IN THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Criminal Appeal No.S-69 of 2024
[Khushhal son of Ratno v The State

Criminal Appeal No.S-92 of 2024
[Partab son of Ratno v The State
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Mr. Girdhari Lal, Advocate for the Appellants.
Mr. Sarfaraz Ali Talpur, Advocate for the Complainant.
Mr. Shahzado Saleem, Additional Prosecutor General (Sindh).
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Date of Hearing: **20.11.2025**

Date of Judgment: **09.12.2025**
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JUDGMENT

Shamsuddin Abbasi, J. Through their respective appeals, Khushhal son of Ratno and Partab son of Ratno, appellants, have called into question the validity of the judgments dated 06.08.2019, penned down by the learned Additional Sessions Judge-I /Model Criminal Trial Court, Mirpurkhas, in Sessions Case No.218-A of 2014 and Sessions Case No.218 of 2014 (FIR No.67 of 2014) registered at Police Station Kot Ghulam Muhammad, District Mirpurkhas, through which they were convicted under Section 302(b), PPC, and sentenced to imprisonment for life and to pay a sum of Rs.2,00,000/- each as compensation to the legal heirs of deceased in terms of Section 544-A, Cr.P.C. and to suffer simple imprisonment for a further period of six months in lieu of amount of compensation, however, the benefit in terms of Section 382-B, Cr.P.C. was extended to the appellants.

2. Complainant Arbab son of Bachoo is the father of deceased Dilbar. He stated that on 27.06.2014 at about 9:00 pm he was present outside his house along with his son Dilbar, his son-in-law Ghulam Hussain and his brother Muhammad Salah. At that time, accused Partab and Khushhal arrived there. Partab informed them that his wife is ill and requested a sum of Rs.3,000/-, upon which the complainant handed over the requested amount. Partab also requested Dilbar to accompany them for shifting his wife to the hospital in his rickshaw. Dilbar accordingly brought his rickshaw and left along with Partab and Khushhal. It is further stated that at about 11:00 pm the complainant attempted to contact Dilbar on his mobile phone, which was found switched off. Concerned, they searched for Dilbar and made inquiries from the people of the locality. On 28.06.2014, their relative Sher Khan, a rickshaw driver, informed the complainant that he had received

a phone call regarding a dead body of an unknown person lying in Daleri Shakh. The complainant party went to the spot and identified the body as that of Dilbar bearing injuries on the neck and other parts of the body caused by a sharp-cutting weapon. The police on information reached the spot, shifted the body to Taluka Hospital, Kot Ghulam Muhammad, and after post-mortem examination handed over the dead body to complainant and after completion of funeral rites the complainant proceeded to the Police Station and lodged FIR on 29.06.2014 under Sections 302 and 34, PPC.

3. Pursuant to the registration of, the investigation was followed and in due course the challan was submitted before the Court of competent jurisdiction, whereby the appellants were sent up to face trial under the aforementioned Sections.

4. A formal charge in respect of offences punishable under Sections 302 and 34, PPC, was framed against the appellants, to which they pleaded not guilty and claimed to be tried.

5. At trial, the prosecution has examined as many as six witnesses. The gist of evidence, adduced by the prosecution, in support of its case, is as under:-

6. Complainant Arbab appeared as witness No.1 Ex.3, Sher Khan as witness No.2 Ex.4, Muhammad Saleh as witness No.3 Ex.5, Dr. Muhammad Ali as witness No.4 Ex.6, Arif Ali (Tapedar) as witness No.5 Ex.8 and SIP Fazal Hussain as witness No.6 Ex.12. All of them have exhibited certain documents in their evidence and were subjected to cross-examination by the defence. Thereafter, the prosecution closed its side vide statement Ex.14.

