

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

HON.MR.JUSTICE MUHAMMAD JEHANGIR ARSHAD
HON.MR.JUSTICE SHEIKH AHMAD FAROOQ

CRIMINAL APPEAL NO.51-L-2010

Naseeb Ullah son of Ismat Ullah,
Caste Jatt, resident of
Chak No.155/R.B,
Tehsil and District Faisalabad

Versus

Appellant

The State

Respondent

For the appellant

Ch.Anwaar-ul-Haq
Pannu,Advocate

For the complainant

Mirza Muhammad Yousaf
Baig,Advocate

For the State

Mr.Muhammad Akhlaq,
D.P.G

No.& date of F.I.R
Police Station

No.856/06,dt.15.8.2006
P.S Khurrarianwala,
Faisalabad

Date of judgment of
Trial court

31.3.2008

Date of institution

24.4.2010

Date of hearing
and decision

2.8.2012

JUDGMENT

SH.AHMAD FAROOQ,J:- Through the instant Criminal Appeal, the appellants/ Naseebullah son of Ismat Ullah and Faisal son of Asghar Ali have challenged the judgment dated 31.3.2008, whereby the learned Additional Sessions Judge, Faisalabad has convicted them under section 302(b) read with section 34 PPC and sentenced them to imprisonment for life each with further direction to pay Rs.100,000/- each as compensation to the legal heirs of the deceased or in default thereof six months S.I each with benefit of section 382-B Cr.P.C.

It is pertinent to mention here that both the above named appellants had challenged their conviction and sentences before the Lahore High Court Lahore through private counsel, but the same was returned to the learned counsel for the appellants, for its presentation before the proper court i.e Federal Shariat Court vide order dated 22.3.2010. However, the record reveals that the convicted accused Faisal also filed an appeal against his conviction through the Superintendent Central Jail Faisalabad bearing No.81/J/2008 which was not only heard but also decided by the Hon'ble Lahore High Court vide judgment dated 7.5.2010. According to the report of the Superintendent Central Jail Faisalabad dated 1.3.2011 Faisal was released from jail on 22.5.2010 in pursuance of the order of his acquittal passed by the Hon'ble Lahore High Court dated 7.5.2010. It has also transpired from the order dated 24.11.2011 that appellant No.2/Faisal has died.

In view of above, the instant appeal to the extent of Faisal has become infructuous. Hence, through this judgment only the appeal of appellant/Naseebullah is being decided.

2. Precisely, the prosecution story as disclosed in the complaint Ex.PA made by Mushtaq Ahmad/complainant is that on 15.8.2006 at about 7.00 a.m, the complainant along with his sons namely Sami Ullah, Muhammad Iqbal and Hamayoon Mushtaq was sitting in his "behtak", In the meanwhile, two persons one of them wearing white "shalwar qameez" and the other clad in "shalwar qameez" of black colour came on the spot and asked Sami Ullah to accompany them to the place of duty. Thereafter the aforesaid two persons along with Sami Ullah departed for Khurrianwala. The complainant stated that at about 11.30 a.m he received a telephonic message that Sami Ullah has been injured by two persons wearing shalwar qameez through pistol shot near Darbar Baba Chiragh Sain situated in Chak No.266/RB and Sami Ullah has been taken to Khurrianwala hospital. On receiving the said information, the complainant along with Dilawar Hussain, Sanaullah and others reached Khurrianwala hospital wherefrom they came to know that Sami Ullah had referred to Allied Hospital Faisalabad. The complainant along with his companions reached Allied hospital Faisalabad where Sami Ullah was being treated in the Operation Theater but after some time he succumbed to the injuries. The complainant was quite sure that the persons, who had taken his son from the house had murdered him for un-known reason. However, the complainant volunteered that he could identify the accused, in case they are produced before him.

3. After completion of investigation, a report under section 173, Cr.P.C was submitted in the learned trial court for taking cognizance of the offences.

