IN THE FEDERAL SHARIAT COURT OF PAKISTAN

(Appellate Jurisdiction)

JUSTICE DR. FIDA MUHAMMAD KHAN
JUSTICE SYED MUHAMMAD FAROOQ SHAH

Cr. Appeal No.01/P of 2012

Arab Khan son of Malak Anwar Khan,
R/o village Larama, Tehsil & District Peshawar --------- Appellant.

Versus

1. Rajesh Masih son of Riasat Masih,
2. Amir Masih son of Munawar Masih,
3. Raheel Masih son of Liaquat Masih,
   All residents of Christian Colony Tehkal,
   Tehsil & District Peshawar.
4. The State ---------- Respondents.

Counsel for the Appellant	---	Mr. Hussain Ali, Advocate.
Counsel for the Respondents	---	Qazi Intikhab Ahmed, Advocate.
Counsel for the State.	---	Mr. Wilayat Khan, A.A.G, KPK.
FIR No, date & P.S	---	FIR No.50 dated 21.01.2010,
	---	P.S Tehkal, District Peshawar.
Date of impugned judgment	---	02.12.2011.
Date of institution	---	10.01.2012.
Date of hearing	---	05.10.2018.
Date of decision	---	05.10.2018.

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JUDGMENT

SYED MUHAMMAD FAROOQ SHAH, J.— The captioned appeal under Section 417 (2-A) Code of Criminal Procedure has been preferred by the Appellant/complainant Arab Khan, brother of deceased Sarmat

Khan, feeling aggrieved and dissatisfied from the acquittal judgment, pronounced on 02.12.2011 by the learned Additional Sessions Judge-IX, Peshawar, whereby all three respondents (accused) were acquitted from the charges levelled against them in the FIR No.50, dated 21.01.2010, registered under Section 17 (4) of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979, lodged at Police Station Tehkal, Peshawar. A prayer to set-aside the impugned judgment and to convict the respondents according to law has also been made.

2. Necessary facts for disposal of the instant appeal are that local police received information about the dead body lying at *Charmari Road*; on such information, they proceeded to the spot and found a dead body. Nobody was found present on the spot to report; the dead body was transferred to mortuary for post mortem examination and necessary *Murasila* was drafted and sent to the Police Station for registration of case, where a formal FIR was registered. Later, on dated 9.2.2010, the appellant recorded his statement under section 164 of the Code of Criminal Procedure and charged the accused persons for commission of the offence. The investigation was entrusted to PW.11 *Zarwali Khan* Police Inspector/SHO; on receipt of FIR, he proceeded to the spot and prepared the site plan (Ex.PW11/1) on pointation of the complainant; the blood stained earth was secured vide recovery memo (Ex.PW6/1); clothes of the deceased vide recovery memo (Ex.PW.6/2-3); he arrested the accused *Rajesh Masih* and *Raheel Masih* vide memo (Ex.PW.11/4) and recorded the statement of the Appellant / complainant Arab Khan under section 164 Code of Criminal Procedure vide his application

(Ex.PW11/5); he took the physical custody/remand of the accused persons and on pointation of accused *Raheel Masih,* he secured the incriminating weapon, i.e. .30 bore pistol vide recovery memo (Ex.PW8/1); he then secured the robbed motor car from PW *Allah Ditta* vide recovery memo (Ex.PW2/1); statement of *Allah Ditta* under section 164 Code of Criminal Procedure was recorded and thereafter all accused persons were produced for recording their confessional statements before the Magistrate, vide his application (Ex.PW1/1); only *Rajesh Masih* confessed his guilt before the Magistrate and remaining two accused have denied their participation in commission of the offence. The Investigating Officer on receipt of Chemical Examiner Report (Ex.PW11/10), recorded the statements of PWs and after completion of the investigation, handed over the case file to the CIO for submission of the final report under section 173 Code of Criminal Procedure before the court.

3. The challan was accepted under section 17 (4) of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979 against all the three accused and after complying codal formality under section 265 (c) Code of Criminal Procedure, the accused were charged for the offence under section 17 (4) of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979, to which they pleaded not guilty and professed their innocence.

4. To substantiate their contention, the prosecution examined as many as 13 witnesses from the calendar of 17 witnesses in all. On conclusion of prosecution evidence, statements of the accused persons were recorded under section 342 Code of Criminal Procedure; and after

affording opportunity of hearing to both sides, the impugned judgment was pronounced by the trial court.