7. Statements of appellants Khushhal and Partab under Section 342, Cr.P.C. were recorded at Ex.18 and Ex.19, respectively. They denied all allegations leveled against them by the prosecution, professed their innocence and asserted that they had been falsely implicated by the complainant at the behest of one Asif, a landlord affiliated with PPP. They further stated that during the 2006 local body elections, they supported PPP, and during that period a quarrel had occurred between the workers of PPP and PML(N), resulting in injuries to persons from both sides including Mir Asif. According to them, Asif suspected that they in collusion with supporters

of PML(N) had caused him injuries, therefore he allegedly managed to involve them in this false case through his Kamdar Arbab (complainant). They, however, opted not to make a statement on Oath under Section 340(2), Cr.P.C. and did not produce any witness in their defence.

8. Upon culmination of the trial, the learned Trial Court found appellants guilty of the offences charged with and, thus, convicted and sentenced them as detailed in para-1 (supra), which necessitated the filing of the listed appeal.

9. It is contented on behalf of the appellants that they have been falsely implicated in this case at the instance of Mir Khalid, who is a landlord and complainant is his Kamdar; that the incident is unseen and none has come forward claiming to be the eye-witness of the incident; that there is delay of two days in lodgment of FIR and that too without any plausible explanation; that no independent witness has been produced by the prosecution in support of its case and the witnesses of last seen are interested and related to complainant as well deceased, hence their testimony cannot be termed as trustworthy and confidence inspiring; that they were inconsistent with each other rather contradicted on crucial points; that the medical evidence is not in consonance with the depositions of prosecution witnesses; that nothing incriminating has been recovered from the possession of the appellants and the alleged recoveries of churrie and hatchet are foisted one, moreover the alleged recovery does not advance the prosecution's case as the mashirs of recovery are related to complainant; that the learned trial Court did not appreciate the evidence adduced by the prosecution and defence taken by the appellants in line with the applicable law and surrounding circumstances and based its findings on misreading and non-reading of evidence and awarded conviction without application of a conscious judicial mind, hence the convictions and sentences awarded to the appellants, based on such findings, are not sustainable in law and liable to be set-aside and the appellants deserve to be acquitted of the charge and prayed accordingly.

10. The learned Additional Prosecutor General (Sindh), assisted by the learned counsel for the complainant, while controverting the submissions of learned counsel for the appellants has supported the impugned judgments to be based on fair evaluation of evidence and documents brought on record; that the witnesses of last seen evidence while appearing before the learned trial Court remained consistent on each and every material point and fully

involved the appellants in the commission of offence; they were subjected to lengthy cross-examination but nothing adverse to the prosecution story has been extracted; that the medical evidence is in line with the depositions of prosecution witnesses; that the prosecution in support of its case has produced last seen evidence, supported by the medical evidence and fully corroborated by the circumstantial evidence in the form of the recoveries of the churrie and hatchet, used in the commission of the offence; that the prosecution has successfully proved its case against the appellants beyond shadow of reasonable doubt, thus, the appeals, filed by the appellants, warrant dismissal and their convictions and sentences recorded by the learned trial Court are liable to be upheld and prayed for dismissal of the appeals.

11. I have heard the learned counsel for both the sides, given my anxious consideration to their submissions and also scanned the entire record carefully with their able assistance.

12. The deceased Dilbar is alleged to have been killed by the infliction of injuries with a sharp cutting weapon. The defence, on the other hand, has not disputed the fact of his unnatural death. They, however, maintained their innocence and stated that they have been falsely implicated in the case by the complainant at the instance of his landlord.