4. The learned trial Court framed the charge against the accused on 19.05.2007 under sections 12 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 and under section 302 PPC read with section 34 PPC . The accused did not plead guilty and claimed to be tried.

5. The prosecution in order to prove its case produced 16 witnesses at the trial. The gist of the evidence of prosecution witnesses is as follows:-

- i) PW-1/Muhammad Azam,ASI is a formal witness. He deposed that on the basis of complaint Ex.PA he drafted formal FIR Ex.PA/1.
- ii) PW-2/Muhammad Nawaz,MHC is also a formal witness of one sealed parcel containing blood stained earth.
- iii) PW-3/Khadim Hussain, constable is a witness of taking of dead body of deceased Sami Ullah to the hospital for post mortem examination. He deposed that after post mortem, the doctor handed over to him a stitched dead body, last worn clothes of the deceased shalwar, P-1,qamees,P/2 and police papers.
- iv) PW-4/Dr.Abdul Shakoor Gill on 15.8.2006 has medically examined deceased/Sami Ullah and opined as follows:

“INJURIES:

1. A firearm wound of entry 1 cm x $\frac{3}{4}$ cm with inverted margins x DNP, at front of centre abdomen, at xiphi sternum(Epigastrium)
 2. A firearm wound of exit $\frac{3}{4}$ cm x $\frac{3}{4}$ cm with averted margins on back of left chest lower part, towards outer side.
- vi) PW-5/Dr.Saeed Akbar Tariq Demonstrator PMC Faisalabad who conducted autopsy upon the dead body of Sami Ullah/deceased and found as under:

INJURIES

1-A Stitched wound 23 cm in length with 11 stitches on the front of abdomen in the mid. It was surgical intervention.

1-B. Fire wound of exit 1 x 1 cm on the back of left chest lower part 7 cm from mid line, 11 cm on the back of left chest lower part 7 cm from mid line. 11 cm from iliac bone. Kargins were everted.

2. An incised wound of 1 x 1 cm on the front of left chest lower part 11 cm from mid line and 18 cm from the left nipple. It was surgical intervention.
3. An incised wound 1 x 1 cm on front of left lower abdomen 8 cm from mid line and 5 cm from iliac bone. It was a surgical intervention.

Cranium and spinal cord.

Skull was opened while spinal cord was not opened. Scalp, skull and brain with membranes were intact

Thorax.

Wall of the thorax were injured while rest of organs of thorax were healthy.

Abdomen

Walls, peritoneum, diaphragm, pancreas, intestines and liver along with left kidney were injured while rest organs were healthy.

The doctor had opined that cause of death Sami Ullah was injury No.1-A and 1-B leading to hemorrhage and shock and death.

- vii) P.W.6/Akbar Ali Nizami is the Draftsman , who prepared scaled site plan as Ex.PF and Ex.PF/1.
- viii) P.W.7/Tariq Zahoor is a formal witness who had identified the dead body of deceased/Sami Ullah.

- ix) P.W.8/Dilawar Hussain is a witness of recovery of blood stained earth vide memo Ex.PG.
- x) P.W.9/Zafar Ullah Khan,S.I recorded the statement (Ex.PA) of the complainant.
- xi) P.W.10/ Asghar Ali,Constable transmitted the parcel of blood stained earth in the office of the Chemical Examiner Punjab Lahore on 31.8.2006.
- xii) P.W.11/Mazhar Farid Kamyana,Judicial Magistrate had conducted the identification parade of the accused as EX.PH/1-6 on 16.9.2006. However, he admitted that the accused persons raised an objection that the witnesses had already seen them in the police station and they repeated their visit.
- xiii) P.W.12/Hamayun Mushtaq stated that the accused took Sami Ullah deceased from the *baithak* of Mushtaq Ahmad/complainant on 15.8.2007 at about 7.00 a.m. He also accompanied the complainant to Allied Hospital Faislabad where Sami Ullah succumbed to the injuries. He also identified the accused namely Naseeb Ullah and Faisal Qureshi during the identification parade.
- xiv) P.W.13/Ajmal Nadeem stated that he saw Sami Ullah going along with Naseeb Ullah and Faisal towards Darbar of Baba Shah Chiragh. He also saw Sami Ullah in injured condition while being brought by the police. He further stated that he conveyed the information of Sami Ullah receiving fire shot to his father. He also stated that the accused/Naseeb Ullah and Faisal fled away when he along with complainant Mushtaq Ahmad and Muhammad Riaz/P.W saw them in Chak No.155/RB Pannu one day after the occurrence.
- xv) P.W.14/Muhammad Riaz is a witness of dying declaration made by Sami Ullah deceased. He further stated that he knew all the

