

CERTIFICATE OF THE COURT IN REGARD TO REPORTING

Cr. Appeal No. 470 of 17 w/ Conf. Case 08/17

M. Idrees Vs. The State

HIGH COURT OF SINDH

Composition of Bench: S-B./D. B.

Mr. Justice Mohammad Karim Khan Agha,
Mr Justice Zulfikar Ali Sangi

Date(s) of Hearing: 4-11-19

Decide on: 12-11-2019

(a) Judgment approved for reporting:

Yes *Yes*

CERTIFICATE

Certified that the judgment*/order is based upon or enunciates a principle of law */ decides a question of law which is of first impression / distinguishes / overrules / reverses / explains a previous decision.

* Strike out whichever is not applicable.

- NOTE:
- (i) This slip is only to be used when some action is to be taken.
 - (ii) If the slip is used, the Reader must attach it to the top of the first page of the judgment.
 - (iii) Reader must ask the Judge writing the Judgment whether the Judgment is approved for reporting.
 - (iv) Those directions which are not to be used should be deleted.

PRESENTED

326(b)

By. Registrar Court

IN THE HON'BLE HIGH COURT OF SINDH
AT KARACHI

Cr. Appeal No. 670/2017

Mohammad Idress
S/O Mohammad Sher,
Muslim, Adult,
Resident House Bilal Colony,
Landhi Karachi
Presently confined in Central Jail
KARACHI.

Appellant

V/S

THE STATE

Respondent

FIR No.403/2014
U/S 302 PPC
P/S: Quaidabad

APPEAL UNDER SECTION 410 Cr.P.C.

Being aggrieved and dissatisfied with the Judgment dated 19.10.2017 passed by the 1st Additional Session Judge Malir Karachi in Session Case No. 1399/2014, title as State V/s Muhammad Idress and out come of FIR No.403/2014/34 PPC P.S Quaidabad, U/s 302 PPC, thereby convicted and sentenced the convict appellant death sentence the appellant. convict, hereby impugned the judgment dated 19.10.2017 passed by learned 1st A.D.J Malir, Karachi with the prayer, that this Hon'ble Court may kindly be pleased to call R & P of the Session Case No.1399/2014 from the trial court above and after hearing of the convict set aside the impugned order (conviction) and sentence of the appellant / convict and acquit the appellant and be pleased to reply the reference in negative on the following facts and grounds.

The certified copy of the impugned judgment is annexed herewith and marked as Annexure "A"

Continued.....P/2

OFFICE OF THE 1ST ADDITIONAL SESSIONS JUDGE MALIR, KARACHI
 No. 1st ADJ/M/ 146 2017 Karachi dated 21.10.2017

To,

The Registrar,
 Honourable High Court of Sindh,
 At Karachi.

INWATER TO 1027
 BEAT 081
 DATE 25/10/17
 HIGH COURT OF SINDH AT KARACHI

Subject:- REFERENCE UNDER SECTION 374 Cr.P.C FOR
CONFIRMATION OF DEATH SENTENCE.

Respected Sir,

I have the honour to submit that, on 19th October, 2017, this Court has passed judgment in Sessions Case No.1399/2014, Re the State versus accused Muhammad Idress son of Muhammad Sher under section 302 PPC, crime No.403/2014 of Police Station Quaidabad, Karachi. The accused Muhammad Idress son of Muhammad Sher has been awarded of death.

I am sending herewith the record and proceedings of above Sessions Case for information of death sentence.

(Shafi Muhammad Pirzada)
 1st Additional Sessions Judge,
 Malir, Karachi.

21/10/2017

Encl
 R & Ps of S.C No.1399/2014
 A to
 Police file 1 to

Shafi
 JUDGE

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Appeal No.470 of 2017
Confirmation Case No.09 of 2017

Present:

*Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Zulfiqar Ali Sangi.*

Appellant by: Mohammad Idress through Mr. Saadat Hussain, Advocate.
Respondent by: The State through Mr. Muhammad Iqbal Awan, Deputy Prosecutor General.
Date of hearing: 04.11.2019
Date of Announcement: 12.11.2019

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- The appellant Mohammad Idress son of Mohammad Sher through instant appeal has assailed the impugned judgment dated 19.10.2017 passed by 1st Additional Sessions Judge, Malir, Karachi in Sessions Case No.1399 of 2014, arising out of FIR No.403 of 2014 U/s. 302 PPC, registered at P.S. Quaidabad whereby the appellant was convicted under Section 302(b) PPC for committing murder of deceased Muhammad Abdullah son of Akhtar Ali and sentenced to death as Tazir subject to confirmation by this court.