5. Arguments advanced by Mr. Hussain Ali, learned counsel for the appellant/complainant and Qazi Intikhab Ahmed, learned Advocate for the respondents in detail are considered. The impugned judgment as well as the record has carefully been scanned by us with the able assistance rendered by the learned counsel for the parties. Conversely, Mr. Wilayat Khan, learned Assistant Advocate General, *Khyberpukhtun Khwa* representing the State, supported the instant appeal to the extent of Rajesh, the Respondent No.1, as according to his contention, the respondent *Rajesh Masih* has voluntarily admitted the commission of offence in his confessional statement (Ex.PW.7/1) recorded under section 164/364 of the Code of Criminal Procedure.

6. It is an admitted position that the prosecution did not adduce ocular testimony being a case of unseen incident and that the case of prosecution hinges on circumstantial evidence and confessional statement of the accused/Respondent No.1, recorded on 11.2.2010 by Mr. Qudratullah, ld: Judicial Magistrate Ist-Class, Peshawar. As per Prosecution version, during interrogation in custody, the incriminating weapon viz pistol allegedly used in commission of the offence and cellular phone of deceased on pointation of accused *Rajesh Masih* were secured from his house. Remaining two Respondents have refused to confess their involvement in commission of offence; moreso, nothing was recovered from their possession. The robbed motor car No.205/FDO Khyber of white colour was recovered from PW *Allah Ditta* but

surprisingly neither he was arrayed as an accused in this case nor he was examined as a witness.

7. Mr. Hussain Ali, learned advocate, representing the Appellant / complainant argued that the Respondents / accused are involved on the basis of strong circumstantial evidence; more particularly accused *Rajesh Masih* during his confessional statement has fully furnished the account of his involvement as well as involvement of co-accused in the incident; the learned counsel contended that the testimony of prosecution witnesses was sufficient to convict all three accused as there was unbroken chain of the circumstantial evidence, coupled with confessional statement of one of the accused and such evidence produced by the prosecution has not been considered in its true perspective. Learned counsel next argued that the impugned judgment is result of complete misreading of evidence indicting great miscarriage of justice in reasons and conclusion arrived at by the trial court. Per learned counsel, the reasons of acquittal of the respondents/accused persons, recorded by the trial court appears to be whimsical and unwarranted under the law, based on surmises and conjectures, which have caused great miscarriage of justice.

8. Conversely, Qazi Intikhab Ahmed, learned counsel representing the respondents has fully supported the impugned judgment and submitted that the circumstantial evidence brought on record by the prosecution including the retracted confessional statement of one of the accused namely *Rajesh Masih,* suffering from infirmities, making sufficient room for reasonable doubt as to the involvement of the accused

in the commission of the alleged offence and that the so-called circumstantial evidence produced at the trial is contradictory, insufficient, defective and chain to connect the accused with their guilt was missing; more particularly, the accused being poor persons, were involved in a blind murder, and so-called confessional statement of accused *Rajesh Masih*, retracted by him, cannot be considered voluntarily one. Learned counsel argued that the recovered pistol on pointation of accused during custody has got no significance as the same was not sent to the ballistic expert for getting his opinion regarding its function or use. In support of his contentions, the learned counsel placed reliance on Reported cases ie . **1994 S C M R 1928** (*Muhammad Iqbal V Abid Hussain alias Mithu and six others*), ii**. 1988 S C M R 1532** (*Dosa V The State*), iii. **1995 SCMR 896** (*Zafar Hayat V The State*), iv. **PLD 1991 S C 447** (*Waqar Zaheer V The State*), v**. 2008 S C M R 1064** (*Ghulam Akbar and another V The State*) and vi. **1974 P. Cr. L.J 164** (*Muhammad Hussain and 3 others V The State*).

It was contended by Qazi Intikhab Ahmed, the learned counsel representing the respondents that in absence of any direct and circumstantial evidence lending support to material particulars mentioned in the confessional statement, the trial court has correctly disbelieved implication of accused; more particularly, motive and lack of voluntariness in its true account was missing. Moreso, no direct evidence was available against the respondents and the witnesses of recovery of incriminating crime weapon as well as the robbed articles were not inspiring confidence; so much so that the robbed motor car No.205/FDO

Khyber of white colour, allegedly recovered from PW Allah Ditta, who was neither joined an accused nor his evidence as a prosecution witness was recorded. Learned counsel further contended that the most striking feature of this case is that all recoveries have been affected in questionable circumstances as in fact nothing was brought on record to prove ownership of the car recovered from the possession of PW Allah Ditta, who received and retained stolen property transferred by commission of robbery, knowingly that the persons from whom he had received the stolen motor car have snatched from the deceased.