accused prior to the occurrence as they are residents of the village where her sister is married. He also recognized the accused Naseeb Ullah and Faisal along with Mushtaq/complainant in village Pannu on 16.8.2006.

- xvi) P.W.15/Mushtaq Ahmad is the complainant of this case, who reiterated the version given in the complaint as well as F.I.R. He further stated that during investigation not only the residents of the village Pannu but also SHO Malik Muzzafar confirmed that the accused committed the murder of his son/Sami Ullah with a fire shot near the Darbar of Baba Shah Chiragh in *Charri* crop. He confirmed of having made a supplementary statement before the police during the investigation.
- xvii) PW-16/Muhammad Naeem S.I who is the I.O of this case, deposed that the investigation of this case was conducted by him. He proceeded to Allied Hospital, Faisalabad, recorded the statements of P.Ws under section 161 Cr.P.C, inspected the dead body, prepared inquest report Ex.PE and injury statement Ex.PD, sent the dead body to the Hospital for postmortem examination and recorded the supplementary statement of Musthaq Ahmad/complainant wherein he nominated Naseebullah and Faisal Ahmad as accused. He inspected the place of occurrence and got prepared un-scaled site plan of the place of occurrence Ex.P1. He took the blood stained earth from the place of occurrence vide memo Ex.PG. On 12.9.2006, he arrested Naseebullah and Faisal accused and sent them to judicial lockup for the purpose of identification parade. On 16.9.2006, identification parade was held in which the P.Ws identified the accused. On 22.9.2006, he formally arrested both the accused. On 28.9.2006, Naseebullah accused got recovered pistol P/3 which was taken into possession vide memo Ex.PK and after completion of formal investigation both the accused were sent to face the trial.

6. After closure of the evidence of the prosecution, the accused-Naseebullah/present appellant was examined under section 342 Cr.P.C and in response to the crucial questions regarding his involvement in the case and the reason for deposition of prosecution witnesses, he replied as follows;

“The case is false one. I or my co-accused have no concern with the murder of this deceased. P.Ws deposed against us only on suspicion and on the asking of police. As SHO Malik Muzafar put our names in the mouth of the complainant party just to show his performance before the high ups. We had no enmity or grudge against deceased. So there was no reason with us to murder him.”

7. However, accused/present appellant neither opted to make statement under section 340(2) Cr.P.C on oath nor produced any witness in defence in disproof of the charge/allegation made against him.

8. Upon conclusion of the trial, the learned trial court vide judgment dated 31.3.2008 found the present appellant/Naseeb Ullah guilty of committing the offence punishable under section 302(b) read with section 34 PPC and sentenced as mentioned herein before in para-1 of this judgment.

9. Being aggrieved by the impugned judgment dated 31.3.2008, the appellant has challenged the legality and validity of his conviction and sentences through the instant appeal before this Court.

