ws on seeing injuries on the person of Gulab Khan and Nizamuddin, who both died within their sight, arranged conveyance and took dead bodies to RHC Garhi Yasin, informed the police and got conducted postmortem of both the deceased. After completing

burial and funeral rituals, the complainant went to police station and lodged FIR to the above effect.

3. FIR of the incident was registered by SIP Abdul Qadir Langah, SHO P.S Garhi Yasin, who after completing necessary investigation submitted challan, thereby sending up the appellants/accused to face trial.

4. At the trial, appellants/accused pleaded 'not guilty' to the charge, while prosecution examined PW-1 Dr. Dayal Das at Ex.8, who produced postmortem report at Ex.8-A; PW-2 complainant Mst. Rani at Ex.9; who produced FIR at Ex.9-A; PW-3 Mst. Zulekhan at Ex.10, who produced Danishnamas, memos of inspection of dead bodies, memo of site inspection and memo of clothes at Ex.10-A to 10-E respectively; PW-4 PC Imamuddin at Ex.11, who produced receipt at Ex.11-A; PW-5 SIP/SIO Abdul Qadir Langah at Ex.12, who produced lash chakas forms and memo of arrest at Ex.12-A to 12-C respectively; PW-6 Tapedar Zulfiqar Ali Khan at Ex.14, who produced sketch at Ex.14-A; PW-7 PC Riaz Hussain Bhutto at Ex.15; and, lastly PW-8 SIP Mumtaz Ali Channa at Ex.16, who produced FSL report at Ex.16-A; thereafter prosecution side was closed at Ex.18.

5. In their statements under Section 342, Cr.P.C, the appellants/accused denied the allegations against them. They did not step into witness-box and also declined to examine any defence witness; however, appellant/accused Abdul Hafeez alias Hafeez produced orders in FIR No.25/2017 of PS Garhi Yasin and FIR No.25/2017 of PS Dakhan at Ex.19-A & 19-B respectively. On conclusion of trial and upon assessment of material available on record, the learned trial Court held the appellants/accused guilty of the charge, convicted and sentenced both of them, as stated in paragraph-1 *supra*.

6. At the hearing, we have had the privilege of hearing the arguments advanced by the learned counsel for the appellants/accused and learned State counsel and with their assistance have gone through the evidence so far brought on record. The evidence against the appellant/accused consists of ocular

evidence, medical evidence confirming and corroborating the unnatural death of both deceased as a result of firearm injuries and recovery of crime weapon from appellant matched with empty bullets recovered from the place of wardat.

7. With regard to the ocular evidence, learned counsel for the appellants has argued that both the alleged eyewitnesses, namely, complainant Mst. Rani and Mst. Zulekhan examined at trial are closely related to the deceased; that occurrence took place at Garhi Yasin town near shop of Allahdino Soomro situated near Octroi Post, where admittedly other people were also present but no independent person was associated to witness the incident; that per prosecution case though the incident was allegedly witnessed by four lady witnesses i.e. complainant Mst. Rani, Mst. Zulekhan, Mst. Ameeran and Mst. Noor Bibi, but only complainant Mst. Rani and Mst. Zulekhan were examined by the prosecution, whereas Mst. Ameeran was given up and Mst. Noor Bibi was not examined; that there are material contradictions and inconsistencies in the evidence of both the alleged eye-witnesses, namely, Mst. Rani and Mst. Zulekhan; that the case property was not produced at trial and even during investigation the blood stained earth was also not secured by the investigating officer from the place of incident; that though appellant Abdul Hafeez alias Hafeez was convicted in the off-shoot case of recovery of crime weapon based upon Crime No.25/2017 of P.S Garhi Yasin; however, he was acquitted by this Court in appeal. He has further contended that the motive was not proved and was shrouded in the mystery. He emphasized that the prosecution story being highly doubtful is not safe to be believed and appellants are entitled to benefit of doubt, therefore, by accepting appeal, they may be acquitted of the charge.

8. On the other hand, in pursuance of notice to complainant, she engaged Mr. Muhammad Ibrahim advocate, who filled Vakalatnama on 02.04.2019 but record reflects that neither complainant nor her counsel appeared on three consecutive date of hearings despite issuance of notice to complainant through SHO concerned and intimation to her counsel. learned Addl. Prosecutor General argued that the occurrence took place during broad daylight; that

identification of the accused is not in doubt, Appellants are nominated in the FIR; that there is strong motive behind the offence; that the names of the prosecution witnesses are also given therein and they have supported the prosecution case; that ocular version corroborated by medical evidence as well as circumstantial evidence; that the time and place of incident is not disputed. He has further submitted that prosecution successfully proved its case against the appellants/accused; therefore, their appeal may be dismissed.

