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Judgment Sheet
IN THE LAHORE HIGH COURT
BAHAWALPUR BENCH BAHAWALPUR

JUDICIAL DEPARTMENT

CrI. Rev. No. 27 of 2011

Muhammad Shehzad and another **Vs.** The State etc.

Date of Hearing:	20.09.2017
Petitioners by:	Mr. Rehan Zafar, Advocate with petitioners.
Complainant by	Rana Hassan Ali, Advocate
State by	Malik Shahid Farid, Assistant District Public Prosecutor.

KHALID MAHMOOD MALIK, J. Precisely facts for disposal of this criminal revision petition are that convicts/petitioners along with others were tried in case FIR No.402/2008, dated 26.9.2008, offence under sections 381/408/109 PPC, registered at police station Fortabbas, District Bahawalnagar. After conclusion of trial, learned Magistrate Section 30, Fortabbas vide judgment dated 21.10.2010 convicted Muhammad Shehzad and Muhammad Arshad, petitioners under section 381 PPC and sentenced them as under:-

Convict/petitioner Muhammad Shehzad

“to suffer R.I for five years and shall also pay fine Rs.10,000/- and in case of default, he shall further suffer S.I. for three months.”

Convict/petitioner Muhammad Arshad

“to suffer R.I. for three years and shall also pay fine of Rs.10,000/- and in case of making default, he shall further suffer S.I. for three months.

Benefit of section 382-B Cr.P.C is given to them.”

The convicts/petitioners preferred an appeal against aforesaid judgment, which was dismissed by learned Addl. Sessions Judge, Fortabbas, vide judgment dated 29.01.2011. They have filed this criminal revision petition with the prayer that the judgments of learned courts below be set aside and they be acquitted from the charge as the prosecution has failed to prove its case against them beyond any shadow of doubt.

2. The facts and evidence produced by the parties have been described in the impugned judgment of learned trial court which need not to be reproduced.

3. It has been argued by learned counsel for petitioners/convicts that prosecution has failed to establish its case against petitioners/convicts beyond any shadow of doubt; that there is six years delay in lodging the FIR with regard to the alleged occurrence; that there are material contradictions in the statements of PWs even they have made improvements in their statements’ that co-accused namely Mansab Ali, Zakir Hussain and Abdul Hafeez have been acquitted of the charge on the same strength of evidence and appeal against their acquittal also met with the fate of dismissal; that both the courts below have not appreciated the evidence in its true perspective; that it is now well settled that

benefit of doubt must be extended in favour of the accused. Lastly prayed that by accepting this criminal revision petition, convicts/petitioners be acquitted of the charge.

4. Conversely, learned Assistant District Public Prosecutor assisted by learned counsel for complainant has maintained that prosecution has succeeded in proving the guilt of petitioners/convicts through cogent and confidence inspiring evidence; that convicts/petitioners' case is distinguishable from the case of his co-accused (since acquitted) and lastly prayed for dismissal of this revision petition.

5. Having heard arguments, survey of evidence and perusal of impugned judgments, it appears that learned trial court has not appreciated the evidence in its true perspective while learned appellate court without reappraisal of the evidence maintained the conviction and sentence awarded to petitioners by trial court. Admittedly, alleged occurrence had taken place about 5/6 years before the matter reported to police and in this regard no plausible explanation has been given by complainant. Muhammad Sarwar, complainant while appearing as PW-1 stated that he had gone to Saudi Arabia for performance of "Hajj" when his son Rehan Sarwar informed him that Muhammad Shehzad has been drawing cheques in his absence. Neither any cheque is produced in the prosecution evidence nor complainant has produced his son Rehan Sarwar as a witness. No direct recovery is effected from convicts/

