IN THE FEDERAL SHARIAT COURT
Appellate/Revisional Jurisdiction)

PRESENT:

MR. JUSTICE DR. SYED MUHAMMAD ANWER, ACTING CHIEF JUSTICE
MR. JUSTICE KHADIM HUSSAIN M. SHAIKH

JAIL CRIMINAL APPEAL NO.01-K OF 2021

ABDUL RAZZAK ALIAS BAGRO SON OF ATTA MUHAMMAD CHANDIO, RESIDENT OF LOHAR COLONY LARKANA CITY, TALUKA AND DISTRICT LARKANA.

APPELLANT

VERSUS

THE STATE

RESPONDENT

CRIMINAL REVISION NO.02-K OF 2021

THE STATE APPELLANT

VERSUS

ABDUL RAZZAK ALIAS BAGRO SON OF ATTA MUHAMMAD CHANDIO, RESIDENT OF LOHAR COLONY LARKANA CITY, TALUKA AND DISTRICT LARKANA.

RESPONDENT

Counsel for the Appellant	Mrs. Maheen Ansari, Advocate
Counsel for the State	Syed Zahoor Shah, Additional Prosecutor General, Sindh.
FIR No., Date & P.S	136/2010, 31.05.2010, Shahdadkot.
Date of impugned judgment	10.12.2020
Date of Institutions of J.Cr.A.No.01-K of 2021 & Cr.Rev.No.02-K of 2021	01.01.2021 & 06.09.2021
Date of Hearing	02.06.2022
Date of Judgment	30.11.2022

J U D G M E N T

KHADIM HUSSAIN M. SHAIKH –J. Appellant Abdul Razzak alias Bagro son of Atta Muhammad Chandio has called in question judgment dated 10.12.2020, passed by the learned Additional Sessions Judge-II,

Kamber, District Kamber/Shahdadkot in Sessions Case No.308 of 2010 re-The State Vs. Akhtiar Kalhoro and others, emanating from Crime No.136 of 2010 registered at Police Station Shahdadkot for Offences under Sections 17(2), 17(3) and 17(4) of The Offences Against Property (Enforcement of Hudood) Ordinance, 1979, **("The Ordinance")**, whereby appellant Abdul Razzak alias Bagro **("The appellant")** has been convicted for offences under Section 302 (b) of The Pakistan Penal Code, 1860 (XLV of 1860) **("The Penal Code")** for committing murder of Amanullah son of Mehrab Mugheri **("The deceased")** and sentenced to suffer rigorous imprisonment for life as Tazir and to pay Rs.500,000/- (five lac) as compensation to the legal heirs of the deceased under the provisions of Section 544-A of The Code of Criminal Procedure, (Act V of 1898) **("The Code")** and in case of default of payment to further undergo S.I for three years more; and, the appellant has also been convicted for offence under Section 397 of The Penal Code and sentenced to suffer rigorous imprisonment for seven years as Tazir and to pay compensation of Rs.200,000/- (two lac) to the victim/injured PW Mehar and in case of default of payment thereof he is to undergo simple imprisonment of 18 months more. The above sentences were ordered to run concurrently with benefit of Section 382-B of The Code.

2. Briefly, the facts of the case are that on 31.05.2010, at about 1600 hours complainant Mehar Ali son of Sain Rakhio Mugheri appeared at police station Shahdadkot and lodged the subject FIR, stating therein that on 31.05.2010 he, his brother Mehrab and his nephew (the deceased), on one motorcycle driven by Amanullah and whereas his relative Khamiso son of Shadi Khan Mugheri on another motorcycle, while were returning from Shahdadkot city to their village, at about 1245 hours when they reached

near the watercourse of Sher Muhammad Jarwar, on the road leading from Shahdadkot towards Garhi Khero, they saw three unknown persons standing there, with one motorcycle, who on seeing again would be identified by them. Of them, one person was having Kalashnikov and the rest two were armed with pistols, who aiming their weapons at the complainant party, stopped their motorcycles. One culprit, who was having Kalashnikov, robbed mobile phone from Amanullah (the deceased) and on the resistance to snatching of motorcycle, the rest two culprits, who were armed with pistols, made fires from their pistols at the complainant's brother Mehrab and his nephew Amanullah, who fell down raising cries. Then the culprits drove away motorcycles including the complainant party's motorcycle through Shahpur Jamali Link Road. Then the complainant found Mehrab lying injured, having two firearm injuries on his right leg near knee, while Amanullah was lying unconscious, having firearm injury on right side of his chest. The complainant party then took both of the injured persons to Taluka hospital Shahdadkot, where after first aid, they were referred to CMC hospital Larkana for further treatment, but on their way to CMC hospital Larkana Amanullah Mugheri succumbed to his injuries at about 03:00 p.m. Then the complainant sent injured Mehrab to CMC hospital Larkana for treatment and took dead body of deceased Amanullah to Taluka hospital Shahdadkot and then leaving his dead body there he appeared at police station Shahdadkot and lodged the subject FIR. Three accused namely Akhtiar, Abdul Khalique and appellant Abdul Razzak alias Bagro were arrested, who after usual investigation, were sent-up with the report under Section 173 of The Code to face their trial. However, on 09.08.2010, co-accused Akhtiar and Abdul Khalique were murdered in the Court premises of the Court of Additional Sessions Judge Shahdadkot in