10. Learned counsel for the appellant/Naseebullah has contended that the prosecution has miserably failed to prove its case beyond reasonable shadow of doubt. He submitted that it was an unseen occurrence and neither the accused were nominated in the FIR nor features of the un-known accused were specifically mentioned therein. He further submitted that the appellant was

involved in this case through the supplementary statement dated 16.8.2006 which has got no evidentiary value. He contended that the last seen evidence of P.W.13/Ajmal Nadeem is not reliable. It is next contended that the statement of P.W.14/Muhammad Riaz cannot be considered as a dying declaration of Sami Ullah, according to Article 46 of Qanun-e-Shahadat Order, 1984. He maintained that even P.W.14 did not specifically state that Naseebullah caused injuries to Sami Ullah with a fire-arm shot. He explained that despite seeing Sami Ullah in injured condition neither P.W.14/Muhammad Riaz accompanied him to the hospital nor passed on the details of the so called dying declaration to the complainant/father of the deceased. He claimed that the recovery of the pistol from the present appellant is insignificant as neither any empty was taken into possession from the spot nor any matching was got done from the concerned agency. He further maintained that the statement of the complainant/ Mushtaq Ahmad is hearsay evidence which cannot be relied upon. He argued that the learned trial court has mis-read and mis-appreciated the evidence on record and has passed the impugned judgment on surmises and conjecture which has resulted in miscarriage of justice. It is further argued that the appellant has been acquitted of the charge under section 12 of Offence of Zina (Enforcement of Hudood) Ordinance, 1979 whereupon he has been convicted for an offence falling under section 302(b) PPC relying on the same set of witnesses. He claimed that identification parade was not only conducted in violation of prescribed law and rules but also of no importance because accused were already shown to the witnesses. Lastly, he argued that there are many contradictions in

the ocular account and the same is also not corroborated by the medical evidence. He pleaded that the appellant may be acquitted of the charge.

11. Conversely, the learned counsel for the complainant has argued that the appellant was specifically nominated in the supplementary statement by the complainant dated 16.8.2006. He further submitted that a dying declaration was made by Sami Ullah deceased which has been proved by P.W.14/Muhammad Riaz. He contended that the weapon of offence i.e pistol was recovered on the pointation of present appellant. He claimed that the ocular account of the occurrence is fully corroborated by the medical evidence and the accused was identified by the witnesses of the prosecution during the identification parade. He maintained that there is no reason for false implication of the present appellant by the complainant. Finally, he argued that the appellant has been rightly convicted and awarded sentence by the learned trial court. In support of his contentions, the learned counsel has relied upon the case of **Farmanullah Vs.Qadeem Khan and another**(2001 SCMR 1474).

12. Similarly, the learned D.P.G appearing on behalf of the State has adopted the arguments advanced by the learned counsel for the complainant. He added that the judgment of the learned trial court is well reasoned and there is sufficient incriminating evidence available on record justifying the conviction and sentence awarded to the present appellant. He also argued that the deceased made dying declaration before P.W.14/Muhammad Riaz who had no enmity or ill-will for false implication of the present appellant. He supported the impugned judgment and contended that the prosecution has fully proved its case against the appellant. He submitted that all the prosecution witnesses are in line and there is

no material contradiction in their statements. He claimed that the charges were proved against the accused/present appellant and he was rightly convicted and awarded punishment by the learned trial court.

13. We have heard the learned counsel for the parties at length in addition to scanning the evidence on record with their able assistance.

14. Admittedly, the FIR (Ex.PA/1) dated 15.8.2006 was lodged against two un-known persons and subsequently, the present appellant and Faisal were implicated as accused by the complainant through a supplementary statement dated 16.8.2006 on the basis of information provided to him by Ajmal Nadeem/P.W.13 and Muhammad Riaz/P.W.14. Undoubtedly in this case no witness had seen the accused/Naseeb Ullah firing a bullet shot upon Sami Ullah on the 'lalkara' of Faisal. Undeniably, there is no eye witness of the murder of Samiullah. However, the prosecution has tried to prove its case against the present appellant through the witnesses, who had lastly seen the deceased in the company of the accused, dying declaration made by Sami Ullah, deceased before P.W.14/Muhammad Riaz, identification parade, recovery of weapon of offence from the present appellant and the medical evidence brought on record through the statements of P.W.4 and P.W.5.

