

**IN THE LAHORE HIGH COURT, MULTAN BENCH
MULTAN
(JUDICIAL DEPARTMENT)**

Criminal Appeal No.190 of 2014 (ATA)

Zafar & another versus The State etc.

Criminal Appeal No.191 of 2014 (ATA)

Ijaz versus The State etc.

PSLA No.51 of 2014

Mst. Kaniz Mai The State etc.

Date of hearing **31.05.2018**

The Appellants by M/s Rana Muhammad Nadeem
Kanju and Abdul Khaliq Dogar,
Advocates.

The State by Syed Nadeem Haider Rizvi,
Deputy District Public
Prosecutor.

The Complainant by In person.

=====

Asjad Javaid Ghural, J. Through this common judgment, we propose to decide the instant Criminal Appeal No.190 of 2014-ATA filed by appellants Zafar and Zahoor Ahmad and a connected Criminal Appeal No.191 of 2014-ATA filed by appellant Ijaz, both under Section 25 of the Anti-Terrorism Act, 1997 whereby they have challenged the vires of judgment dated 17.04.2014 passed by the learned Judge, Anti-Terrorism Court-I, Multan in private complaint titled ‘*Mst. Kaniz Mai versus Zafar and 7 others*’ in respect of offences Sections 302, 324, 201, 109 & 34 PPC and Section 7 of The Anti-Terrorism Act, 1997, Police Station Saddar Kehror Pakka District Lodhran arising out of case FIR No.382 dated 02.08.2011, in respect of offences under Sections 324 & 34 PPC and Section 7 of the Anti-Terrorism Act, 1997 registered at the instance of one of the co-accused namely Muhammad Yar. The appellants were convicted and sentenced as under:-

Appellant Zafar,

Under Section 302(b) PPC

Imprisonment for life for committing Qatl-i-Amd of deceased Mst. Yasmin Bibi.

Appellants Zahoor and Ijaz,

Under Section 302(b) PPC

Imprisonment for life each for Qatl-i-Amd of deceased Mst. Sanobar.

Appellants Zafar, Zahoor and Ijaz,

Under Section 302(b) PPC read with Section 34 PPC

Imprisonment for life each for sharing common intention of death of Mst. Yasmin Bibi and Mst. Sanobar.

Under Section 7 the Anti-Terrorism Act, 1997

Imprisonment for life each and to pay the fine of Rs.100,000/- by each and in default thereof, to further undergo simple imprisonment for one year.

All the three appellants were directed to pay the compensation of Rs.200,000/- each to the legal heirs of the deceased and in case of non-payment of compensation, to further undergo simple imprisonment for six months.

All the aforesaid sentences were directed to run concurrently.

The benefit of Section 382-B Cr.P.C. was extended to the appellants.

2. Complainant Mst. Kaniz Mai filed a *Petition for Special Leave to Appeal No.51 of 2014* against the acquittal of respondents No.2 to 6, which shall also be decided through this common judgment.

3. The prosecution story unfolded in the private complaint (Ex.PA) filed by Mst. Kaneez Mai (PW-1) is that in the intervening night of 01/02.08.2011 at 1:00 a.m. she alongwith her son Zubair, daughter Mst. Yasmin and granddaughter Mst. Sanobar were sleeping in the courtyard of her house. Her husband Muhammad Yar and another son Yasin were not present in the house. She woke up on hearing some noise and saw Zafar, Zahoor and Ijaz (appellants), who were having acid in the bottles. In their view, Zafar sprinkled acid on the eyes and other parts of body of her sleeping daughter Mst. Yasmin whereas Zahoor and Ijaz sprinkled acid on her grand-daughter Mst. Sanobar. The complainant raised hue and cry and tried to apprehend the

accused persons whereupon Zafar threw acid upon the complainant and she also fell injured, however some drops had injured accused Zafar himself. Zahoor and Ijaz sprinkled acid upon Zubair, a son of the complainant but he luckily saved. The complainant raised hue and cry and poured water upon both the injured girls. In the meanwhile, her brother Muhammad Arif and one Qasim attracted there. The complainant informed the police and got recorded her statement. The complainant and both the aforesaid injured girls were shifted to hospital with the help of the lady constable. The investigating officer recorded the statement of Mst. Yasmin in the hospital. Mst. Yasmin succumbed to injuries on 29.08.2011 whereas injured Sanobar had passed away on 07.09.2011. It was alleged in the private complaint that the complainant's husband, in connivance with the accused persons, managed to lodge the FIR in order to save his close relatives. Thereafter, the complainant had come to know that her version had not been recorded correctly by the investigating officer whereas her husband had mentioned the name of an innocent person namely Wazir as an accused.