9. We have carefully considered the submissions of the parties and have gone through the impugned judgment in the light of the evidence available on record.

10. From perusal of record, it appears that occurrence took place on 18.05.2017 at 11.30 am while the matter was reported to the police by [P.W-2] Mst. Rani, sister of deceased Gulab Khan, at police station Garhi Yasin, situated at a distance of only 01 kilometer after two days i.e. 20.05.2017 at 1300 hours. Per prosecution case, there existed longstanding enmity between the parties. As per FIR, both deceased were serving as Constables in Police Department and deceased Gulab Khan was posted in District Kashmore at Kandhkot, after enjoying one day leave at his house he proceeded from his house on the day of incident i.e. 18.05.2017 for joining his duty and went to Garhi Yasin town, while complainant Mst. Rani and P.Ws Mst. Ameeran, Mst. Zulekhan and Mst. Noor Bibi also went to Garhi Yasin town for domestic work and they met the deceased Gulab at the shop of Allahdino Soomro near Dakhan Octroi Post of Garhi Yasin town and while they were chitchatting, their relative Nizamuddin Brohi, who was also a Constable in Police Department, came there and started deliberations with deceased Gulab Khan, when at about 11.30 am the accused persons came there and killed both the deceased by firing. From the above story, it is clear that the incident was not only witnessed by the above-named four ladies but also by several other persons including the owner of the shop, namely, Allahdino Soomro, but during investigation I.O. had not recorded statement of any independent witness and only recorded statements of prosecution witnesses and even at trial the prosecution examined only two alleged eye-witnesses, namely, PW.2

complainant Mst. Rani and PW.3 Mst. Zulekhan, out of whom PW Mst. Zulekhan was also cited as mashir of Inquest report, inspection of dead bodies, site inspection and clothes of deceased. Admittedly, both the eye-witnesses are closely related *interse*, hence they could be inimical and partisan witnesses. It is well settled proposition of law that the evidence of interested witnesses cannot be discarded merely on the ground of relationship nor it can be considered as gospel truth, but propriety of safe administration of justice demands that their evidence must be scanned with care and caution, which too need strong corroboration by independent pieces of evidence. In the present case deceased Gulab Khan was brother of complainant and relative of P.W Zulekhan and both P.Ws were also relatives of deceased Nizamuddin. The prosecution did not examine Mst. Ameeran and Mst. Noor Bibi, out of whom Mst. Ameeran was given up whereas the entire record is silent with regard to Mst. Noor Bibi as to why she was not examined, therefore, adverse inference would be drawn that had these witnesses been examined, they might have not supported the prosecution case. It is pertinent to mention here that Mst. Rani and Mst. Zulekhan are eye-witnesses of alleged incident, but at the same time P.W Mst. Zulekhan was also made as mashir of Danishnama, inspection of dead bodies, site inspection and clothes of deceased. Though the incident took place at a busy public place i.e. shop of Allahdino Soomro and complainant has also stated that it was surrounded by other shops and at the time of incident general public as well as shop keepers were available but even then neither any independent person was associated to witness the incident nor I.O. examined any person of the locality or even police had not bothered to cite any independent and local person as mashir of site inspection. There is another important aspect in criminal cases, which is always treated as backbone of a criminal case i.e. Motive. In the present case complainant has set out the motive against the accused party as longstanding murderous enmity between Brohi and Kakepoto community, but she kept mum on this point in her whole evidence and did not give any detail for longstanding enmity, therefore, we are of the considered view that prosecution has failed to establish motive against appellants and it is shrouded in mystery.