15. First of all, we would like to discuss and decide the evidentiary value of the statements of the witnesses, who statedly had seen the deceased in the company of the present appellant and his co-accused namely Faisal (since died) and the dying declaration made by Sami Ullah/deceased before P.W.14. According to FIR, two sons of the complainant namely Muhammad Iqbal and

Humayun Mushtaq were sitting with him, when two un-known persons took his third son namely Sami Ullah from the drawing room of his house to Khurrianwala on the pretext of joining the duty. Out of the said two witnesses cited in the FIR, only Humayun Mushtaq appeared as P.W.12 during the trial. During his cross-examination P.W.12 stated that he had narrated the features of the accused persons in his statement under section 161 Cr.P.C. but on confrontation with Ex.DA, it was not so recorded. It is pertinent to mention here, that P.W.12 is the son of the complainant and real brother of the deceased. It is not plausible that two unknown persons could take away Sami Ullah from his house in the presence of his real father and two brothers. Hence, the statement of P.W.12 regarding the taking away of Sami Ullah/deceased from the drawing room of their house without any corroboration cannot be relied upon. The other last seen witness i.e P.W.13/Ajmal Nadeem stated that he saw Sami Ullah, deceased, going towards Darbar Baba Shah Chiragh Sain along with Naseeb Ullah/present appellant and Faisal on 15.8.2006 at about 10.30/10.45 a.m, P.W.13, who is a resident of Tehsil Jaranwala District Faisalabad, in his cross-examination admitted that he is a friend of Sami Ullah, deceased, and his presence near Darbar of Baba Shah Chiragh Sain and Khurrianwala at the time of the occurrence has not been explained. He is a chance witness, who had not been able to establish beyond doubt his presence at the time of the incident. Even otherwise, in his cross-examination he admitted that he had not informed 'thanedar' about the identity of the accused persons, who were accompanying the deceased. Furthermore, Sami Ullah, deceased, had left his house at 7.00 a.m whereas the P.W.13 had seen him near Darbar of Baba Shah Chiragh Sain at

about 10.30/10.45 a.m, Similarly, P.W.14 deposed that he found Sami Ullah in injured condition in *Charri* crop on the eastern side of Darbar Baba Shah Chiragh Sain on 15.8.2006 at 10.30/10.45 a.m. This witness/P.W.14 claimed to have been informed by Sami Ullah, deceased, that Faisal and Naseeb Ullah had tried to commit sodomy with him and upon his refusal, Naseeb Ullah/present appellant fired at him on *the 'lalkara'* of Faisal. The presence of this witness/P.W.14, who is admittedly a distant relation of the complainant as well as Sami Ullah, deceased, near the place of occurrence is not proved beyond reasonable doubt. Neither, he passed on the details of the so called oral dying declaration of Sami Ullah, deceased to his father i.e complainant(P.W.15) immediately nor accompanied Sami Ullah, who was injured, to the hospital. He even did not see the father of the deceased/Mushtaq Ahmad on the day of occurrence. P.W.14 clarified in his statement that Ghulam Hussain (not produced as P.W.) informed Mushtaq Ahmad/complainant (P.W.15) about the occurrence on telephone. On the other hand, Mushtaq Ahmad/P.W.15 stated that Ajmal Nadeem (P.W.13) had informed him telephonically on the mobile phone of his son about the occurrence. P.W.14 claimed that he knew the accused prior to the occurrence and as such, he should have informed the complainant at the earliest so that the name of the accused could have been specifically mentioned in the FIR but the same was not done. It is strange that both P.W.13 and P.W.14 did not see and inform the complainant about the occurrence on the same day i.e 15.8.2006. Hence, it seems that the supplementary statement made by the complainant/ Mushtaq Ahmad (P/W.15) on 16.8.2006 wherein the present appellant and Faisal (since died) were implicated as accused on the basis of

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information provided to him by Ajmal Nadeem(P.W.13) and Muhammad Riaz (P.W.14) is not only the result of an after thought but also an attempt to fill in the lacunas. Consequently, no credence could be attached to the said supplementary statement of the complainant/Mushtaq Ahmad dated 16.8.2006 and it would not be safe to convict the present appellant thereon.