13. The prosecution's case rests primarily on "last seen" and other circumstantial evidence. The prosecution examined the complainant Arbab (PW-1, Ex.3) and Muhammad Saleh (PW-3, Ex.5) as witnesses to the last-seen circumstance. Admittedly, the complainant is real father of the deceased Dilbar and Muhammad Saleh is the deceased's paternal uncle and the complainant's brother, therefore, their testimony is interested and must be scrutinized with particular care and caution especially because the case carries capital punishment. A close analysis of their evidence discloses material contradictions between them and certain improvements in their statements. The complainant testified that on 27.06.2014 he was sitting on the street outside his house along with his son Dilbar, his brother Muhammad Saleh and his son-in-law Ghulam Hussain. At about 9:00 pm the accused Partab and Khushhal arrived there. Partab informed him about illness of his wife and requested him to pay Rs.3,000/-, which the complainant paid. Thereafter, both accused went away along with his son Dilbar in his rickshaw. On the other hand, his brother Muhammad

Saleh though supported the complainant on other aspect did not state that they were sitting on the street at the relevant time nor did he make any mention of the payment of Rs.3,000/- allegedly made by the complainant to the accused. According to Muhammad Saleh, they informed the villagers and their relatives regarding Dilbar's disappearance and also contacted the accused, who merely kept them on false hopes. However, the complainant did not state in his examination-in-chief that they had contacted the accused during the search and only disclosed the same during his cross-examination. Likewise, the complainant deposed that after the post-mortem, the police handed over Dilbar's body to him, whereas his brother Muhammad Saleh has claimed that he received the dead body of Dilbar and signed the relevant receipt. The complainant, during cross-examination, stated that Sher Khan personally came to inform him about the dead body. This assertion contradicts the version in the FIR, which records that Sher Khan had conveyed the information on phone and also departs from his own examination-in-chief wherein he stated that on 28.06.2014 at about 6:00 pm Sher Khan had informed him on phone. On the other hand, Muhammad Saleh has stated in cross-examination that he and the complainant were sitting together when Sher Khan informed them by phone about the dead body of an unknown person. Further inconsistency emerges regarding the phone calls made to Dilbar by complainant. The complainant has stated that he had called his son at about 11:00 pm whereas his brother has stated that they made the call at late hours of the night.

14. A comparative assessment of the last seen evidence furnished by the complainant Arbab and his brother Muhammad Saleh when examined alongside the deposition of Sher Khan (PW-2, Ex.4) reveals that they have presented divergent and mutually contradictory versions thereby undermining the foundation of the prosecution case. Sher Khan in his examination-in-chief has deposed that on 28.06.2014 he received a phone call from complainant who enquired from him whether Dilbar had come to his house to which he replied in the negative. On the other hand, the witnesses of last seen namely, complainant and Muhammad Saleh, did not state anywhere in their depositions that they had contacted Sher Khan to inquire about Dilbar. Sher Khan has further deposed that at sunset on 28.06.2014 he received a phone call from an unknown person informing him that the dead body of an unidentified person was lying in the bhadda of Daleri Shakh and that he thereafter conveyed this information to

complainant. The complainant, however, stated that he received Sher Khan's phone call regarding the availability of a dead body at around 6:00 pm. Sher Khan has also stated that immediately after he informed the complainant about the dead body, the complainant narrated the entire background story to him. The complainant, however, did not state narration of any such details rather he stated that upon receiving Sher Khan's phone call, he simply informed him that Dilbar was also missing. This version of the complainant is supported by Muhammad Saleh, who deposed that the complainant informed Sher Khan about Dilbar's disappearance only. According to the complainant he was the one who informed the police about the recovery of his son's dead body and Muhammad Saleh has corroborated this by stating that upon reaching the place where the body was lying they informed the police. Sher Khan, however, did not identify the complainant as the person who informed the police and he stated only that someone from among them had conveyed the information. These material discrepancies and mutually destructive contradictions emerging from the testimonies of the last seen witnesses and PW.2 Sher Khan strike at the very root of the prosecution's narrative. Where the entire case is founded upon circumstantial evidence, the law requires that every link in the chain must be proved through trustworthy, consistent, and confidence inspiring testimony. However, the divergent accounts regarding the complainant's communication with Sher Khan, the time and manner in which information about the deceased was exchanged and the identity of the person who informed the police, not only remain unexplained by the prosecution but also negate the possibility of forming an unbroken chain of circumstances pointing unerringly towards the guilt of the accused. Such contradictions, being material in nature, erode the credibility of the last seen evidence and render the prosecution case extremely doubtful. The Hon'ble Supreme Court in the case of *Fayyaz Ahmad v The State* (2017 SCMR 2026) has laid down certain principles for guidance while deciding cases based on the last seen evidence. Some of the principles befitting the circumstances of this case are reproduced below.