police custody when they were brought there for their trial and such FIR was registered against the culprits of that crime. In such view of the matter, a formal charge was framed only against Abdul Razzak alias Bagro (the appellant) vide Ex.3 to which he pleaded not guilty and claimed his trial vide his plea Ex.4.

3. In order to prove its case, the prosecution examined as many as 08 (eight) witnesses, namely ASI Ayaz Chandio, the author of the FIR at Ex.05, who produced the FIR at Ex.05/A; Tapedar of Tapa/Deh Pathan namely Muhammad Paryal at Ex.06, who produced sketch of place of incident at Ex.06/A; complainant Mehar Ali at Ex.07; injured Mehrab at Ex.08, who produced the form of identification parade at Ex.08/A; mashir Shah Muhammad at Ex.09, who produced memo of inspection of dead body at Ex.09/A, memo of the place of incident Ex.09/B, memo of the inspection of injuries of injured Mehrab Ex.09/C and the memo of arrest of the accused Abdul Khalique, Akhtiar and Abdul Razzak (the appellant) at Ex.09/D; Investigating Officer ASI Muhammad Khalid Gopang at Ex.10, who verified the memos Ex.09/A to 09/D, and produced the Lash Chakas Form and inquest report at Ex.10/A & Ex.10/B; Corpse Bearer P.C Muhammad Ranjhan at Ex.12, who produced the receipt of handing over dead body of the deceased at Ex.12/A and MLO Dr. Muhammad Idress at Ex.13, who produced the provisional & final MLCs of injured Mehrab at Exs.13/A & 13/B, provisional MLC of the deceased and his postmortem report at Ex.13/C and Ex.13/D as PW 01 to 08 respectively. Then, the side of prosecution was closed vide statement at Ex.14 and whereafter the statement of the appellant under Section 342 of The Code was recorded, wherein he denying the prosecution allegations, professed his innocence and his false implication by the complainant party, further contending

therein that on 31.05.2010 he was arrested by Miro Khan Police, who falsely implicated him in crime No.55 of 2010 under Section 324, 353 of The Penal Code and later on he was falsely implicated in this case on the same day at P.S Shahdadkot. Accused of this case namely Akhtiar and Abdul Khalique alias Arbelo have been murdered by the complainant party in the Court premises of the Additional Sessions Judge Shahdadkot on 09.08.2010 in police custody and such FIR was registered against them he produced the copy of FIR No.55 of 2010 of P.S Miro Khan and he claims to have been acquitted from that case by the learned 1st Additional Sessions Judge Kamber; he also produced certified copy of the FIR No.176 of 2010 of P.S Shahdadkot under Section 353 of The Penal Code he, however, neither examined himself on oath nor did he produce any person as his defence witness. At the conclusion of trial and after hearing the parties' counsel, the learned trial Court has convicted and sentenced the appellant vide impugned judgment dated 10.12.2020 as discussed in paragraph-I *supra*.

4. Having felt aggrieved by the impugned judgment dated 10.12.2020, the appellant has preferred the captioned Jail Criminal Appeal, while the learned Prosecutor General of Sindh has filed the captioned Criminal Revision Petition for enhancement of the sentence by converting the sentence of life imprisonment awarded to the appellant into death sentence.

5. The learned Counsel for the appellant, who also represents him in subject Criminal Revision Petition, has mainly contended that the appellant is innocent and he has been falsely implicated in the subject case; that the name of the appellant does not find place in the FIR; that the identification parade of the appellant is illegal and managed one; that there are material

contradictions in the evidence led by the prosecution, and, that the prosecution has failed to prove its case against the appellant beyond reasonable doubt. The learned counsel has prayed for acquittal of the appellant and for dismissal of the Criminal Revision Petition.

6. Learned Additional Prosecutor General, Sindh has mainly contended that the prosecution by examining 08 witnesses and producing all the necessary documents including postmortem report, MLCs, memos of place of vardhat, recovery of empties, danistnama, sketches, arrest of the appellant and blood stained clothes of the deceased etc, has proved its case against the appellant beyond any shadow of doubt, per learned Additional Prosecutor General, Sindh, the learned trial Court has rightly convicted the appellant, but disputing the sentence of imprisonment for life awarded to the appellant, the learned Additional Prosecutor General, Sindh has prayed for dismissal of the instant appeal and enhancement of the sentence by converting imprisonment of life awarded to the appellant into death penalty.