9. We have scanned the findings given by the trial court while keeping in mind the criteria to upset the acquittal based on evidence leading to miscarriage of justice ***or*** that the impugned judgment is based upon surmises, suppositions and conjectures and the acquittal is result of reasons which do not appeal to a prudent mind. It is well settled principle of law that extraordinary remedy of an appeal against acquittal is quite different from an appeal directed against the findings of conviction and sentences. The appellate jurisdiction under section 417 Code of Criminal Procedure can be exercised by this Court if gross injustice has been done in the administration of criminal justice. The scope of appeal against acquittal is considerably limited because presumption of double innocence of the accused is attached to the acquittal.

10. Neither this case rest on ocular testimony nor this was a case of last seen evidence, as admittedly it was a blind occurrence with no direct evidence. The entire case hinges on circumstantial as well as

confessional statement of the respondent / accused *Rajesh Masih* who retracted the same firstly by pleading not guilty to the charge and then again in his statement recorded under section 342 of the Code of Criminal Procedure, wherein he has vehemently denied in detail to confess his guilt. Before dilating upon the legal authenticity of retracted confessional statement of Respondent No.1 and circumstantial evidence brought by the prosecution on record, we deem it fit and proper, for the sake of administration of justice to highlight briefly, the events of the case in hand.

11. The date of occurrence as shown in the prosecution case is 21.1.2010 and PW Arab Khan, brother of deceased in his statement recorded under section 164 Code of Criminal Procedure on 9.2.2010, i.e. after about 20 days, charged the accused persons without showing any source of information and clue, stated that:-

"***We tried our best to find out the accused and now I have come to the definite conclusion without any shadow of doubt that my brother late Sarmast Khan was murdered by one Rajesh Masih son of Riasat Masih, Raheel son of Liaquat Masih and Amir son of Munawar Masih and they snatched from him motor car, mobile and cash amount".***

12. The learned trial court in paragraphs No.10 and 11 of the impugned judgment thoroughly discussed and discarded the evidentiary value of the confessional statement of one of the respondent namely *Rajesh Masih* as well as circumstantial evidence with regard to the

recovery of incriminating weapon and mobile phone. A perusal of record reflects that in his statement under section 164 of the Code of Criminal Procedure, recorded after 20 days of the incident, the appellant/complainant involved all the accused by name with parentage without showing any source of information. His cross examination was reserved and thereafter the accused were not afforded opportunity to cross examine him though all the accused were involved on the strength of unknown source / clue which was not unveiled during trial. *Questionnair*e (Ex.PW7/1) annexed with the confessional statement reveals that in reply to *question No.4*,which reads that, "***Have you been subjected to any torture, treat or force or given any inducement for making the confession?***, accused Rajesh replied in affirmative by stating that, "***Yes I was subjected to physical torture by police***." Moreso, in reply to question No.8, the accused stated that he was kept in police custody for **three days**. The above replies of the accused brushed aside the voluntariness of the so-called confessional statement reproduced hereinbelow:-

مورخہ01.2010-21/20 کو رات تقریبا 9.45 تا 10.30 بجے میں اپنے گھر واقع کرسچن کالونی تہکال سے نکلا اور ارباب روڈ سے ایک گاڑی دو صد روپے کرائے پر بک کرائی ، ڈرائیو ر کو میں نے بتایا کہ پہلے کرسچن کالونی جانا ہے اور وہاں سے د و تین دوستوں کو ساتھ لینا ہے ، راستے میں آتے ہوئے میں نے ڈرائیور کو پیچھے سے سر پر ایک گولی مار دی ، جس سے ڈرائیور موقع پر فوت ہوگیا ، میں گاڑی کو بیچنے کے لئے اسلام آباد لے گیا ، لیکن کسی نے گاڑی ہم سے نہیں خریدی ، ہم گاڑی پہلے اپنے ایک دوست اللہ دتہ کے پاس لے کے گئے اور پھر اسکے ایک دوسرے بندے فردوس کے پاس لے گئے ، گاڑی تقریبا ایک ہفتہ تک اللہ دتہ کے پاس رہی ، اس کے بعد اسلام آباد پولیس نے پکڑلی ، اور اللہ دتہ کو بھی پولیس نے گرفتار کر لیا تھا ، جس کے بعد اللہ دتہ کے بتانے پر تہکال پولیس والوں نے مجھے گرفتار کر لیا ،