16. As far as the contention of the learned counsel for the complainant regarding the oral dying declaration made by Sami Ullah(deceased) before Muhammad Riaz/P.W.14 is concerned, the same is devoid of any legal force, because the statement made by P.W.14/Muhammad Riaz before the investigating officer is only a statement under section 161 Cr.P.C and not a dying declaration of the deceased. The rule of criminal administration of justice is that the dying declaration like the statement of an interested witness requires close scrutiny and is not to be believed merely for the reason that dying person is not expected to tell lie. It is a matter of common knowledge that in such circumstances in preference to any other person, a doctor is the most trust worthy and reliable person for a patient to repose confidence in him with the expectation of sympathy and better treatment to disclose the true facts.(Reliance PLD 2006 S.C-255).In the present case, admittedly, Sami Ullah deceased not only approached P.W.4/Dr.Abdul Shakoor Gill himself after receiving bullet injury but also provided his particulars. However, he never got recorded his statement in the hospital to the doctor or to the investigating officer. In these circumstances, the statement of P.W.14 which he made to investigating officer or during the course of the trial cannot be considered by any stretch of imagination as a dying declaration of Sami Ullah deceased. At the most, the

deposition of P.W.14/Muhammad Riaz could be given the status of statement of a witness, who had seen Sami Ullah immediately after being injured by the accused. But P.W.14 admitted in his statement that neither he conveyed the details of information provided to him by the deceased regarding the occurrence immediately to father of the deceased i.e complainant/P.W.14 nor he accompanied Sami Ullah , who was in injured condition, to the hospital along with the police. It is worth mentioning that even the learned trial court, which has convicted and awarded sentence to the present appellant vide judgment dated 31.3.2008, did not rely upon the statement of this witness/P.W.14. Further-more, not only P.W.14 admittedly did not see Naseeb Ullah/present appellant firing a bullet shot upon Sami Ullah but also his statement regarding attempt of the accused to commit sodomy with Sami Ullah has not been believed by the learned trial court as the accused have been acquitted of the charge under section 12 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979. Additionally, Faisal (a co-accused) has already been acquitted by the Hon'ble Lahore High Court vide judgment dated 7.5.2010 on the basis of benefit of doubt. Notwithstanding the absence of any dying declaration of Sami Ullah deceased in this case, we would like to observe that dying declaration is a weak kind of evidence, which requires deep scrutiny and corroboration. In the instant case there is no corroboration of statement of P.W.14. In this regard a reference could be made to the judgment of Hon'ble Supreme Court of Pakistan delivered in the case of **Farman Ahmad Vs.Muhammad Inayat and others.** (2007 SCMR-1825) wherein it is declared that dying declaration like statement of interested witness would require close scrutiny and corroboration.

17. As far as the identification of the accused through identification parade which was conducted by P.W.13/ Mr.Mazhar Farid Kamyana, Judicial Magistrate on 16.9.2006 is concerned, the same is immaterial because not only the complainant had specifically nominated the accused in his supplementary statement dated 16.8.2006 but also the witnesses who identified the accused during the identification parade had already seen them. Even the learned counsel for the complainant, during the course of his arguments, conceded that in this case, the identification of accused in the identification parade is insignificant and of no help to prosecution.