7. We have considered the submissions of learned counsel for the parties and have gone through the evidence brought on the record with their assistance.

8. From a perusal of the record, it would be seen that the appellant was not nominated in the FIR. The culprits, who committed the subject offence, were not known to the complainant and other two alleged eye witnesses namely injured Mehrab and Khamiso. The descriptions such as features and physiques etc of the culprits were not given in the FIR. Complainant Mehar Ali in his FIR stated that **one culprit**, who was equipped with Kalashnikov, snatched mobile phone from his nephew Amanullah, and **on the resistance of his brother Mehrab and nephew Amanullah** to

snatching of their motorcycle, **the two culprits**, who were armed with pistols, made fires from their pistols at Amanullah and Mehrab; in the joint identification parade test shown to have been carried out before the learned Civil Judge and Judicial Magistrate-I Shahdadkot on 05.06.2010, the complainant and two other alleged eye witnesses namely Mehrab and Khamiso allegedly picked out the appellant and two other co-accused namely Abdul Khalique and Akhtiar as the culprits of the subject crime, however, they neither attributed any specific role in the commission of the offence to the appellant or even to the two other arrested co-accused named above nor did they state about any weapon carried by any of them at the time of incident, but when the complainant appeared in witness box, he deposed that **"the culprit, who was armed with Kalashnikov, robbed away one Nokia mobile phone from Amanullah; the culprits also tried to rob bike from Amanullah, on which Amanullah resisted whereupon accused Akhtiar armed with pistol made fire from his pistol upon my nephew Amanullah on his chest; accused Akhtiar also made two fires upon the knee of my brother Mehrab"** and that **"Akhtiar and Abdul Razzak had TT pistols and accused Abdul Khalique had KK"**, besides, the complainant there were two other alleged eye witnesses of the occurrence namely Mehrab and Khamiso; of them alleged eye witness PW Khamiso, having been given up, was not examined by the prosecution and whereas the rest alleged eye witness injured Mehrab, who appeared as PW.4 Ex.8 deposed that **"they** (the culprits) **robbed away one mobile from my son. They also tried to rob the bike from my son Amanullah. My son Amanullah resisted, on which accused Akhtiar armed with pistol made fire from his pistol upon my son Amanullah, who receiving the fire shot on left side of his chest, fell down. Accused**

Akhtiar also made two fires upon me, which I received on my right knee. I also fell down. Thereafter, accused Akhtiar took our bike and went away", thereby both the aforesaid alleged eye witnesses examined by the prosecution have not only contradicted the prosecution version as set-out in the FIR, but they have also made a vain attempt to improve the prosecution case qua the contents of the FIR Ex.5/A and memo of identification parade Ex.7/A, obviously with dishonest intention so as to bring the prosecution case in line with the medical evidence, which revealed one injury on the person of deceased Amanullah and two injuries on the person of injured Mehrab, that rendered the credibility of both the aforesaid examined alleged eye witnesses doubtful and no explicit reliance can be placed upon their evidence in view of the well settled law. Reliance in this context is placed on the case of ***AKHTAR ALI AND OTHERS V. THE STATE (2008 SCMR 6)***, wherein the Hon'ble Supreme Court of Pakistan has held that:-

> ***"It is also a settled maxim when a witness improves his version to strengthen the prosecution case, his improved statement subsequently made cannot be relied upon as the witness had improved his statement dishonestly, therefore, his credibility becomes doubtful on the well known principle of criminal jurisprudence that improvements once found deliberate and dishonest cast serious doubt on the veracity of such witness. See Hadi Bakhsh's case PLD 1963 Kar. 805."***

In case of **MUHAMMAD MANSHA Vs. The STATE [2018 SCMR 772]**, the Hon'ble Supreme Court of Pakistan has held that:-

> ***Once the Court comes to the conclusion that the eye-witnesses had made dishonest***

improvements in their statements then it is not safe to place reliance on their statements. It is also settled by this Court that when ever a witness made dishonest improvement in his version in order to bring his case in line with the medical evidence or in order to strengthen the prosecution case then his testimony is not worthy of credence. The witnesses in this case have also made dishonest improvement in order to bring the case in line with the medical evidence (as observed by the learned High Court), in that eventuality conviction was not sustainable on the testimony of the said witnesses. Reliance, in this behalf can be made upon the cases of Sardar Bibi and another v. Munir Ahmad and others (2017 SCMR 344), Amir Zaman v. Mahboob and others (1985 SCMR 685), Akhtar Ali and others v. The State (2008 SCMR 6), Khalid Javed and another v. The State (2003 SCMR 1419), Mohammad Shafiqe Ahmad v. The State (PLD 1981 SC 472), Syed Saeed Mohammad Shah and another v. The State (1993 SCMR 550) and Mohammad Saleem v. Mohammad Azam (2011 SCMR 474).