Bare reading of above statement of the accused does not show that as to whether the deceased was driving the vehicle when he was done to

death by firing a bullet shot from back of his head and that at the time of occurrence, the said accused was accompanied with two other co-accused or not. It is also not clear as to whether he had thrown the dead body of the deceased on the spot. The second part of above statement reflects that the robbed vehicle was lying with his friend namely *Allah Ditta* and it was recovered by the police from Allah *Ditta* and on his disclosure, he (accused Rajesh) was arrested. From perusal of record, it appears that *Allah Ditta*, from whose possession the robbed vehicle was recovered, has neither been joined as an accused nor was he put in the witness box by the prosecution, although his statement under section 164 Code of Criminal Procedure was recorded and cross examination was reserved. His statement recorded under section 164 Code of Criminal Procedure available in the original record of the trial court at page No.114, transpires that the motor car was lying with him and *Rajesh Masih* asked him on phone to bring the said car to Police Station Tehkal and he took the same to the police station where he came to know that all three accused had committed the murder of a person and snatched the motor car No.205/FDO Khyber. He further stated that the robbed motor car was lying with him from 21.1.2010 till recording his statement on 10.2.2010, i.e. far about 20 days. As per prosecution story PW *Allah Ditta*, dishonestly received and retained the alleged robbed vehicle. He was having participation in robbery, punishable under section 412 of the Pakistan Penal Code, should have been made an accused; more particularly, he admitted his role and participation with regard to dishonestly receiving the robed property. However, such point has not

been agitated before us at the time of worthy arguments advanced by the learned counsel for the parties, we therefore, refrain ourselves to the extent of averments of the instant appeal filed under section 417 Code of Criminal Procedure.

13. So far as appraisal of prosecution evidence is concerned, suffice it to say that the Investigating Officer PW.11 Zarwali Khan Inspector/SHO admitted in cross examination that:-

"*It is correct that during investigation I did not sent the recovered pistol to Fire Arm Expert in order to ascertain whether it was capable of firing or not. It is also correct that I did not sent the recovered pistol to FSL in order to ascertain whether any firing was made from the said pistol or not. It is also correct that I did not sent the said recovered pistol to the Finger Print Expert in order to ascertain the finger prints of the accused Rajesh and others*.... *"* He further admitted that at the place of recovery of pistol and Mobile telephone, people of the locality were present but he did not record their statement. He admitted in cross-examination that, **"*It is correct that the motor car Khyber of white colour bearing registration No.205/FDO was handed over to me by Allah Ditta on 10.2.2010 in P.S".*** He has further clarified in cross-examination that *"**The brother of decd: namely Arab Khan did not state to me during the investigation in his statement under section 164 Code of Criminal Procedure regarding the source of satisfaction that how he came to know regarding the names ,parentage and residence of accused*".** We have no hesitation to observe, in peculiar

circumstances of the case that the alleged recovery of incriminating crime weapon and Mobile, made on pointation of the Respondent No.1 in the clutches of police seems that the same have been effected under duress and coercion.

14. The confessional statement of one of the respondent namely *Rajesh Masih* cannot be considered free from extraneous influences such as threat, promise or inducement and therefore it is neither made voluntarily, suffers from various defects and infirmities nor it is true statement which was retracted by the above named accused; enough to make it involuntary and diminish its intrinsic value. We are of the considered opinion that the confession of the appellant is not worth reliance. It is well settled principle of law that the retracted confessional statement if not made voluntarily has got no legal authenticity in the eyes of law, therefore, the impugned judgment delivered by the trial court is neither perverse nor is result of misreading of evidence leading to the miscarriage of justice. The case law relied upon by the learned counsel for the respondents, is fully attracting in the peculiar facts and circumstances of the case in hand. The learned counsel for respondents has rightly argued that the prosecution evidence suffers from infirmities and improbabilities and could not be made a base for conviction of the respondents.