11. Apart from the above, there is delay of two days in lodging of FIR inasmuch as the incident is shown to have taken place on 18.05.2018 at 11:30 am whereas FIR has been lodged on 20.05.2018 at 1:00 pm despite of the fact that the distance between P.S. and place of incident was only 01 km and no plausible explanation has been furnished by the complainant despite police reached at place of incident within half an hour and sent corpse for postmortem after completing all codal formalities. The complainant has simply explained that she lodged FIR after funeral and burial ceremonies of deceased and finalizing condolence rituals. In back ground of murderous enmity, it cannot be ruled out that FIR has been lodged after due deliberations and consultations. As per settled principle of law, the FIR is always treated as a cornerstone of the prosecution case to establish guilt against those involved in a crime, thus it has a significant role to play, hence if there is any delay in lodging of FIR and commencement of investigation, it gives rise to a doubt and benefit thereof is to be extended to the accused. Reliance may well be made to the case of **Zeeshan @ Shani v/s The State {2012 SCMR 428}**, wherein it has been held by Apex court that delay of more than an hour in lodging of FIR give rise to an inference that occurrence did not take place in the manner projected by the prosecution and time was considered in making efforts to give a coherent attire to prosecution case, which hardly proved successful. In the present case delay in lodging of FIR is two days and it is more fatal particularly when P.S. was at a distance of 01 km from place of incident.

12. Insofar as the ocular account is concerned, it consists upon complainant Mst. Rani and P.W Zulekhan. It is the case of the prosecution that 16 accused armed with deadly weapons had killed two persons in presence of prosecution witnesses. The question arises as to why the accused left the complainant party unhurt despite they being empty handed were at their mercy and naturally it was within their knowledge that they would report the case against them in time to come. Such a behavior of accused party does not appeal to a prudent mind that when they could have easily wiped out the entire evidence against them why they did leave complainant party unhurt. This view has been taken by Apex Court in a case of

Mst. Rukhsana Begum and others v. Sajjad & others (2017 SCMR 596), wherein it has been held as under:-

"Another intriguing aspect of the matter is that, according to the FIR, all the accused encircled the complainant, the PWs and the two deceased thus, the apparent object was that none could escape alive. The complainant being father of the two deceased and the head of the family was supposed to be the prime target. In fact he has vigorously pursued the case against the accused and also deposed against them as an eye witness. The site plan position would show that, he and the other PWs at the mercy of the assailants but being the prime target even no threat was extended to him. Blessing him with unbelievable courtesy and mercy shown to him by the accused knowing well that he and the witnesses would depose against them by leaving them unheard, is absolutely unbelievable story. Such behavior, on the part of the accused runs counter to natural human conduct and behavior explained in the provision of article 129 of Qanun-e-Shahadat order, 1984 therefore, the Court is unable to accept such unbelievable proposition."

13. Besides, it is important to note that admittedly complainant happens to be sister of deceased Gulab Khan and close relative of deceased Nizamuddin and alleged incident had occurred in her presence. A bare perusal of entire evidence on record reflects that complainant did not make any attempt or try to prevent murder of her brother. Such a conduct of complainant does not appeal to a prudent mind as it is highly improbable and creating doubt in the prosecution case and it does not appeal to the logic that sister would not react or attempt to prevent killing of her brother in her presence. Hence such conduct of the complainant has created doubt into the veracity of prosecution story. Reliance may well be made to the case of **Sardar Ali v. Hameedullah and others reported as 2019 P.Cr.L.J 186**, wherein it has been held as under:-

"The conduct of the complainant is also worth of to be looked into as it is story of the prosecution that the deceased Ahmed Khan was done to death through fire shots by the accused, yet at the relevant time no sign of resistance have been shown by the complainant in order to at least save his father from the grasp of assailants, rather he became a mere spectator, so, such kind of attitude of the complainant being sole eye witness and real son of the deceased is beyond understanding of natural human conduct."

Likewise in the case of **Zafar v. The State and others** reported as **2018 SCMR 326**, wherein it has been held as under:-

“The conduct of the witnesses of ocular account also deserves some attention. According to complainant, he along with Umer Daraz and Riaz (given up PW) witnessed the whole occurrence when their father was being murdered. It is against the normal human conduct that the complainant, Umar Daraz and Riaz (PW since given-up) did not make even in abortive attempt to catch hold of the appellant and his co-accused particularly when the complainant himself as stated in the FIR and before the learned trial Court that when they raised alarm, the accused fled away. Had they been present at the relevant time, they would not have waited for the murder of their deceased father and would have raised the alarm the moment they saw the appellant and his co-accused standing near the cot of their father.”