9. Furthermore, injured Mehrab, who could be termed to be a star witness for the prosecution, Investigating Officer ASI Muhammad Khalid Gopang and mashir Shah Muhammad, they all did not identify appellant Abdul Razzak in the trial Court when they recorded their evidence on 31.10.2019 and 31.07.2019 respectively, for, injured Mehrab and Investigating Officer stated that **"accused present in Court is Akhtiar"**, who in fact was appellant Abdul Razzak and not Akhtiar, rather the latter, who was co-accused in this case, was already murdered alongwith other co-accused Abdul Khalique in the Court premises of the Court of Additional

Sessions Judge Shahdadkot as far as back on 09.08.2010 in police custody i.e. nine years prior to their evidence and whereas Shah Muhammad, who allegedly acted as mashir for several purposes including the mashir of arrest, stated that **"the accused present in the Court is same, but I do not know his name".**

10. It further reveals that although the prosecution claimed that the appellant and his two co-accused namely Abdul Khalique and Akhtiar were arrested by police of Miro Khan P.S on the same day at 1330 hours i.e. shortly after the subject incident occurred at 1230 hours as is evident from the FIR No. 136 of 2010 of P.S Shahdadkot involved in this case and FIR No.55 of 2010 of P.S Miro Khan produced by the appellant through his statement under Section 342 of The Code, but nothing has been brought on the record to show if the mobile and motorcycle, which were allegedly snatched from deceased Amanullah and others, were recovered from any of the above arrested accused and even crime weapons allegedly used in the commission of the offence were not shown to have been recovered from them (the accused) despite their having remained in continuous custody under remand after their arrest upto 16.06.2010 when the challan was submitted; it is also strange enough that four empties of 30 bore pistol collected from the place of incident vide memo of inspection Ex.9/B, were not shown to have been sent to ballistic expert for his expert opinion, for, neither any FSL report in this respect was produced in evidence by the prosecution nor did any official witness including Investigating Officer ASI Muhammad Khalid Gopang state about sending the aforesaid article to FSL; if the Investigating Officer had any impression that the aforesaid article might be the corroborative piece of circumstantial evidence in the instant case, he should have sealed the same forthwith and handed over

the same to some responsible police official of the police station for safe custody, but it never happened as the same were left somewhere without taking any care for getting them analyzed from the ballistic expert and as such nothing is brought on the record to show that the alleged four empty shells, secured from the place of incident, were fired from two different weapons as claimed by the complainant in the FIR or they were fired from one weapon as claimed by the complainant and injured Mehrab in their evidence.

11. Patently, the prosecution case mainly rested on the identification parade of the appellant purportedly held on 05.06.2010 before the learned Civil Judge & Judicial Magistrate-I Shahdadkot, due to the fact that the culprits, who committed the subject offence, were not known to the complainant and other two alleged eye witnesses injured Mehrab and Khamiso (not examined); their descriptions such as their features and physiques etc were also not given in the FIR; the appellant and his two co-accused Abdul Khalique and Akhtiar were arrested by the police of Miro Khan police station in another case on the same day of incident i.e. 31.05.2010; complainant Mehar Ali and injured Mehrab claimed to have visited police station Miro Khan alongwith other alleged eye witness Khamiso (not examined) to see the arrested accused including the appellant 4/5 days before the test identification parade in question held on 05.06.2010 as is revealed from their evidence, in that the complainant has deposed that **“I came to know about the arrest of the accused on the same day of the incident. On the same day I alongwith Mehrab and Khamiso including police arrived at P.S”**; injured Mehrab also admitted his visiting police station Miro Khan for the purpose of seeing the arrested accused, but he contradicting the complainant, stated that on the following

day of the incident he alongwith Mehar (the complainant) and Khamiso had visited the police station Miro Khan, deposing that **"we came to know regarding the arrest of the accused on the same day; I had visited the P.S Miro Khan on the next day of the incident alongwith Mehar and Khamiso;** according to the complainant they went to police station Miro Khan in a police mobile and whereas per injured Mehrab they went to police station by hiring a private vehicle from Larkana city, but no one among the staff of police station Miro Khan was either cited as witness or was examined by the prosecution; even the official witnesses examined by the prosecution did not state about the complainant's and/or other prosecution witnesses' visiting police station Miro Khan; the Investigating Officer stated that **"I had issued notice to complainant one day prior to the identification parade"** i.e. one day prior to the formal arrest of the accused including the appellant in this case and despite having knowledge about the arrest of the appellant and two other co-accused namely Abdul Khalique and Akhtiar by the police of Miro Khan P.S, they were not shown arrested by the police of P.S Shahdadkot in this case for four days and it was on 05.06.2010 at 0920 hours when their formal arrest was shown by Investigating Officer ASI Muhammad Khalid Gopang vide mashirnama of arrest Ex.9/D; the prosecution case was that all the three accused named above including the appellant were arrested from judicial lockup at P.S Miro Khan vide mashirnama of arrest Ex.9/D as was deposed by Investigating Officer Muhammad Khalid Gopang, but mashir of arrest namely Shah Muhammad Mugheri did not state about arrest of the **three accused** named above and instead he without taking name of any accused stated that **"on 05.06.2010 the ASI had again called me and co-mashir Muhammad Umar at the Shahdadkot P.S and then we went to judicial**