2. The brief facts of the case are that the complainant Akhtar Ali son of Ameer Zad Gul, recorded his statement under Section 154 Cr.P.C on 14.10.2014 pertaining to the incident of murder of his son on 14.10.2014 at 1500 hours and the same was incorporated in the FIR bearing crime No.403/2014 lodged on 14.10.2014 at 1910 hours. The complainant in the FIR alleged that he has been residing at Bilal Colony, Munawara Masjid, Landhi, Karachi. On the day of incident he was present at his house at 03:00 pm when one mohalla boy informed him that near Bismillah Kiryana Store, Bilal Colony, one body in injured condition lying in the street, who appeared to be Abdullah. The complainant on receipt of such information called his son on phone and his call was attended by the

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driver of Chippa ambulance who further informed him to come to Jinnah Hospital Karachi where he saw the dead body of his son namely Muhammad Abdullah aged about 18 years, who was having bullet injury on his forehead. Police Officer SIP namely Khursheed completed the formalities and after postmortem he received the dead body of his son for funeral ceremony. The complainant alleged that unknown accused due to some individual enmity by causing firearm injury has committed the murder of his son, hence he recorded his 154 Cr.P.C. statement which was incorporated in the FIR.

3. The investigation was conducted by first Investigating Officer SIP Ghulam Mustafa Niazi. During investigation he inspected the place of incident, recovered 30 bore empty bullet, prepared Mashirnama and arrested the accused on 20.10.2014 and also recovered 30 bore pistol with three live rounds and one motorcycle on the pointation of the accused. Thereafter, investigation was transferred to another IO SIP Muneer Ahmed of CIA, who after usual investigation submitted charge sheet against the accused.

4. Thereafter charge was framed on 20.03.2015 to which the accused pleaded not guilty and claimed trial.

5. In order to prove its case the prosecution examined 10 PW's who exhibited various documents and other items in support of the prosecution case where after the prosecution closed its side. The accused recorded his statement under S.342 Cr.PC whereby he claimed his false implication in the case and in effect took the defense of alibi as he was at work in a textile factory at the time of the incident. He also examined himself on oath and produced one DW in support of his defense case who gave evidence that he was arrested from his home as opposed to the place of arrest given by the police.

6. Learned Additional District & Sessions Judge-1 Malir, Karachi after hearing the learned counsel for the parties and assessment of evidence available on record, vide the impugned judgment dated 19.10.2017, convicted and sentenced the appellant as stated above, hence this appeal has been filed by the appellant against his conviction.

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7. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition.

8. Learned counsel for the appellant has argued that there is no eye witness; that the place of the incident has been described differently by each PW who gave evidence on this issue; that all the PW's are closely related and cannot be safely relied upon; that all necessary natural witnesses have been excluded such as the boy who told the complainant about the body and the ambulance driver who took the body to hospital; that there were contradictions in the FIR and statement of the complainant who in the FIR stated that he first saw his sons body when he went to the PS but in his evidence states that he first saw the dead body of his son in hospital; that the complainant admits that the police had not correctly recorded his FIR; that the so called last seen witnesses were put up being relatives of the complainant; that the pistol was foisted on the accused and that for any of the above reasons the accused be acquitted of the charge by extending to him the benefit of the doubt. In support of his contentions he placed reliance on **Muhammad Mansha v. The State** (2018 SCMR 772), **Muhammad Yaseen v. Muhammad Afzal and another** (2018 SCMR 1549), **Mst. Sabeeha v. Ibrar and others** (2012 SCMR 74) and **Ashiq Hussain v. The State** (1993 SCMR 417).