Motive behind the occurrence was that Mst. Yasmin was earlier married with one Farooq, thereafter she contracted love-marriage with one Wazir, accused Zafar had a bad-eye upon Yasmin, he wanted to marry her for running brothel. Earlier Zafar had taken Mst. Yasmin at the Daira of one Allah Ditta Daha in order to murder her but she luckily escaped. The accused persons had nourished grudge of her marriage with Wazir and they used to exert pressure to get divorce from her husband. Accused Muhammad Yar (since acquitted), in connivance with her close relatives, had got recorded the statement of Mst. Yasmin under Section 164 Cr.P.C., who had in fact received injuries while sleeping and did not see the occurrence. It was further alleged that on 03.08.2011, the accused persons had individually made extra judicial confession before her sister Pathani Mai and brother Muhammad Arif and sought pardon.

4. Muhammad Khaliq, Inspector (CW-10) reached at the place of occurrence on 02.08.2011, prepared injury statements of Mst. Yasmin (Ex.PE) and Mst. Sanobar (Ex.PG) and sent them to the hospital. He recorded the statement of Muhammad Yar (complainant of FIR) for the registration of the FIR. He inspected the place of occurrence, prepared

rough site plan (Ex.CW-10/A), took into possession cot (P-5) of Mst. Sanobar, a dupatta, Khais, pillow, Shalwar, (P-6 to P-9) with burnt marks of acid of Mst. Sanobar, Dupatta, Khais, Gindi and cot (P-10 to P-13) with burnt marks of acid and stained with earth and took the same into possession vide recovery memo (Ex.CW-10/B). He recorded the statements of witnesses under Section 161 Cr.P.C. at the spot. He recorded the statement of injured Mst. Yasmin at the hospital on the same day after getting permission from the doctor. He conducted raids to arrest accused Wazir, Kabir and Zulfiqar, nominated by the complainant and also accused Zafar, Zahoor, Ijaz, Mst. Pathani Mai and Mst. Hamshir Mai, nominated by the injured in her statement recorded under Section 161 Cr.P.C. He arrested Wazir Ali, an accused of the FIR on 15.08.2011. Thereafter, he accompanied the learned Area Magistrate, who recorded the statement of Mst. Yasmin under Section 164 Cr.P.C. on 17.08.2011. During investigation, Wazir Ali led to the recovery of a motorbike (P-14). On 29.08.2011 he was informed by the complainant of the FIR that Mst. Yasmin had succumbed to the injuries, he prepared her injury statement (Ex.PJ), inquest report (Ex.PK) and escorted her dead body to the mortuary. On 07.09.2011, Mst. Sanobar died due to acid burn injuries, he prepared her injury statement (Ex.PM) and inquest report (Ex.PN) and escorted her dead body to the mortuary. On 08.09.2011 he got prepared incomplete report under Section 173 Cr.P.C. On 10.09.2011, the present complainant alongwith her brother appeared before him, claimed themselves to be the eye witnesses of the occurrence, he prepared injury statement (Ex.PQ) of the complainant and got her medically examined. He again submitted incomplete report under Section 173 Cr.P.C. on 20.09.2011. On 24.10.2011 he recorded the statements of Muhammad Tayyab, Qari Muhammad Iqbal and Riaz Ahmad under Section 161 Cr.P.C. On 11.11.2011 the JIT arrested Muhammad Yar (complainant of FIR). During investigation, Muhammad Yar was found connected with this occurrence. He arrested accused Ahmad Yar on 12.12.2011. He arranged confrontation meeting of the complainant with the accused party Muhammad Ijaz, Mst. Hamshir Mai and Mst. Pathani Mai. He obtained proclamation under Section 87 Cr.P.C. of accused Zafar, Zahoor and Manzoor. He arrested Mst. Pathani Mai on 06.01.2012 whereas the pre-

arrest bail of Ejaz-ur-Rehman and Mst. Hamshir Mai was confirmed. He arrested Zafar on 11.04.2012, who was sent to the judicial lockup by the court. On 03.05.2012 he got prepared challan against Manzoor Ahmad and Zahoor Ahmad accused.