lockup Miro Khan, where, the accused *was* confined in another case. The ASI had arrested *him* and prepared the imagine mashirnama in our presence"; the appellant and two above named co-accused were shown to have been put to identification parade before the learned Civil Judge and Judicial Magistrate-I Shahdadkot after taking their custody from police station Miro Khan and covering distance of nearly 15 kilometers, but nothing was brought on the record to show that necessary precautions to secure and hide the identity of the arrested accused from the PWs before their putting into identification parade test, were adhered to; even otherwise, the memo of identification parade Ex.8/A reveals that the appellant and the other two arrested accused (now dead) had not been identified with reference to any role played by them during the incident, which in our humble view, should have been specific with their role so as to complete the picture of the crime and reinforce the case against the accused for commission of the crime, and if a witness is able to pick out an accused person amongst the crowd it does not prove that he had identified that accused person as having taken part in the subject crime, rather it might merely mean that the witness happens to know that accused person by sight; moreover, the material evidence of the identification is the evidence of witnesses including the Magistrate, under whose supervision and mashirs, in whose presence such identification parade test was carried out, given in the Court as to how and under what circumstances the witnesses came to pick out a particular accused person and the details of the part which that accused took in the commission of crime in question for the simple reason that the statement made by any witness at an identification parade could be used to corroborate his evidence given in the Court. Three witnesses namely injured Mehrab,

Investigating Officer ASI Muhammad Khalid Gopang and mashir Shah Muhammad did not identify the appellant in the trial Court during their evidence as discussed *supra* and hence the identification parade in question, which could at the best be used as a corroboratory piece of evidence, was of no help to the prosecution; neither the learned Magistrate in whose supervision nor anyone among the two mashirs namely Muhammad Ilyas and Raheem Buksh, in whose presence, the alleged identification parade was carried out, have been examined by the prosecution to substantiate the subject identification parade; PWs namely complainant Mehar Ali and injured Mehrab claimed to have visited police station Miro Khan for the purpose of seeing the accused including the appellant on their arrest i.e. 4/5 days prior to the alleged identification parade test, conducted before the learned Magistrate on 05.06.2010. In such view of the matter, the possibility that the police had got the accused including the appellant identified by the witnesses prior to the identification parade test cannot be ruled out and under these circumstances, the aforesaid unsubstantiated joint identification parade, suffering from the illegalities and infirmities discussed *supra*, has got no evidentiary value.

12. Apart from the above, there are also several other material and glaring contradictions in the evidence led by the prosecution coupled with numerous infirmities and admissions, adversely reflecting upon the prosecution case e.g. the complainant in his evidence has deposed that **“on the same date, I brought ASI Muhammad Saleh Gopang at Taluka Hospital Shahdadkot where he inspected dead body of my nephew Amanullah and prepared such memo of inspection of dead body and inquest report in presence of mashirs Shah Muhammad Mugheri and Muhammad Umar Mugheri. Thereafter, I also took ASI Muhammad**

Saleh Gopang to place of incident and on my pointation, above named ASI inspected the place of incident in presence of same mashirs and he secured 04 empties of pistol from the spot and above named ASI also secured the blood stained earth and sealed the same separately. Thereafter, ASI Muhammad Saleh prepared such memo on the spot in presence of above named mashirs at 1645 hours. Thereafter, I along with ASI Muhammad Saleh Gopang and same mashirs proceeded to Civil Hospital Larkana, where he inspected injuries of my brother Mehrab in presence of same mashirs and prepared such memo", but according to prosecution the Investigating Officer, who had conducted all the aforesaid proceedings, was ASI Muhammad Khalid appeared as PW.6 and not Muhammad Saleh and whereas mashir Shah Muhammad did not take name of the Investigating Officer, and instead stated that **"complainant Mehar Ali along with one Sobedar who was by caste Gopang came at there** (Taluka Hospital Shahdadkot)**; ASI Gopang had inspected the dead body; ASI had also inspected the place of incident; on same date at 07:00 p.m. we went to Civil Hospital Larkana where ASI inspected the injuries of Mehrab"**; while injured Mehrab did not state about inspection of his injuries and preparation of mashirnama thereof by the police; Investigating Officer ASI Muhammad Khalid stated that **"complainant was accompanied with me while I was going to Chandka hospital at Larkana where I had inspected the injuries of the victim";** then he changing his version stated that **"the complainant had arrived along with mashirs at Hospital at Larkana from Shahdadkot"** and then he again changing his stances stated that **"the mashirs of injuries had arrived at hospital at Larkana through separate vehicle",** while the complainant did not state about his