14. Since this is a case of awarding capital punishment of death, therefore, we would like to reassess and reexamine the evidence of prosecution witnesses. Admittedly prosecution witnesses are highly interested witnesses particularly in back ground of murderous enmity and scandalous delay of two days in lodging of FIR, therefore, propriety of safe administration of justice demands to examine their evidence with care and caution. We have noticed various improvements and material contradictions in the statements of prosecution witnesses as detailed below:-

- (i) P.W2/Complainant Mst. Rani had assigned specific role of firing to co-accused Manzoor and Ibrahim in FIR; per FIR they caused fire arm injuries to deceased Gulab Khan but she exaggerated in her statement and deposed that accused Hafeez, Manzoor and Ibrahim caused fire arm injuries to deceased Gulab. We have noted reason for exaggeration/improvement in her statement for the reason that per FIR role of aerial firing has been assigned to appellant Hafeez and now she wanted to make out her case more heinous by assigning specific role of causing fire arm injuries to deceased Gulab in the case as he is in custody while others are still at large.

- (ii) There is inconsistency between ocular version of complainant and medical evidence. The complainant has deposed in her evidence that accused Hafeez, Manzoor and Ibrahim had caused firearm injuries to deceased Gulab. She further stated that accused fired seven shots at deceased from a distance of 2/3 paces but medical evidence shows that deceased Gulab had sustained two firearm injuries (entry wounds). In our humble view chance of misfire from a distance of 2/3 paces would not be possible.
- (iii) The complainant in FIR has stated that she along with PWs Zulekhan, Ameeran and Noor Bibi came to Garhi Yasin town for domestic work and met with deceased Gulab at the shop of Allahdino Soomro and were chitchatting when their relative deceased Nizamuddin also arrived there and met with deceased Gulab, when incident had taken place. On the contrary she has stated in her cross-examination that when she along with witnesses reached at the shop of Allahdino, deceased Gulab and Nizamuddin were already available there.
- (iv) The complainant deposed in her examination-in-chief that police arrived at the scene of offence but she deviated from this version and improved her version by stating in her cross examination that firstly they took dead bodies of deceased to P.S. and then went to Hospital but record reflects that police prepared Inquest report of deceased Gulab at 12:15 pm at hospital. It is very difficult to justify for the prosecution that complainant party completed whole process within 45 minutes i.e. incident occurred at 11:30 am, thereafter they arranged conveyance and shifted dead bodies of deceased to P.S. wherefrom they obtained letter and reached Hospital. Thereafter police reached there and prepared Inquest report at 12:15 am. In a case of double murder, it is very difficult to justify particularly when all the prosecution witnesses are ladies, it would not

possible to complete whole process within 45 minutes in ordinary situation. All these aspects of the case suggested that police had completed all formalities at P.S. or not in a manner given by prosecution.

- (v) It is the case of prosecution that 13 identified and 03 unidentified persons boarded on 06 motorcycles came at the scene of offence and complainant had categorically given details of 16 motorcyclist and their boarding position on each motorcycles in the FIR but in her cross examination, she varied their boarding position and failed to give actual boarding position/details of each motorcycle given by her in FIR, which suggested that she is not actual witness of the incident and FIR had been managed by complainant party with the cooperation of police as police has also sympathies with complainant party for the reason that both deceased were police constables in Sindh Police.
- (vi) ThePW3/Mst. Zulekhan, who is an eye-witness and also made as mashir of place of incident, inquest report and mashirnama of seeing corpse. She had given totally different version as given by complainant in her deposition as well as in FIR. According to the statement of complainant accused Manzoor, Ibrahim and Hafeez caused firearm injuries to deceased Gulab but PW Zulekhan in her examination-in-chief has deposed that accused Ibrahim, Manzoor, Hafeez, Akber and Haq Nawaz made firing upon deceased Nizamuddin and again she deviated from her first version and stated that accused Mukhtiar and Hafeez killed her brother, even she did not bother to disclose that who killed Gulab Khan. However, she admitted in her cross-examination that she stated in her statement u/s 161 Cr.P.C that accused Manzoor and Ibrahim had caused fire arm injuries to deceased Gulab.