> *"Quick reporting of the matter without any undue delay was essential, otherwise the prosecution story would become doubtful for the reason that the last seen evidence was tailored or designed falsely to involve the accused person.*
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> *Last seen evidence must be corroborated by independent evidence, coming from an unimpeachable source because uncorroborated last seen evidence was a weak type of evidence in cases involving capital punishment".*

15. As regards the prompt reporting of the matter, suffice it to observe that although the alleged occurrence took place on 27.06.2014 at about 9:00 pm when the accused persons purportedly took Dilbar with them, his dead body was recovered the next day on 28.06.2014 at around 6:45 pm despite the FIR was lodged on 29.06.2014 at 1:00 pm reflecting an unexplained delay of more than 18 hours from the time the dead body was recovered. It is also significant to note that the police took custody of the dead body on 28.06.2014 at 7:45 pm and shifted it to the hospital in the presence of the complainant, yet during entire intervening period the complainant did not make any attempt to have his statement recorded under Section 154, Cr.P.C. nor did the police deem it appropriate to record the same. This unexplained delay in setting the criminal law into motion casts a serious doubt on the veracity of the prosecution version. The Hon'ble apex Court, in absence of any plausible explanation, has always considered the delay in lodgment of FIR to be fatal and castes a suspicion on the prosecution story, extending the benefit of doubt to the accused. It is a well-settled principle of law that 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. If there is any delay in lodging of a FIR and commencement of investigation, it gives rise to a doubt, which, of course, cannot be extended to anyone else except to the accused. Reliance in this behalf may well be made to the case of *Zeeshan @ Shani v The State* (2012 SCMR 428) wherein it has been held that *"delay of more than one hour in lodgment of FIR give rise to an inference that occurrence did not take place in the manner projected by prosecution and time was consumed in making effort to give a coherent attire to prosecution case, which hardly proved successful".* In another case reported as 2010 SCMR 97 *(Noor Muhammad v The State)* it has been held that *"when the prosecution could not furnish any plausible explanation for the delay of twelve hours in lodging the FIR, which time appeared to have been spent in consultation and preparation of the case, the same was fatal to the prosecution case".* I am, thus, of the view that the explanation furnished by the prosecution in lodgment of FIR after two days of the incident and more than 18 hours of recovery of dead body is not plausible, benefit whereof must go to the appellants.

16. Insofar as the principle that last seen evidence must be corroborated by independent and reliable material, it is sufficient to observe that the entire edifice of the prosecution case rests upon the testimony of

complainant Arbab (PW.1 Ex.3) and Muhammad Saleh (PW.3), who are not only closely related to each other but also to the deceased. It is difficult to comprehend how no independent witness was available at the time of the recovery of the dead body or when site inspection was being conducted. On the contrary, the witnesses of the last seen as well as PW.2 Sher Khan have admitted that some many persons were gathered before their arrival at the place where the dead body was lying. Although it is true that people generally avoid involvement in matters relating to Courts and police, the record does not indicate that the police made any sincere or meaningful effort to persuade any resident or member of the public to act as a witness. There is no material to suggest that any attempt was made to secure independent corroboration. The manner in which the investigation was conducted reflects a purely mechanical approach, devoid of the requisite diligence expected in a murder case. In such a backdrop, the last seen evidence, adduced by the prosecution, by itself, is insufficient to sustain a conviction. Where the witnesses are related to the deceased, independent corroboration becomes all the more necessary before reliance may be placed on such evidence. It is a settled proposition that last seen evidence is a weak type of circumstantial evidence and cannot on its own form the basis for conviction in a charge of murder without strong circumstantial support. Reliance in this behalf may well be made to the case of *Mazhar Hussain v. The State* (PLJ 2015 Cr.C. 207), wherein it has been held as under:-