accompanying the Investigating Officer to Larkana hospital; Investigating Officer ASI Muhammad Khalid stated that **"on the same date at about 1730 hours, we went to the place of incident along with the complainant and same mashirs, where, I had inspected the place of incident by preparing the mashirnama",** while complainant Mehar Ali stated that **"I took ASI Muhammad Saleh Gopang to the place of incident and on my pointation, above named ASI inspected the place of incident in presence of mashirs; ASI Muhammad Saleh prepared such memo on the spot in presence of above named mashirs at 1645 hours"**, and whereas the record reveals that mashirnama of place of vardhat Ex.9/B was prepared on 31.05.2010 at 1730 hours while three memos of inspection of dead body, lash chakas form and danistnama Ex.9/A, Ex.10/A & Ex.10/B respectively, were shown to have been prepared at **1645 hours** at Taluka Hospital Shahdadkot; the postmortem examination on the dead body of the deceased was started at 05:00 p.m. and it was finished at 06:30 p.m. and after completing all the formalities I.O ASI Muhammad Khalid set-out for the inspection of the place of the incident which was at the distance of 6/7 kilometers from Taluka Hospital, Shahdadkot and after inspecting the place of incident, he completed all the formalities, yet the memo of place of incident Ex.9/B was shown to have been prepared at 1730 hours i.e. within 45 minutes from the inspection of the dead body of deceased Amanullah at Civil Hospital Shahdadkot, which apparently is incompatible with the timings, distances, ranges of the places and circumstances of the case; per prosecution the sole close relative of the deceased available there, was his uncle namely complainant Mehar Ali, whose leaving hospital during the postmortem on the dead body of his nephew for inspection of the place of incident located at the distance of

more than six kilometers is also incomprehensible; according to Investigating Officer ASI Muhammad Khalid he had prepared lash chakas form Ex.10/A and inquest report Ex.10/B in presence of mashirs Shah Muhammad and Muhammad Umar by obtaining their LTIs thereon, but mashir Shah Muhammad did not state about preparation of lash chakas form and inquest report in his evidence, while the other mashir Muhammad Umar was not examined by the prosecution; per Investigating Officer he had recorded further statement of the complainant, but the latter did not state about recording of his further statement during the investigation, which even otherwise was not the prosecution case; according to the Investigating Officer the statements of the witnesses under Section 164 of The Code were recorded after recording their statements under Section 161 of The Code at P.S, but in fact neither the statements under Section 164 of The Code of PWs were recorded or produced in evidence nor did the PWs state about recording of their statements under Section 164 of The Code; according to mashir Shah Muhammad, the injuries of the victim were seen by him in open condition prior to their bandage, which is negated by the fact that mashir Shah Muhammad had first time seen the injuries of injured Mehrab at CMC hospital Larkana at 08:30 p.m. (night), where the latter after treatment and bandages etc was hospitalized, as is even evident from the evidence of the said mashir Shah Muhammad, who deposed that **"I am mashir of this case. On 31.05.2010, I was available in my village, where I have come to know regarding the incident in between our relatives and accused. Then I came to the P.S and then we left to the Taluka Hospital Shahdadkot, where we found the dead body of Amanullah Mugheri, which was in the hospital…..On the same date, at about 07:00 p.m. we went to civil Hospital Larkana, where, the**

ASI had inspected the injuries of Mehrab in our presence; according to Investigating Officer he produced the accused including the appellant before Civil Judge and J.M-I Shahdadkot where PWs Mehrab and Khamiso were brought, who identified the accused in open Court in the identification parade, but he did not state about the identification of the accused through complainant Mehar Ali although according to the prosecution case, the identification of the accused through complainant Mehar Ali was also shown to have been made; per Investigating Officer he recorded statements of the witnesses under Section 161 of The Code at police station on the same day of identification parade, which was held on 05.06.2010 i.e. after 5 days of the incident and whereas according to injured Mehrab, the police recoded his statement under Section 161 of The Code at Civil hospital Larkana on the same day of the incident, but complainant Mehar Ali and mashir Shah Muhammad did not state about recording of the statement of injured Mehrab either at police station as claimed by the Investigating Officer or even in the hospital at Larkana as claimed by injured Mehrab; according to injured Mehrab, the complainant and Khamiso accompanied with them in the ambulance and no one else from their relatives was accompanied with them and whereas per complainant he was accompanied with so many relatives from Shahdadkot to Larkana and vice-versa from Larkana to Shahdadkot in ambulance; Shah Muhammad, who acted as mashir for several purposes, which included preparation of mashirnama of inspection of dead body of deceased Amanullah, inquest report, danistnama, memo of clothes of deceased Amanullah, inspection of place of incident, inspection of injuries on the person of injured Mehrab and arrest of three accused including the appellant etc, appeared as PW.5 at Ex.9, and stated that **“I do not**