5. Dr. Aneela Ali (PW-4) had conducted medical examination of injured Mst. Yasmin on 02.08.2011 and observed the following injuries:-

- No.1 There was superficial burn marks on both eyes. There was complaint of burning of vision on both eyes. Expert opinion from Bahawalpur.
- No.2 There was superficial burn marks on whole of face and neck.
- No.3 There was superficial burn marks on thorax.
- No.4 There was superficial burn marks on abdomen.
- No.5 There was superficial burn marks on right & left arm and on right & left legs.
- No.6 Superficial burn marks were also present on medial aspect of left elbow joint to left wrist.
- No.7 Superficial burn marks on right elbow and right wrist and dorsal aspect of right hand.

Mst. Yasmin expired on 29.08.2011, the said medical expert conducted autopsy on her dead body and observed the aforesaid injuries. It was opined that almost 65% of body surface area was burnt and due to hypovolemic shock and wounds sepsis death was occurred in ordinary course of nature. The duration between injuries and death 27-days and between death and post mortem examination almost 3 ½ hours.

She had conducted medico legal examination of injured Mst. Sanobar on 02.08.2011 and observed the following injuries:-

- No.1 There were deep burn marks on both eyes. Expert opinion from B.V.H.
- No.2 There was deep burn marks on whole of face.
- No.3 Deep burn marks on neck.
- No.4 Anteriorly and posteriorly, there were deep burn marks on thorax.
- No.5 There were deep burn marks on upper half of both arms.
- No.6 There were deep burn marks on sides of abdomen.
- No.7 There were deep burn marks on left thigh and left leg.

Mst. Sanobar expired on 07.09.2011, the said medical expert conducted autopsy on her dead body on the same day and observed the aforesaid

injuries. It was opined that almost 40% to 45% of body surface area was burnt and due to hypovolemic shock and wounds sepsis death was occurred in ordinary course of nature. The duration between injuries and death one month and five days and between death and post mortem examination almost 6 ½ hours.

She had conducted medico legal examination of injured/complainant (present) on 12.09.2011 with the history of acid burns on 02.08.2011 at 1:00 a.m. and observed a superficial burn mark above buttock and lower part of her back, which was declared as '*Jurh Ghair Jaifah Damia*'. The duration of injury was almost one month and 10-days.

6. At the commencement of trial, the prosecution had produced 08-witnesses whereas 14-witnesses had been examined as Court Witnesses. Learned Law Officer had tendered reports of Chemical Examiner (Ex.PT, Ex.PU, Ex.PV & Ex.PW). The appellants and their co-accused, in their statements recorded under Section 342 Cr.P.C., had denied and controverted all the allegations of fact levelled against them, they did not opt to make statements under Section 340(2) Cr.P.C., however co-accused Muhammad Yar had produced documents Ex.DK to Ex.DT in their defence.

7. Learned trial Court, upon conclusion of the trial, had acquitted Muhammad Yar, Ahmad Yar, Manzoor Ahmad, Mst. Hamshir Mai and Mst. Pathani Mai whereas convicted and sentenced the appellants supra. Hence, this criminal appeal.