> *"Last seen evidence is a weak type of evidence unless corroborated with some other piece of evidence which is conspicuously missing in instant case. Last seen evidence can be procured at any time during investigation if direct evidence is not available to prosecution".*

17. Turning to the circumstantial evidence, the prosecution has claimed that on 29.06.2014 the appellants/accused Partab and Khushhal, during interrogation, agreed to recover the crime weapons and voluntarily led the police party to the pointed place, wherefrom a chhurri and a hatchet were allegedly recovered and also produced their blood-stained clothes in the presence of mashirs Muhammad Saleh and Ghulam Hussain. It is worth noting, however, that the appellants were already in police custody at the time of these alleged recoveries. Despite this no independent person was associated with the recovery proceedings neither from the police station nor from the way leading to the place of pointation nor even from the place of recovery itself. In these circumstances, the contention raised by learned counsel for the appellants that the recoveries have not been proved through reliable and confidence inspiring evidence and that conviction based on such

doubtful evidence is unsustainable appears to be well founded. The prosecution was required to offer a plausible explanation that genuine efforts were made to associate an independent witness, particularly when the appellants had specifically denied the recoveries. Where sufficient opportunity was available to join an independent person to witness the recovery proceedings, but no attempt was made by the police to persuade any local resident or member of the public, the failure to do so casts serious doubt on the veracity of the alleged recoveries. Furthermore, the blood stained earth, allegedly secured on 28.06.2014 during site inspection as well as the clothes of the deceased and that of the appellants were forwarded for chemical analysis only on 16.07.2014 after an unexplained delay of 18 days. Such a delay, without any plausible or justifiable explanation, raises a serious question regarding the safe and secure custody of churrie and hatchet and other case property from the date of recovery until their dispatch to the office of Chemical Examiner. No evidence has been produced to show that the chhurri, hatchet or any other case property was promptly dispatched for examination. The prosecution has also failed to produce Register No.19, the Malkhana Register, which is a vital document for establishing the safe custody and safe transmission of the case property. Its non-production has caused a serious dent in the prosecution case. It is a settled proposition that where the best available evidence is withheld, the Court may draw an adverse inference under Article 129(g) of the Qanun-e-Shahadat Order, 1984, that had such evidence been produced, it would have gone against the prosecution. This omission, therefore, creates substantial doubt regarding the genuineness of the alleged recoveries. Reliance in this behalf may well be made to the case of *Samandar @ Qurban and others v. The State* (2017 MLD 539 Karachi). In the said case, while dealing with the violation of Section 103, Cr.P.C. and the delay in sending the case property, this Court has observed as under:—

> *"Apart from above sending of crime weapon to ballistic expert for forensic report with delay of 20 days of their recovery also added further doubt into the prosecution case, thus in view of above coupled; with non-compliance of section 103, Cr.P.C., it can safely be presumed that alleged recovery of crime weapon was not made from the possession of the appellants as alleged by the prosecution."*

18. There is yet another material infirmity in the prosecution case. The case property viz chhurri and the hatchet, alleged to have been recovered on the pointation of the appellants on 29.06.2014, was dispatched to and received by the office of the Chemical Examiner after an unexplained delay

of 17 days. In such a background, two possible interpretations emerge first that the alleged weapons remained un-tampered and second that they were not kept in safe custody and may have been tampered with. It is a settled principle of criminal jurisprudence that where two interpretations of the evidence are reasonably possible, the one favourable to the accused must be preferred. Consequently, the positive report regarding the case property viz churrie and hatchet having been received after an undue and unexplained delay does not advance the prosecution case and was wrongly relied upon by the learned trial Court. The prosecution has failed to establish through cogent and confidence inspiring evidence the safe custody of the case property and its secure transmission to the concerned office. Thus, the alleged recovery of churrie and hatchet, on the face of it, appears doubtful in view of the law laid down by the Hon'ble Supreme Court in the case of Kamal *Din alias Kamala v. The State* (2018 SCMR 577) and *Ikramullah & others v. The State* (2015 SCMR 1002), wherein it has been held as under:—