15. In the case of ***Muhammad Parvez & others..Vs..The State and others*** reported in **2007 S C M R 670,** the Hon'ble Supreme Court (***Shariat Appellate Jurisdiction***), set-aside the impugned judgment dated

14.11.2003 of learned Federal Shariat Court, whereby conviction and sentence awarded to the accused by the trial court was maintained. It may be advantageous to reproduce hereinbelow the relevant noting of the said reported judgment:-

> *"------Ss. 395, 396, 397, 412 & 148--- Criminal Procedure Code (V of 1898), S.164---Reappraisal of evidence---Judicial confession---Unexplained delay---Exculpatory statement---Return of accused to police custody after recording the confession---Accused, after their arrest, were subjected to torture and thereafter confessional was recorded before the Magistrate---Trial Court as well as Federal Shariat Court mainly relied upon the confessional statement of accused and convicted and sentenced them to life imprisonment---**Plea raised by accused was that confessional statement was recorded with unexplained delay and was a result of torture---Validity---Delay of over 24 hours would normally be fatal to acceptance of judicial confession and prosecution failed to explain the delay in recording of confessional statement---Such delay created doubt regarding confessional piece of evidence---Mere delay of 24 hours in recording confessional statements was not fatal but surrounding circumstances were also to be considered regarding believing or not believing confessional statement---Accused were tortured by police, therefore, courts below were not justified to come to the conclusion that confessional statement was voluntarily made by accused---**Accused, after recording of confessional statement were handed back to police, such type of confession was irrelevant---Accused remained in police custody before and after recording confession for 24 hours and Magistrate had taken only one hour to record confession of the accused, such type of confession would not fall in the category of*

voluntary confession---Both the courts below erred in law to accept confessional statement, which was exculpatory in nature.

16. It needs to be reiterated that extraordinary remedy of an appeal against an acquittal is quite different from an appeal preferred against the findings of conviction and sentence. Obviously, the appellate jurisdiction under Section 417 Code of Criminal Procedure. can be exercised by this Court if gross injustice has been done in the administration of criminal justice, more particularly, wherein, findings given by trial Court are perverse, illegal and based on misreading of evidence, leading to miscarriage of justice or where reasons advanced by trial Court are wholly artificial. Scope of appeal against acquittal of accused is considerably limited, because presumption of double innocence of the accused is attached to the order of acquittal as held in **2002 SCMR 713**. Order of acquittal passed by trial Court which is based on correct appreciation of evidence would not warrant interference in appeal. Accused earns double presumption of innocence with the acquittal; first, initially that till found guilty he has to be considered innocent; and second, that after his acquittal by trial Court further confirmed the presumption of innocence as held in **2012 P Cr. L J 1699 (FSC)** (*Said Rasool V Sajid and 3 others*), **2013 YLR 223** (*Mst. Zahida V Koki Khan and 2 others)*, **2011 P Cr. L J 1234** *Abdul Ghafoor V Zafid Wali.* **In 2013 P Cr. L J 374** (*Fateh Muhammad Kobhar v. Sabzal and 4 others*) it was held that appellate court would not interfere, unless misreading of evidence, violation of legal provisions, jurisdictional

defect; acquittal order on face of it being contrary was established (**2013 P Cr. L J 345 and PLJ 2009 FSC 284)** (*The State V Faisal Munir*). The appellate Court by exercising its powers under section 417 Code of Criminal Procedure, could interfere only if the order of acquittal is based on misreading, non-appraisal of evidence or/was speculative, artificial, arbitrary and foolish as held in **2008 MLD 1007** (*Safdar Abbas and 4 others V The State*). In **2002 MLD 293** (*Tanveer Hussain Shah V Chan Waiz alias Khal Shah and others)* and **2000 YLR 190** *(Khushi Muhammad V Muhammad Rafique and others*) the dictum as laid down is that the order of acquittal passed by the trial Court being balanced and well reasoned, would hardly call for interference of the appellate Court in appeal and similarly the appellate Court should not disturb acquittal if main grounds on which trial Court had based its acquittal order are reasonable and plausible, and cannot be entirely and effectively dislodged or demolished. we have already fortified our views in judgments, delivered earlier by us in likewise appeals against acquittal, more particularly, in **Criminal Appeal No.65/P of 2001,** decided on 1.10.2018, **Criminal Appeal No.41/P of 2005**, decided on 2.10.2018 and **Criminal Appeal No.22/P of 2010** decided on 04.10.2018 by us while placing reliance on the case law in such context, expounded in **AIR 1934 P C 227** (2) (*Sheo Swarup and others v. King Emperor,* (ii) **P L D 1985 S C 11** (*Ghulam Sikandar and another v. Mamraz Khan and others*), (iii) **PLD 1977 S C 529** (*Fazalur Rehman v. Abdul Ghani and another),* (iv) **P L D 2011 S C** 554 (*The State and others v. Abdul Khaliq and others),* (v**) P L D 2010 S C 632** (*Azhar Ali v. The State*),