- (vii) PW Zulekhan has also contradicted complainant on the point that police came at place of incident and they firstly shifted corpses to P.S. and after getting letter for postmortem they went to Hospital but she stated that they arranged the vehicle and went to Hospital. Neither she stated that police visited the place of incident on the day of incident nor arrived at Hospital.
- (viii) PW3/Zulekhan also contradicted the statement of complainant and FIR. Per FIR the incident took place at 11:30 am whereas she stated in her cross-examination that they reached at Hospital at 11:30 am.
- (ix) It is the case of prosecution that accused came at place of incident on 06 motorcycles whereas PW Zulekhan has stated that accused came at place of incident on 05 motorcycles. She also contradicted the FIR and mashirnama of place of incident. As per record FIR was lodged at 1300 hours and police visited the place of incident at 1400 hours whereas PW Mst. Zulekhan has stated in her cross-examination that she had shown place of incident to police at 1300 hours but again stated that FIR was lodged at 1300 hours and police visited place of incident at 1230 hours meaning thereby that police visited place of incident just half an hour before registration of FIR.
- (x) Record reflects that appellants were arrested on 21.05.2017 and recovery of crime weapons were effected on 26.05.2017, which led to filing of separate FIRs against them. Record further reflects that crime weapons were received by FSL for report on 07.06.2017 after 05-days of its recovery. Record does not show that recovered crime weapons were kept in Malkhana and any entry to that effect has been produced by the prosecution. Thus, the prosecution has failed to prove its case on the point of safe custody of crime weapons. It is also a matter of record that per FIR no specific role of causing injuries has been assigned to present appellants and only role of

aerial firing has been attributed to them whereas specific role of causing injuries has been assigned to co-accused Manzoor, Ibrahim, Akber and Haq Nawaz. No doubt appellants Hafeez and Mukhtiar were convicted by the trial Court in the cases of recovery of crime weapons but this Court has set-aside such convictions vide judgments dated 04.02.2019 passed in Appeal No.95/2017 filed by appellant Hafeez and Appeal No.17/2017 filed by appellant Mukhtiar and acquit them of the charge by extending the benefit of doubt. Hence recovery of crime weapons, on the pointation of appellants, has become doubtful.

- (xi) From the above-referred evidence of complainant and eyewitness Mst. Zulekhan, it appears that both prosecution witnesses have made several improvements in their earlier versions given in the FIR and statements and also made material contradictions which cannot be ignored.

15. It is settled principle of law that if a single doubt arise into the veracity of prosecution case, the benefit thereof must go to the accused. The Honourable Apex Court in the case of **Tariq Parvez v/s The State {1995 SCMR 13455}** on the point of benefit of doubt, held as under;

"The concept of benefit of doubt to an accused person is deep-rooted in our country. For given benefit of doubt to an accused, 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."

16. It is also by now well settled that the accused must presumed to be innocent until proved guilty. The onus of proving the offence against him is on the prosecution. There is no cavil with the proposition that if on the facts proved no hypothesis consistent with the innocence of the accused can be suggested, the conviction must be upheld. If however, such facts can be reconciled with any

reasonable hypothesis compatible with the innocence of the accused the case will have to be treated as one of no evidence and the conviction and the sentence will in that case have to be quashed. Rule of Islamic Jurisprudence has been laid down in the judgment rendered by the Honourable Supreme Court of Pakistan in **Ayoub Mashh** case {**PLD 2002 SC 1048**} wherein the Apex Court ruled that:-

*"It is also firmly settled that if there is an element of doubt as to the guilt of the accused, the benefit of the doubt must be extended to him. The doubt, of course, must be reasonable and not imaginary or artificial. The rule of benefit of doubt, which is described as the golden rule, is essentially a rule of prudence, which cannot be ignored while dispensing justice in accordance with law. It is based on maxim. "It is better that 10 guilty persons be acquitted rather than one innocent person be convicted". In simple words it means that utmost care should be taken by the Court in convicting an accused. **It was held in "State v. Mushtaque Ahmed (PLD 1973 SC 418)** that this rule is antithesis of half hazard approach or reaching fitful decision in case. It will not be out of place to mention here that this rule occupies pivotal place in the Islamic laws and is enforced rigorously in view of the saying of Holy Prophet (P.B.U.H) that the mistake of Qazi (Judge) in releasing a criminal, is better that his mistake in punishing an innocent."*

17. In view of above discussion, we are of the considered opinion that the prosecution has failed to discharge its onus of proving the guilt of the appellants beyond shadow of reasonable doubt. Therefore, while extending the benefit of doubt in favour of the appellants, we hereby allow this appeal, set-aside the conviction and sentence recorded by the trial Court by impugned judgment dated 17.10.2018 and acquit the appellants Abdul Hafeez alias Hafeez son of Abdul Rehman Kakepoto and Mukhtiar son of Mohammad Bachal Kakepoto of the charge. They shall be released forthwith if not required to be detained in any other custody case.

18. In sequel to above, the murder reference made by trial Court is answered in negative.