> *"In the case in hand not only the report submitted by the Chemical Examiner was legally laconic but safe custody of the recovered substance as well as safe transmission of the separated samples to the office of Chemical Examiner had also not been established by the prosecution. It is not disputed that the investigating officer appearing before the learned trial court had failed to even to mention the name of the police official who had taken the samples to the office of the Chemical Examiner and admitted no such police official had been produced before the learned trial Court to depose about safe custody of the samples entrusted to him for being deposited in the office of the Chemical Examiner. In this view of the matter the prosecution had not been able to establish that after the alleged recovery the substance so recovered was either kept in safe custody or that the samples taken from the recovered substances had safely been transmitted to the office of the Chemical Examiner without the same being tampered with or replaced while in transit".*

19. Insofar as the contention of the learned Additional Prosecutor General that the recovery of the chhurri and hatchet on the pointation of the appellants, coupled with the positive report of the Chemical Examiner, conclusively establishes their involvement in the murder of Dilbar. It is sufficient to observe that for the reasons discussed hereinabove, the report of the Chemical Examiner has lost its evidentiary sanctity and cannot be safely relied upon. Moreover, it is by now a well settled principle of criminal jurisprudence that the recovery of crime weapons, earth samples, blood stained clothes or similar articles is merely a corroborative piece of evidence. Such evidence standing alone is never sufficient to bring home the charge against an accused particularly when

the other material relied upon by the prosecution to establish the guilt of the appellants has already been disbelieved. Reliance in this regard may well be placed to the case of *Imran Ashraf and 7 others v. The State* (2001 SCMR 424), wherein the Hon'ble Supreme Court held as under:—

> *"Recovery of incriminating articles is used for the purpose of providing corroboration to the ocular testimony. Ocular evidence and recoveries, therefore, are to be considered simultaneously in order to reach for a just conclusion."*

20. Another intriguing aspect of the matter is that the prosecution did not exhibit the case property in evidence as "articles." The prosecution merely produced the case property at the time of recording evidence and the recovery mashir identified the same. It is noteworthy that the learned trial Court neither specifically marked the case property as "articles" nor mentioned each item of case property produced during the trial. A careful examination of the testimony of PW.3 Muhammad Saleh, who is one of the recovery mashirs, reveals that he identified the case property only by stating that the case property present in Court is the same, however, even then such case property has not been shown to the appellants at the time of recording their statements under Section 342, Cr.P.C. The present case is one involving a capital sentence and the prosecution has heavily relied upon the positive report of the Chemical Examiner. It is a well-settled principle of criminal law that every material piece of evidence relied upon by the prosecution must be put to the accused during recording of his statement under Section 342, Cr.P.C. so as to provide him an opportunity to explain his position. Denial of such an opportunity defeats the ends of justice. It is apparent that the learned trial Court did not perform its functions diligently and dealt with the matter in a casual manner while awarding the punishment of imprisonment for life coupled with compensation under Section 544-A, Cr.P.C. I am genuinely shocked by the cursory manner in which the learned trial Court handled the recording of the appellants' statements under Section 342, Cr.P.C. which statements are completely devoid of the necessary details that ought to have been put to the appellants. It goes without saying that the omission on the part of the learned trial Court was not a mere irregularity but one that vitiated the conviction of the appellants particularly when the other material relied upon by the prosecution to establish their guilt has already been disbelieved. The Hon'ble Supreme Court in the case of *Muhammad Nawaz and others v. The State and others* (2016 SCMR 267) has observed as under:—