remember that who had inspected the dead body either by me or any other; it is correct to suggest that blood was oozing from the deceased; I do not remember whether mark of bullet was on collar or not; I do not remember whether I.O himself had secured the blood stained earth; I do not remember whether any writing was mentioned on empty shells or not; the concerned police officer had obtained my signatures on papers, but I do not remember whether same were written or blank", meaning thereby he was not sure whether the mashirnamas were prepared before he put his signatures on the papers, whereon the mashirnamas were prepared so also about all the proceedings shown to have been conducted by the Investigating Officer in presence of the said mashir Shah Muhammad and thus he has not supported the prosecution case; furthermore, daily diaries relating to the momentum of the Investigating Officer and his other staff from police station to the places namely Taluka Hospital Shahdadkot, the place of incident for its inspection, CMC hospital Larkana for inspecting the injuries of injured Mehrab, the police station Miro Khan for the purpose of arrest of the accused, and the Court of learned Judicial Magistrate Shahdadkot for the purpose of identification parade etc and their return to the police station from the aforesaid places, were neither shown to have been made in the relevant daily diary register nor were produced in evidence, although the same were essential to be adduced in evidence so as to establish the momentum of the police towards the places where the proceedings discussed *supra*, were shown to have been conducted and non-production thereof would adversely reflect upon the prosecution case.

13. As is apparent from the face of record injured Mehrab and Amanullah were firstly brought at Taluka hospital Shahdadkot and then

both of them after examination and first aid were referred to CMC hospital Larkana for treatment etc by PW.8 Dr. Muhammad Idrees Shaikh, Medical Officer Civil Hospital Shahdadkot and while both injured Mehrab and Amanullah together with complainant etc in Ambulance, were on their way to CMC hospital Larkana, one of the injured persons namely Amanullah succumbed to his injuries, but neither the entries relating to the information about the incident given to the police and for issuance of letter for treatment of the injured persons namely Amanullah and Mehrab to the Medical Officer Taluka hospital Shahdadkot, were shown to have been kept in daily diary register at police station Shahdadkot nor did prosecution bring anything on the record to denote that any letter for examination, treatment and certificates of the injured persons named above was issued by the police to the Medical Officer Taluka hospital Shahdadkot, who has also not produced such letter in his evidence and it seems as if PW.8 Dr. Muhammad Idrees the Medical Officer Taluka hospital Shahdadkot had dealt with the case without intervention of the police and when he came in witness box he attempted to improve the case by deposing that **"PC Ranjhan was available with the injured persons at Hospital",** which was negated by the complainant by stating that **"no police arrived at Shahdadkot hospital"**, which is further negated by the fact that PC Ranjhan, who acted as corpse bearer first time appeared before the Medical Officer after the dead body of deceased Amanullah was brought as is reflected from his evidence wherein he stated that **"I am corpse bearer in this case. On 31.05.2010, I was posted as P.C at the P.S Shahdadkot. On the same day, the ASI Muhammad Khalid Gopang handed over to me the dead body of deceased Amanullah son of Mehrab Khan Mugheri for conducting his postmortem"** and that is also

evident from the record, which reveals that the mashirnama of injuries of injured Mehrab produced at Ex.15 was prepared on 31.05.2020 at 2030 hours (08:30 p.m.) in CMC hospital Larkana and whereas no mashirnama of injury on the person of Amanullah, who earlier was injured and after his examination and referral, died on the way to CMC hospital Larkana, was prepared by the police.

14. A glance at the statement of the appellant recorded under Section 342 of The Code Ex.15 depicts that the incriminating material i.e. the memo of identification parade, in which the appellant was shown to have been picked up by complainant Mehar Ali, injured Mehrab and Khamiso, the medical evidence including postmortem report and MLCs revealing unnatural death of deceased Amanullah and injuries to injured person Mehrab caused by firearm, inquest report, danistnama, memos of inspection of dead body, place of incident, recovery of four empty shells of 30 bore pistol and blood stained earth etc from the place of incident, blood stained clothes of the deceased, arrest of the accused including the appellant and injuries to injured PW Mehrab, FSL report relating to the blood stained earth and clothes of the deceased etc were not put to the appellant to extract his explanation thereon during his examination under Section 342 of The Code, although according to law the accused is to be confronted with each and every piece of evidence and circumstance, with specific and definite details thereof, so as to afford him all possible opportunities to explain the charge and the circumstances of the case and where any important and material piece of evidence is not put to the accused and an opportunity is not given to him to explain that, such evidence could not be used for conviction of the accused. In such an eventuality either that piece of evidence is to be excluded from the

consideration or the case is to be remanded to the trial Court for re-examination of the accused under Section 342 of The Code.