(vi) **2002 S C M R** 261 (*Khadim Hussain v.Manzoor Hussain Shah and 3 others*), (vii) **P L J 2002 S C 293** (*Khadim Hussain v.Manzoor Hussain Shah and 3 others)* (viii) **2013 P.Cr.L.J 374** (*Fateh Muhammad Kobhar v. Sabzal and 4 others),* (ix) **2011 P.Cr.L.J 856 (FSC)** (*Mst. Salma Bibi v. Niaz alias Billa and 2 others),* (x) **PLD 1994 S C 31**, (*Ghulam Hussain alias Hussain Bakhsh and 4 others v. The State and another),* (xi) **2010 S C M R 1592** (*Qurban Hussain alias Ashiq v. The State*), (xii) **2017 S C M R 633** (*Intizar Hussain v. Hamza Ameer and others*). In the case of *Intizar Hussain v Hamza Amir and others,* reported in **2017 SCMR 633**, the Hon'ble Supreme Court held;-

نیز انصاف اور قانون کا مسلمہ اصول یہ ہے کہ اگر دو مختلف نوع کے رپورٹ یا شہادت فوجداری مقدمہ مثل میں آ جائے تو عدالت اس شہادت اور مواد کو ترجیح دے گی جو ملزم کو فائدہ دے ناکہ اس شہادت اور مواد کو جو کہ استغاثہ کے حق میں جاتا ہو۔ لہٰذا اس مسلمہ اصول جوکہ ایک صدی پر محیط ہے کو بروئے کار لاکر ملزم کو اس کا فائدہ لینے کا حق پہنچتا ہے .

17. Undoubtedly, the instant occurrence had taken place in which Sarmast Khan was shot to death but not in the manner asserted by the prosecution. It is now settled law that a single circumstance creates reasonable doubt in a prudent mind about the guilt of the accused; entitle him to such benefit not as a matter of grace but as a matter of right; more particularly conviction cannot be based on high probabilities and suspicion cannot take the place of proof, therefore, no legal sanctity is attached to the statement made by the appellant/ complainant, reproduced above as well as the retracted confessional statement of the Respondent No.1.

Doubts Prevent Hudood in Islam. A general principle of the Islami Shariah is that *Hudood* are suspended by doubts. This theory is based on the tradition of the Holy Prophet (SAWS):

عَنْ عَائِشَةَ قَالَتْ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ ادْرَئُوا الْحُدُودَ عَنْ الْمُسْلِمِينَ مَا اسْتَطَعْتُمْ فَإِنْ كَانَ لَهُ مَخْرَجٌ فَخَلُّوا سَبِيلَهُ فَإِنَّ الْإِمَامَ أَنْ يُخْطِئَ فِي الْعَفْوِ خَيْرٌ مِنْ أَنْ يُخْطِئَ فِي الْعُقُوبَةِ

Sayyidah ‘Ayshah (R.A) reported that Allah’s Messenger (ﷺ) said “Avert as far as possible, infliction of prescribed punishment on Muslims. And if there is any way out then let them go, for, it is better for an Imam to err while forgiving than to err while giving a punishment. (Muhammad ibn ‘Isa al Tirmidhi: Sunan al Tirmidhi Vol.2 Page 438-439. In another Tradition the Holy Prophet said: ادرؤا الحدود بالشبهات . In case of doubts set aside Hadd punishment. (Nihayat al Muhtaj, Vol.7 p.404)

18. Crux of the aforementioned discussion is that the prosecution has failed to bring home the charge against the Respondents beyond reasonable doubt and the defense succeeded to create serious doubt and dents in the prosecution case; thus the trial court rightly acquitted the Respondents of the charge. Suffice it to say that no case of interference in the impugned judgment is made out. We therefore, keeping in mind consistent view of the Superior Courts reached at the irresistible conclusion that the instant appeal against the impugned judgment is having no merits for consideration.

These are the reasons of short order of dismissal of appeal of even date announced by us in court.

The surety amounting to Rs.50,000/- each, deposited in cash with the Incharge Bench Registry, Peshawar, in compliance of order of this Court dated 21-03-2018 be returned to the said respondents.

JUSTICE SYED MUHAMMAD FAROOQ SHAH

JUSTICE DR. FIDA MUHAMMAD KHAN

Peshawar the
October 05th 2018.
*F.Taj/***