> *…….There is yet another aspect of the case. While examining the appellants under section 342, Code of Criminal Procedure, the medical evidence was not put to them. It is well settled by now that a piece of evidence not put to an accused during his/her examination under section 342, Code of Criminal Procedure, could not be used against him/her for maintaining conviction and sentence".*

Thus, it is held that the prosecution case rests upon very weak circumstantial evidence, which cannot be relied upon in a casual manner to convict the appellants merely on the basis of last seen evidence. In this regard, guidance may be taken from the case of *Fayyaz Ahmad* (supra), wherein it has been held that:—

> " *To believe or rely on circumstantial evidence, the well settled and deeply entrenched principle is that it is imperative for the Prosecution to provide all links in chain an unbroken one, where one end of the same touches the dead body and the other the neck of the accused. The present case is of such a nature where many links are missing in the chain.*
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> *To carry conviction on a capital charge it is essential that courts have to deeply scrutinize the circumstantial evidence because fabricating of such evidence is not uncommon as we have noticed in some cases thus, very minute and narrow examination of the same is necessary to secure the ends of justice and that the Prosecution has to establish the case beyond all reasonable doubts, resting on circumstantial evidence. "Reasonable Doubt" does not mean any doubt but it must be accompanied by such reasons, sufficient to persuade a judicial mind for placing reliance on it. If it is short of such standard, it is better to discard the same so that an innocent person might not be sent to gallows. To draw an inference of guilt from such evidence, the Court has to apply its judicial mind with deep thought and with extra care and caution and whenever there are one or some indications, showing the design of the Prosecution of manufacturing and preparation of a case, the Courts have to show reluctance to believe it unless it is judicially satisfied about the guilt of accused person and the required chain is made out without any missing link, otherwise at random reliance on such evidence would result in failure of justice".*

21. Another intriguing aspect of the matter, which is of immense importance is that Ghulam Hussain, who alleged to be one of the last seen witnesses has not been examined by the prosecution and was given up merely on the ground that Muhammad Saleh, the other last seen witness, has already been examined. I am, therefore, of the view that the prosecution withheld a best available piece of evidence and in view of Article 129(g) of the Qanun-e-Shahadat Order, 1984, an adverse inference can safely be drawn against the prosecution that had this witness been produced before the learned trial Court, he would not have supported the

prosecution case. Guidance in this regard is drawn from the cases of *Lal Khan v. The State* (2006 SCMR 1846), *Muhammad Rafique and others v. The State and others* (2010 SCMR 385) and *Muhammad Asif v. The State* (2017 SCMR 486). In the recent case of *Muhammad Asif* (supra), the Hon'ble Supreme Court of Pakistan is pleased to observe as under:—

> *"9. In our considered opinion these two independent witnesses could provide the first degree of evidence of reliable nature, thus, adverse inference has been drawn that because they were not supporting the prosecution so set up, therefore, they were dropped at the trial. In this way, the best evidence, independent in nature, was withheld from the Court for obvious reasons. This fact by itself is sufficient to discard the evidence of the interested and related witnesses because their evidence is not only of the second degree but also for the reason given above due to their unnatural conduct."*

22. The appellants, both during trial and in their statements recorded under the law took plea of their false implication by stating that they are the *Haris* of Mir Khalid Talpur, whereas the complainant is his "Kamdar", and this fact has also been admitted by the complainant in his deposition. According to the appellants, during the 2006 local body elections a quarrel took place between the workers of the PPP and PML(N) in which Mir Khalid sustained injuries and he allegedly suspected them of having colluded with PML(N) supporters in that assault and consequently managed to involve them in this false case through his Kamdar Arbab. Although the complainant denied this specific plea, he admitted in his cross-examination that immediately after the recovery of Dilbar's dead body, he spread the news throughout the locality that his brother has been murdered by Partab and Khushhal. The question then arises as to how the complainant came to know even before registration of FIR and the commencement of investigation that his brother has been murdered by the appellants. This fact, on the face of it, renders the prosecution's case extremely doubtful. When both versions, one put-forth by the prosecution and the other set-forth by the defence are considered in juxta position, the appellants' version seems to be more plausible, convincing and closer to the truth whereas the prosecution's account seems to be an afterthought and is riddled with doubt.