9. Learned DPG on behalf of the State who was also acting for the complainant argued that the last seen evidence supported by the medical evidence; the recovery of the pistol on the pointation of the accused showed that the prosecution had proved its case beyond a reasonable doubt and that the impugned judgment should be upheld and the appeal dismissed although he very fairly conceded that it was a case of life imprisonment as opposed to the death penalty as the prosecution had neither alleged a motive nor proved a motive against the accused. In support of his contentions he placed reliance on **The State V Manzoor Ahmed** (PLD 1966 SC 664) and **Fayyaz Ahmed V State** (2017 SCMR 2026).

10. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the appellant and the impugned judgment with their able assistance and have considered the relevant law including that cited at the bar.

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11. In our view after our reassessment of the evidence based on the evidence of the PW's, especially the PW MLO post mortem report we are satisfied that the prosecution has proved beyond a reasonable doubt that on 14.10.2014 at about 3pm near Bismillah Kiryana Store, Bilal Coloney Quaidabad Karachi Mohammed Abdullah son of Akhbar (the deceased) was murdered by firearm.

12. The only issue therefore, in our view, left before us is whether the prosecution have proved beyond a reasonable doubt that the accused murdered the deceased.

13. It is an admitted position that there was no eye witness to the murder and no person is nominated in the FIR as the murderer and as such based on the particular facts and circumstances of the case in our view the fate of the accused will hinge on the reliability and trustworthiness of the last seen evidence together with any reliable corroborative evidence as it is well settled by now that last seen evidence is a very weak form of evidence and must be considered with a great deal of caution.

14. In this regard we need to consider the relevant law on last seen evidence and then see if based on a detailed analysis of the last seen evidence as given by the PW's in this case **and** any other corroborative evidence which there may be whether we can safely convict the accused for the murder of the deceased especially keeping in view that this is a capital case.

The Law on last seen evidence.

15. With regard to the last seen evidence in the case of **Fayyaz Ahmed V State** (2017 SCMR 2026) at P.2030 the Supreme Court set out some of the **fundamental principles which must be followed and the prosecution was obliged to fulfill the same** which are set out below:

"7. The last seen evidence is one of such categories of evidence. In this category of cases some fundamental principles must be followed and the Prosecution is under legal obligation to fulfill the same, some of which may be cited below:-

- (i) *There must be cogent reasons that the deceased in normal and ordinary course was supposed to accompany the accused and those reasons must be*

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palpable and prima facie furnished by the Prosecution.

- (ii) *The proximity of the crime seen plays a vital role because if within a short distance the deceased is done to death then, ordinarily the inference would be that he did not part ways or separated from the accused and onus in this regard would shift to the accused to furnish those circumstances under which, the deceased left him and parted ways in the course of transit.*
- (iii) *The timing of that the deceased was last seen with the accused and subsequently his murder, must be reasonably close to each other to exclude any possibility of the deceased getting away from the accused or the accused getting away from him.*
- (iv) *There must be some reasons and objects on account of which the deceased accompanied the accused for accomplishment of the same towards a particular destination, otherwise giving company by the deceased to the accused would become a question mark.*
- (v) *Additionally there must be some motive on the part of the accused to kill the deceased otherwise the Prosecution has to furnish evidence that it was during the transit that something happened abnormal or unpleasant which motivated the accused in killing the deceased.*
- (vi) *The quick reporting of the matter without any undue delay is essential, otherwise the prosecution story would become doubtful for the reason that the story of last seen was tailored or designed falsely, involving accused person. Beside the above, circumstantial evidence of last seen must be corroborated by independent evidence, coming from unimpeachable source because uncorroborated last seen evidence is a weak type of evidence in cases involving capital punishment.*
- (vii) *The recovery of the crime weapon from the accused and the opinion of the expert must be carried out in a transparent and fair manner to exclude all possible doubts, which may arise if it is not done in a proper and fair manner.*
- (viii) *The Court has also to seriously consider that whether the deceased was having any contributory role in the cause of his death inviting the trouble, if it was not a pre-planned and calculated murder." (bold added)*

16. The above fundamental principles were endorsed in the recent Supreme Court case of **Muhammad Abid V The State** (PLD 2018 SC 813)

where it was held as under regarding last seen evidence or "last seen together" evidence at P.818 para 5 and 6 as under;