15. Manifestly, the aforesaid material and glaring contradictions, infirmities, admissions of the PWs adverse to the prosecution case, and dishonest & deliberate improvements in the statements of the PWs during the trial to strengthen the prosecution case, which did go to the root of the case, rendering it highly doubtful, were not at all attended to by the learned trial Court while passing the impugned judgment dated 10.12.2020, convicting and sentencing the appellant, although the learned trial Court was obliged to take into consideration the material placed before it for arriving at the conclusion as to whether a fact was proved or not. And, thus, we are of the humble view that the impugned judgment dated 10.12.2020 of the trial Court suffers from mis-reading and non-reading of the evidence and the conviction and sentence awarded to the appellant cannot sustain, as the prosecution has miserably failed to prove its case against the appellant beyond a reasonable doubt; it needs no reiteration that a single circumstance creating reasonable doubt in the prudent mind about the guilt of the accused, benefit thereof is to be extended to the accused not as a matter of grace or concession, but as matter of right. Reliance in this context is placed on the case of ***GHULAM QADIR AND 2 OTHERS V. THE STATE (2008 SCMR 1221)***, wherein the Hon'ble Supreme Court of Pakistan has held that:-

> ***"16. It needs no reiteration that for the purpose of giving benefit of doubt to an accused person, more than one infirmity is not required, a single infirmity creating reasonable doubt in the mind of a reasonable and prudent mind regarding the truth of the charge-makers the whole case doubtful. Merely because the burden is on the***

accused to prove his innocence it does not absolve the prosecution from its duty to prove its case against the accused beyond any shadow of doubt end this duty does not change or vary in the case. A finding of guilt against an accused person cannot be based merely on the high probabilities that may be inferred from evidence in a given case. Mere conjectures and probabilities cannot take the place of proof. Muhammad Luqman v. The State PLD 1970 SC 10."

In the case of ***MUHAMMAD MANSHA supra***, the Hon'ble Supreme Court of Pakistan has observed that:-

"4. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted". Reliance in this behalf can be made upon the cases of Tariq Pervez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Muhammad Akram v. The State (2009 SCMR 230) and Muhammad Zaman v. The State (2014 SCMR 749).

In the case of ***MUHAMMAD AKRAM v. THE STATE*** **(2009 SCMR 230),** the Hon'ble Supreme Court of Pakistan has held that:-

"*It is an axiomatic principle of law that in case of doubt, the benefit thereof must accrue in*

> ***favour of the accused as matter of right and not of grace. It was observed by this Court in the case of Tariq Pervez v. The State 1995 SCMR 1345 that for giving the benefit of doubt, it was not necessary that there should be many circumstances creating doubts. If there is circumstance which created reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of doubt not as a matter of grace and concession but as a matter of right."***

In the case of ***MUHAMMAD ILYAS V. THE STATE (1997 SCMR 25),*** the Hon'ble Supreme Court of Pakistan has held that:-

> ***"It is well-settled principle of law that where evidence creates doubt about the truthfulness of prosecution story, benefit of such a doubt had to be given to the accused without any reservation. In the result, there is no alternative but to acquit the appellant by giving him benefit of doubt".***

Under the given circumstances, re-examination of the appellant under Section 342 of The Code so as to extract his explanation by putting the aforesaid material to him would not improve the prosecution case, rather it would be an exercise of futility and abuse of the process of the Court to remit this case back to the learned trial Court for re-examination of the appellant under Section 342 of The Code for the simple reason that there is no evidence worth consideration against the appellant to connect him with the subject crime and, therefore, the prosecution itself has miserably failed to bring home the guilt of the appellant to the hilt.

16. In view of what has been stated above, the captioned appeal is allowed, the conviction and sentence awarded to appellant Abdul Razzak alias Bagro son of Atta Muhammad Chandio vide the impugned judgment dated 10.12.2020, passed by the learned trial Court, are set aside and he is acquitted of the charge, extending him the benefit of doubt. The appellant is directed to be released forthwith if his custody is not required in any other case. Resultantly, the captioned Criminal Revision, seeking enhancement of the sentence of life imprisonment awarded to the appellant into death sentence, having become infructuous is disposed of as such.

(JUSTICE KHADIM HUSSAIN M.SHAIKH)
JUDGE

(JUSTICE DR. SYED MUHAMMAD ANWER)
ACTING CHIEF JUSTICE

Islamabad, the
30 of November, 2022
Khurram