23. A motive is ordinarily set-forth in cases involving the charge of murder. In the present matter the deceased Dilbar had accompanied the appellants voluntarily and with the consent of the complainant party, which itself indicates that no enmity or ill-will existed between them. The complainant did not disclose any motive in the FIR, however, while

appearing before the learned trial Court he introduced a specific motive alleging that the accused being "haris" of Mir Khalid Talpur had been annoyed with him due to deduction of their wages by him. This improvement, in my humble view, amounts to nothing more than an attempt to strengthen the prosecution's case. The august Supreme Court in the case of *Akhtar Ali* (2008 SCMR 6) has held that when a witness improves his version to reinforce the prosecution such an improved statement cannot be relied upon as it reflects a dishonest attempt to modify the narrative. Consequently, the credibility of the witness becomes doubtful on the well-settled principle of criminal jurisprudence that deliberate and dishonest improvements cast serious doubt on the veracity of the witness. In these circumstances, the alleged motive remains shrouded in mystery.

24. In like cases the evidence produced by the prosecution must be so strong and unimpeachable that it begins from the toe of the deceased on one end and forms a firm and unbroken chain encircling the neck of the accused on the other. If the chain is incomplete or any reasonable doubt arises in the prosecution's case particularly when the edifice of the case is constructed upon feeble or shaky evidence such doubt is sufficient to demolish the entire structure and its benefit must be extended to the accused.

25. It is a well-settled principle of law that involvement of an accused in heinous nature of offence is not sufficient to convict him as the accused continues with presumption of innocence until found guilty at the end of the trial. All that may be necessary for the accused is to offer some explanation of the prosecution evidence against him and if this appears to be reasonable even though not beyond doubt and to be consistent with the innocence of accused, he should be given the benefit of it. The prosecution must establish its case on the strength of its own positive and affirmative evidence and not on the weakness, silence, or absence of any explanation from the accused. In the present case, the prosecution has failed to bring on record any convincing or reliable evidence. On the contrary, numerous circumstances, discussed hereinabove, create serious doubts about the prosecution's version striking at the very root of its case. Under the "golden principle" of giving the benefit of doubt even a single substantial doubt is sufficient to entitle the accused to acquittal. The rule pertaining to benefit of doubt is essentially a rule of prudence and cannot be ignored while administering justice in accordance with law. A conviction must rest upon

unimpeachable evidence and the certainty of guilt; any doubt arising in the prosecution case must be resolved in favour of the accused. This principle is anchored in the maxim that *"it is better that ten guilty persons be acquitted rather than one innocent person be convicted"* which occupied a pivotal place in the Islamic Law and is enforced strictly in view of the saying of the ***Holy Prophet (PBUH)*** that the *"mistake of Qazi (Judge) in releasing a criminal is better than his mistake in punishing an innocent".*

26. The epitome of the entire discussion leads to the conclusion that the appellants were convicted without a proper appreciation of the evidence in its true perspective. Rather, the prosecution's case is packed with multiple discrepancies and irregularities, entitling the appellants to the benefit of doubt. Consequently, the convictions and sentences awarded to the appellants through impugned judgments dated 06.08.2019, are set aside and the appellants are acquitted of the charge by extending them the benefit of doubt. They shall be released forthwith if not required to be detained in connection with any other case.

27. The instant Criminal Appeal S-69 of 2024 and Criminal Appeal No.S-92 of 2024 stand allowed in the foregoing terms.

JUDGE