8. Learned counsel for the appellants has contended that the appellants are quite innocent having nothing to do with the murders in issue and they being close relatives of the complainant's husband namely Ahmad Yar (complainant of the FIR) had been falsely implicated in this case; that initially the case was registered against one Wazir and two unknown accused persons but due to the intended dishonest investigation by the investigating officer, the complainant of the FIR (Muhammad Yar) had filed a private complaint against the innocent persons, who after facing full-dressed trial, had been acquitted in the said private complaint case by the learned trial court; that the present complainant had made her statement under Section 161 Cr.P.C. with the delay of more than 2 ½ months of the occurrence wherein it was alleged that some unknown accused persons while

trespassing into her house, had committed the murder of both the deceased girls by sprinkling acid; that the complainant had earlier filed a petition under Section 22-A Cr.P.C. before the learned Ex-officio Justice of Peace seeking direction for recording her statement against her husband and others (Ex.DB) wherein the set of accused persons and the version were different to that as mentioned in this private complaint; that the version of the complainant is contradicting the first version mentioned in the FIR, registered at the instance of her husband namely Muhammad Yar; that the story narrated by the complainant in the private complaint filed after about 5-½ months of the occurrence was an afterthought and has no sanctity wherein she had concealed some real facts to that of her husband's version for the reasons best known to her; that in her statement recorded under Section 164 Cr.P.C., injured Mst. Yasmin had supported the version recorded in the FIR by her father; that there was no occasion for the appellants to murder the deceased girls by sprinkling acid; that the entire prosecution story is based on the presumptions and is highly doubtful. Finally, the prayer for acquittal of the appellants has been made.

9. On the other hand learned counsel for the complainant has sent a written request for adjournment. The same was the position on the last many dates of hearing when the case was adjourned as a last opportunity with the clear direction that no further adjournment shall be granted in future but today again a written request for adjournment has been sent, which shows his least interest to prosecute the matter. It is an old matter, learned Law Officer states that he is well-prepared and, thus, the written request for adjournment sought for by learned counsel for the complainant is turned-down.

10. Learned Deputy Prosecutor General appearing for the State, in the presence of the complainant, has contended that the complainant being wife of Muhammad Yar (complainant of FIR) remained under the impression that her statement had been recorded in verbatim and after getting information that her statement had not been recorded correctly by the local police, she obtained direction from the court of learned Ex-officio Justice of Peace and got recorded her statement under Section 161 Cr.P.C.; that the complainant, being an injured witness and inmate of the house, is not expected to deviate

from the true facts for the murder of her real daughter and grand-daughter; that Mst. Yasmin in her statement recorded under Section 161 Cr.P.C. recorded on the same day, had fully supported the version of the complainant; that there was no occasion for the complainant to implicate her close relatives including her husband for the murder of his own daughter and grand-daughter; that the story narrated by the complainant's husband in the FIR had already been disbelieved by the learned trial court and the accused persons mentioned therein had been acquitted of the charge vide even dated separate judgment; that both the deceased girls had been murdered in a brutal, shocking, callous and barbaric manner, which created panic and insecurity in the society; that the appellants do not deserve any leniency rather they are required to be sentenced to the capital sentence; that the acquitted co-accused had actively participated in the occurrence and they are also required to be punished for their barbaric act. Finally, prayer has been made for dismissal of both the appeals against conviction of the appellants and also acceptance of her petition for special leave to appeal against the acquittal of respondents No.2 to 6.

11. We have heard learned counsel for the appellants, learned Deputy Prosecutor General appearing for the State and have perused the record with their able assistance.

12. This unfortunate incident had taken place in the intervening night of 1/2.08.2011 at about 1:00 a.m., which was reported to the police by one Muhammad Yar (since acquitted) on the same night, his narration was recorded at 2:00 a.m. and the case was registered at 2:10 a.m. nominating one Wazir Ali alongwith two unknown accused persons. During investigation, the complainant of the instant private complaint alongwith Muhammad Arif and Muhammad Qasim had intruded themselves to be the eye witnesses of the occurrence and on the direction of learned Ex-officio Justice of Peace, they got recorded their statements under Section 161 Cr.P.C. on 23.10.2011 with different versions wherein they had not supported the contents of the FIR rather the complainant, who in the initial part of her statement, had stated that five unknown accused persons had sprinkled acid upon both the deceased girls and while further stating the detail of the occurrence, she had nominated the appellants and their

co-accused with the joint role. The statement of the complainant (Ex.DA) gives an impression that she had two versions in her one statement with the specification of roles of the accused persons but different in mode and manner of the occurrence, which creates doubt with regard to the veracity of her statement. The overall view, which infers from the facts and circumstances of the case, is that the sanctity shall remain attached with the version recorded in the promptly lodged FIR instead of the private complaint, which was filed after 5 ½ months whereas the delay of even one or two days in recording the statement of an eye witness has been found fatal for the prosecution and not worth reliance by the august Supreme Court of Pakistan in case titled “MUHAMMAD ASIF versus The STATE” (2017 SCMR 486) as under:-