"5. Ocular account forming the last seen evidence is that the appellant was seen by PW-6 (Muhammad Naeem) at his shop with the victim at 2:15 pm on 05.09.2010 where he had come to rent a motorcycle and by PW-7 (Dildar Ahmed) at 2:20 pm on the same day when the appellant purchased petrol from his shop. The theory of last seen together is one where two persons are 'seen together' alive and after an interval of time, one of them is found alive and the other dead. If the period between the two is short, presumption can be drawn that the person alive is the author of the other's death. Time gap between the sighting and the occurrence should be such as to rule out possibility of somebody else committing the crime. The circumstance of the deceased being last seen in the company of the accused is not by itself sufficient to sustain the charge of murder. There must be evidence to link the accused with the murder of his companion, such as incriminating facts as recovery, strong motive and the proximate time when they were last seen together and the time when the deceased was killed. Last seen evidence as circumstantial evidence must be incompatible with the innocence of the accused and should be accepted with great caution. It must be scrutinized minutely so that no plausible conclusion should be drawn therefrom except guilt of the accused'.

6. The foundation of the "last seen together" theory is based on principles of probability and cause and connection and requires 1. cogent reasons that the deceased in normal and ordinary course was supposed to accompany the accused 2. proximity of the crime scene 3. small time gap between the sighting and crime. 4. no possibility of third person interference 5. motive. 6. time of death of victim. The circumstance of last seen together does not by itself necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime." (bold added).

17. Keeping in view the above principles the last seen evidence in this case is provided by PW1 the complainant and father of the deceased who gave evidence that before the incident **Noor-ul Ameen** and **Jan Mohammed** had informed him that they had seen the deceased on a motor cycle along with Mohammed Idrees on 14.10.2014 and about an hour and a half later they had again seen Idrees with blood stained clothes at which time the deceased was not with him. He also gave evidence that after five to six days Mohammed Khawar Abbassi and Mohammed

Adnan informed him that on 14.10.2014 that they had seen the deceased with one boy at Baba-e-Ameer Mawiya Mohalla whose description they gave. Where after he sent boys to different places to search the accused. **Naik Muhammed** also saw the accused on the day of the incident.

18. Thus, there are potentially 5 last seen witnesses all of whom knew both the accused and the deceased and as such there was no need for an identification parade.

(a) **PW 4 Noor ul Amin** gave evidence that on 14.10.2014 at about 2.15pm he saw two persons on a motor bike who he recognized as the accused driving the bike with the deceased sitting on the back. Later that evening at 8.40pm he heard that the deceased had been killed in firing. He does not state that he saw the accused returning alone. He is related to the complainant. His statement was taken on 14.11.2014 one month after the incident. Although the DPG states that in fact his statement was taken on 14.10.2014 which was the day of the incident in the evidence it is clearly recorded as 14.11.2014 and no application or any attempt is on record whereby the prosecutor moved to have this date corrected. We have seen the S.161 statement which shows that it was made on 14.10.2014 on the day of the incident however since it was not part of the evidence and it is not the role of the courts to fill in the lacuna's in the prosecution case to the detriment of the accused we cannot take it into account. In this respect reliance is placed on the case of **Muhammad Naeem V The State** (unreported) dated 10.05.2019 in Criminal Appeals 81-L and 82-L of 2017 where the Supreme Court held as under:

"In an adversarial system the role of the judge is that of a neutral umpire, unruffled by emotions, a judge is to ensure fair trial between the prosecution and the defence on the basis of the evidence before it. The judge should not enter the arena so as to appear that he is taking sides. The court cannot allow one of the parties to fill lacunas in their evidence or extend a second chance to a party to improve their case or the quality of the evidence tendered by them. Any such step would tarnish the objectivity and impartiality of the court which is its hallmark. Such favoured intervention, no matter how well-meaning, strikes at the very foundations of fair trial, which is now recognized as a fundamental right under article 10-A of our Constitution."