18. The recovery of a pistol vide recovery memo Ex.PK from present appellant is also insignificant as neither any empty was recovered from the spot nor any bullet allegedly fired by the present appellant was got matched from the Expert with the recovered pistol. Additionally, no witness had seen the present appellant firing a bullet shot upon Sami Ullah deceased and as such, in the absence of the ocular account, the medical evidence, which is primarily a corroborative piece of evidence alone not sufficient to hold an accused guilty of commission of an offence.

19. It is worth consideration that the complainant while appearing as P.W.15 stated that people from village Panuan namely Anwar-ul-Haq, Atta Ullah and Javed in addition to SHO Malik Muzaffar confirmed that the accused persons had committed the murder of his son but none out of the said four persons had been produced as witnesses of the prosecution. This also proves that the evidence of P.W.15/complainant is hearsay. Similarly, there are many discrepancies in the statements of the witnesses of the prosecution, e.g

P.W.12/Hamayun Mushtaq stated that the person, who had informed them about the occurrence had shifted Sami Ullah to R.I.C Khurrianwala whereas P.W.13/Ajmal Nadeem and P.W.14/Muhammad Riaz deposed that a police party had taken Sami Ullah in injured condition to the hospital. The said statements of P.Ws are also contradicted by Dr.Abdul Shakoor Gill/P.W.4 who stated that the injured approached of his own and provided his particulars. In this regard, we would like to refer to M.L.C (Ex.PB) wherein neither the No. of the police docket nor any name of the police official accompanying the injured have been mentioned.

20. Lastly, the reason for the commission of the murder of Sami Ullah i.e his refusal to allow the accused to commit sodomy has not been proved and the present appellant/Naseeb Ullah as well as Faisal have been acquitted of the charge under section 12 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979. It is also significant to point out that the deceased was about 23 years of age according to P.W.4, whereas the present appellant/Naseeb Ullah was only 20 years old at the time of recording of his statement under section 342 Cr.P.C on 17.3.2008, whereas the occurrence took place on 15.8.2006.

21. The upshot of the above discussion and observation is that it was an unseen occurrence and no witness had actually seen the present appellant causing injury to Sami Ullah deceased with a pistol which allegedly resulted in his death. Ajmal Nadeem/P.W.13 and Muhammad Riaz/P.W.14 are chance witnesses and their presence at the place of occurrence is highly doubtful.

There is no dying declaration of Sami Ullah (deceased) and the statement of P.W.14 in this regard is not only unreliable but also not corroborated by any other witness. Hence, the prosecution could not prove the guilt of the present appellant beyond reasonable doubt. It has been held in 2005 P.Cr.L.J-578 (**Ghulam Qadir Dayo Vs. The State**) that single circumstance creating a doubt in a prudent mind is sufficient to entitle accused to have benefit of doubt as a matter of right. The Hon'ble Supreme Court of Pakistan in the case of **Tariq Pervez Vs. The State** (1995 SCMR 1345) has also held that for giving the benefit of doubt to an accused, it is not necessary that there should be many circumstances creating doubts. If a simple circumstance creates reasonable doubt in a prudent mind about the guilt of the accused, then he will be entitled to such benefit not as a matter of grace and concession but as a matter of right.

22. For the foregoing reasons, we are inclined to hold that the prosecution had failed to prove its case beyond reasonable shadow of doubt against the present appellant/Naseeb Ullah and the judgment of the learned trial court dated 31.3.2008 cannot be sustained. Resultantly, the instant appeal filed by the

present appellant is allowed and the conviction recorded and sentence awarded to the present appellant by the learned trial court vide judgment dated 31.3.2008 are set aside. The appellant is acquitted of the charges. He shall be released forthwith, if not required in any other case.

 Scd
JUSTICE SHEIKH AHMAD FAROOQ

 Scd
JUSTICE MUHAMMAD JEHANGIR ARSHAD

APPROVED FOR REPORTING.

 Scd
JUSTICE SHEIKH AHMAD FAROOQ

Lahore, 2.8.2012

M.Akram/