petitioners with regard to misappropriated fertilizer and other items. The recovery memo Ex:PB shows that stolen articles mentioned therein were produced by complainant before the court which were allegedly given to him by legal heirs of accused party. Further-more, recovery witnesses are at variance with one another. No bank record with regard to drawing of amount in question from the concerned bank has been brought on record. Investigating Officer did not probe this matter from the officials of concerned bank. Though Muhammad Imran(PW-2) stated in examination-in-chief that “Munshi” Shehzad in his and Nadeem’s presence confessed his guilt with regard to theft of fertilizer, spray, letter pad and cheque book etc. but no time, date, month were given when the accused had made their statement. It is constantly held by apex Court that extra judicial confession is a weak type of evidence and same can easily be procured whenever direct evidence of crime is not available. Until and unless extra judicial confession is not corroborated by any-other independent piece of evidence and when any link in the chain is missing in case of a circumstantial evidence, it would not be safe to record conviction. Reliance is placed upon case laws titled “Munawar Shah Vs. Liaquat Hussain and others” (2002 SCMR 713) and “Sh. Muhammad Amjad Vs. The State” (PLD 2003 SC 704). “Sajid Mumtaz and others versus Basharat and others” (2006 SCMR 231), “Sarfray Khan Vs. State and 2 others” (1996 SCMR 188),

“Nizam-ud-Din versus The State” (2010 P Cr. L J 1730) and “Imran alias Dully and another versus The State and others” (2015 SCMR 155). In cross-examination, Muhammad Imran (PW-2) admitted that no tag of seed or marka was written on Ex:PB. He further stated that in the court he had not seen fertilizer, seeds, spray, cheque book and letter pad etc. which show that at the time of his statement, said articles were not produced before the court. The co-accused Mansab Ali, Zakir Hussain and Abdul Hafeez have been acquitted of the charge. The complainant has challenged their acquittal by filing criminal appeal No.,414 of 2010, which was dismissed by this court vide order dated 10.1.2012 and said judgment is still in the field. Now it is settled by this court as well as apex Court that *“if evidence of the same witness has been disbelieved to the extent of one set of accused persons, then same could only be believed against the other set of accused persons, if the same was corroborated by any independent piece of evidence”* i.e. lacking in the present case. In this regard wisdom has been gained from case titled “RASHID MASIH versus The STATE” (2015 Y L R 1293) and “IFTIKHAR HUSSAIN and others versus THE STATE”(2004 S C M R 1185). It is cardinal principle of criminal jurisprudence that prosecution remained under heavy burden to bring the home guilt to the accused beyond any shadow of doubt but in the instant case, prosecution has failed to prove the charge against the convicts/petitioners. Both the

below courts have not appreciated the evidence in its true perspective. The apex court has been pleased to hold in case titled “Muhammad Khan and another Vs. State” (PLJ 2000 SC 1041) that *it is axiomatic and universal recognized principle of law that conviction must be founded on unimpeachable evidence and certainty of guilt and hence any doubt that arises in prosecution case must be resolved in favour of accused.* Further, it is well settled by now that a single instance caused a reasonable doubt in the mind of Court entitles the accused to the benefit of doubt not as a matter of grace but as a matter of right. Reliance is placed on case titled as “Muhammad Akram versus The State” (2009 SCMR 230) and “Tariq Pervaiz Vs. The State” (1995 SCMR 1345). Moreover, it is settled principle of law that this court while exercising revisional jurisdiction under sections 435 & 439 of the Criminal Procedure Code, 1898, cannot only go into the evidence for its evaluation and reverse the findings and adjudged the propriety of judgment rather can also evaluate the reasonability and correctness of conviction and sentence. Reliance is placed upon case titled “Abdul Rehman Bajwa Vs. Sultan and 9 others”(PLD 1981 SC 522) and “Naveed and another Vs. The State”(2014 P Cr. L J 250). Resultantly, for what has been discussed above, instant revision petition is accepted and impugned judgments dated 21.10.2010 and 29.1.2011 are hereby set aside and convicts/petitioners Muhammad Shehzad and

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Muhammad Arshad are acquitted of the charge. They are on bail.

Their sureties and bail bonds stand discharged from their liabilities.

"Siddique"

(KHALID MAHMOOD MALIK)

JUDGE

APPROVED FOR REPORTING.

JUDGE