In the present case the direction of the High Court for obtaining fresh samples of the alleged intoxicating substance and preparing a fresh report of the Chemical Examiner amounts to granting the prosecution a premium on its failure to put up a proper case in the first instance. Such judicial intervention is opposed to the adversary principle and offensive to the fundamental right of fair trial and due process guaranteed under the Constitution. See *Dildar v. State; Painda Gul v. State and State v. Amjad Ali*", (bold added)

(b) **PW 5 Jan Mohammed** gave evidence that on 14.10.2014 at about 2:00 p.m he saw two persons on the accused's motor bike on which the deceased was also riding and that after 30 or 45 minutes on the same street he saw the accused alone on the same motor bike. The accused had blood marks on his clothes and went towards his house. Thereafter he saw the accused change his clothes and go away on his motorbike. **He recorded his statement on the day of the incident.**

(c) **PW 2 Muhammed Adnan** gave evidence that on 14.10.2014 he along with his friend **Khawar Abbas** were going on a motorcycle. He found **Khawar Abbass** and the accused at Mian Waali Mohalla. Khawar Abbass asked the deceased where his father was and was told that he was at home. They returned back and within a short span of time heard one fire shot and then saw the accused going on motor cycle with speed and saw blood stain on his face and clothes. He met the complainant after 7 days of the incident and recorded his statement on 14.11.2014 one month after the incident.

Khawar Abbass does **not** give evidence to corroborate the evidence of **PW 2 Muhammed Adnan**. **Khawar Abbass** was on the calendar of PW's however he was not called to give evidence by the prosecution and as such under A.129 (g) Qanoon-e-shahdat Order 1984 (Q and S) an adverse inference may be drawn that if he had given evidence he might not have supported the prosecution case. In this respect reliance is placed on **Muhammed Rafique V State** (2010 SCMR 385)

(d) **PW 6 Naik Muhammed** gave evidence that on 14.10.2014 he was working in Younis Textile Mills when at about 3 to 3.15pm

Muhammed Taj told him that the deceased had been murdered. That according to his evidence the accused was also working at the mill with him on the same day and that on that day the accused left for taking tea outside the mill at 2.15pm and returned at 3.15pm. His statement was recorded on 21.11.2014 which was 7 days after the incident.

19. In evaluating the last seen evidence it appears that the prosecution evidence in a nut shell is that on 14.10.2014 the accused left the Mill where he was working at about 2.15 (PW 6 Naik Muhammed) and was seen with the deceased on his bike at about 2 to 2.15pm independently by (PW 4 Noor ul Amin and PW 5 Jan Mohammed) and at about 3pm returning alone on his bike with bloody clothes (PW 5 Jan Mohammed) and was also seen with the deceased and again alone with his clothes and face covered in blood (PW 2 Muhammed Adnan) before finally being seen returning to the factory at about 3.15 (PW 6 Naik Muhammed)

20. It would therefore appear from the last seen prosecution evidence that between 2.15 and 3.15 pm the accused murdered the deceased.

21. At first glance this evidence appears quite compelling in terms of last seen evidence but the question is whether it can it withstand deeper scrutiny?

22. We have noted that PW 4 Noor ul Amin's statement was recorded after a month. It may be that this was an error in date by the prosecution but the evidence on record does not show this especially as there was no application to correct this evidence and as such we discard the evidence of this PW as it could have been concocted. PW 2 Muhammed Adnan despite being very close to the complainant does not tell him about what he saw until 7 days after the incident which does not appeal to natural human conduct. Even then in the complainant's evidence he does not say that PW 2 Muhammed Adnan told him that it was the accused Idress who was last seen with the deceased but simply gives his description and based on this description the boys go and look for the accused. He also gave his statement one month after the incident which again leaves room for concoction. He is also not corroborated in his evidence by Khawar Abbass who is not called as a PW despite being with PW 2 Muhammed

Adnan when they saw the deceased and Idress together and when they both saw accused alone with blood on his clothes and face and as such we discard the evidence of this PW as it could have been concocted. Furthermore, as mentioned earlier in this judgment an adverse inference may be drawn by the failure of Khawar Abbas to give evidence for the prosecution that he would not have supported the prosecution case under A.129(g) Q and S

23. **PW 5 Jan Mohammed** had no reason to falsely implicate the accused. On 14.10.2014 at about 2pm he saw two persons on the accused's motor bike on which the deceased was also riding and that after 30 or 45 minutes on the same street he saw the accused on the same motor bike. The accused had blood marks on his clothes and went towards his house. Thereafter he saw the accused change his clothes and go away on his motorbike. He recorded his statement on the day of the incident and thus we believe the evidence of this witness especially as he knew both Idress and the deceased.

24. Since we have believed the evidence of **PW 5 Jan Mohammed** it follows that we also believe the evidence of **PW 6 Naik Muhammed** who gave evidence that on 14.10.2014 he was working in Younis Textile Mills alongside the accused when on that day the accused left for taking tea outside the mill at 2.15pm and returned at 3.15pm. His statement was recorded on 21.11.2014 07 days **after** the incident. The 7 day delay in recording his statement in our view is of lesser importance as during this period the accused was not a suspect and had not been arrested and as such this PW would have no need to rush to the police to give his statement. Instead the police took his statement on either the same day or the day after the accused was arrested when presumably the accused raised the defense of alibi in that he was working at the Mill at the time of the incident.

25. In this respect the accused called no witnesses from the mill or even the register to prove that he did not leave the mill during the relevant time. He apparently made an application to call for the CCTV to show the comings and goings to the factory but such application was not exhibited into evidence.

26. Having come to the conclusion that the last seen evidence **most likely** can stand up to scrutiny we must consider what other corroboratory evidence there may be to support it since as already noted last seen evidence must be viewed with great caution especially in a capital case **and** there must be some independent corroboration from some unimpeachable source especially as in this case the accused could have dropped the deceased off and someone else could have killed him in the intervening period of about 45 minutes.

27. In this respect we note that no blood stained clothes were recovered from the accused; that although a pistol was recovered on the pointation of the accused the FSL report did **not** match with the empty recovered at the scene of the murder which means that the pistol recovered from the accused was **not** used to murder the deceased; that all the PW's were related; that the prosecution has by its own admission neither alleged nor proven any motive for the accused murdering the deceased; no enmity between the accused and the deceased has come on record, the prosecution has not pointed out any reason why the accused should be with the deceased in the first place as it is not even known whether they were even friends; that although a motor cycle was allegedly recovered from the accused there is no evidence on record that he was its owner or it it was even the motorbike which he was riding at the time he was with the deceased keeping in view that a PW described the bike as black in colour yet in court it was red in colour; that the accused's confession before the police is of no evidentiary value; that the time frame of one hour to leave the factory and travel to collect the accused from an unknown location then take him to another location and murder him in broad day light in front of shops and then travel back home and change his clothes and return to the factory seems in our view to be some what unrealistic. In our view this may have taken at least up to two hours as opposed to the one hour indicated by the PW's.

28. There are also some other holes in the prosecution case in that no independent witness from the shop (Bismillah Kiyana Store) where the murder allegedly took place outside of came forward as a PW especially as this was a day time incident and it was busy at that time; that three different scenes of the incident have been given by 3 different PW's (complainant states Bilal Coloney, PW 4 Noor ul Amin states Sherpao

Coloney and PW 6 Naik Muhammed states Muslimabad Coloney); the wardat was inspected by PW 07 Ghulam Mustafa who was the first IO on the pointation of the complainant but since the complainant was not an eye witness how did he know where the wardat was?; that no blood stained earth or any other blood was recovered from the place of wardat which seems odd if the accused's face and clothes were blood stained and the deceased was shot in the head there; that no sketch of the wardat was made by the tapedar

29. Thus, we cannot find any evidence to corroborate the last seen evidence and under these circumstances whilst also taking into account the other anomalies mentioned above and the law mentioned earlier in this judgment namely, **Fayyaz Ahmed's case** (Supra), **Muhammad Abid's case** (Supra) as once we ruled out the evidence of **PW 2 Muhammed Adnan** it is quite possible that any body could have murdered the deceased if the accused had dropped him off in this one hour window.

30. Under these circumstances based on the case of **Tariq Pervez V The State** (1995 SCMR 1345) which held that if there is a **single 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 which principle was recently reiterated by the Supreme Court in the case of **Abdul Jabbar V State** (2019 SCMR 129) and keeping in view the great caution which must be taken in relying on last seen evidence **and** that it requires independent corroborative evidence from an unimpeachable source which is not present in this case we hereby acquit the accused of the charge by extending to him the benefit of the doubt and set aside the impugned judgment and allow the appeal. The confirmation reference is answered in the negative and the appellant shall be released unless he is wanted in any other custody case.

31. The appeals and confirmation reference stand disposed of in the above terms.