“There is a long line of authorities/precedents of this court and the High Courts that even one or two days unexplained delay in recording the statement of eye witness would be fatal and testimony of such witnesses cannot be safely relied upon.”

13. The mainstay of the prosecution case is on the testimony of ocular account furnished by Mst. Kaniza Mai (PW-1)/complainant/mother of deceased Mst. Yasmin and grandmother of deceased Mst. Sanobar, Muhammad Zubair (PW-2), a son and Muhammad Qasim (PW-3), a brother of the complainant. The complainant while appearing in the dock in the courtroom had deposed that in the intervening night of 1/2.08.2011 at 1:00 a.m. her son Zubair, daughter Mst. Yasmin and granddaughter Mst. Sanobar were sleeping in the courtyard of her house whereas her husband Muhammad Yar and another son Yasin were not present in the house, she woke up on hearing some noise and saw Zafar, Zahoor and Ijaz (appellants), who were having acid in the bottles. In their view, Zafar sprinkled acid on the eyes and other parts of body of her sleeping daughter Mst. Yasmin whereas Zahoor and Ijaz sprinkled acid on her grand-daughter Mst. Sanobar, she raised hue and cry and tried to apprehend the accused persons whereupon Zafar threw acid upon the complainant and she also fell injured, however some drops had injured accused Zafar himself. Zahoor and Ijaz sprinkled acid upon Zubair, a son of the complainant but he luckily saved but his quilt was burnt. The complainant raised hue and cry and poured

water upon both the injured girls. In the meanwhile, her brother Muhammad Arif and one Qasim (PW-3) attracted there. The complainant informed the police and got recorded her statement. She and both the aforesaid injured girls were shifted to the hospital with the help of lady constable. Mst. Yasmin succumbed to injuries on 29.08.2011 whereas injured Mst. Sanobar had passed away on 07.09.2011 due to the burn injuries. It was alleged in the private complaint that the complainant's husband, in connivance with the accused persons, had managed to lodge the FIR in order to save his close relatives. The motive behind the occurrence was that Mst. Yasmin had contracted love-marriage with one Wazir whereas accused Zafar had a bad-eye upon Mst. Yasmin, he wanted to marry her for running brothel. Earlier he (Zafar) had taken Mst. Yasmin at the Daira of one Allah Ditta Daha in order to murder her but she luckily escaped. The accused persons had nourished grudge of her marriage with Wazir and they used to exert pressure to get divorce from her husband. Accused Muhammad Yar (since acquitted), in connivance with her close relatives, had got recorded the statement of Mst. Yasmin under Section 164 Cr.P.C., who had in fact received injuries while sleeping and did not see the occurrence. It was further alleged that on 03.08.2011, the accused persons had individually made extra judicial confession before her sister Pathani Mai and brother Muhammad Arif and sought pardon. Muhammad Zubair (PW-2) aged about 12-years was found competent by the learned trial court to make statement. He had supported the complainant in verbatim in his deposition before the learned trial court. That being so, the established principle for criminal administration of justice is that every case is to be decided on the basis of totality of impression gathered from the facts and circumstances of a particular case. See case titled "NADEEM RAMZAN versus The STATE" (2018 SCMR 149).

It has already been discussed that the first version at the spot was brought on record by Muhammad Yar (since acquitted), husband of the complainant with a total different version to that of the instant one. The complainant has first time introduced herself while making an application before the learned Ex-officio Justice of Peace (Ex.DB) on 08.09.2011 after more than one month of the occurrence whereupon her statement under

Section 161 Cr.P.C. (Ex.DA) was recorded by the investigating officer on 23.10.2011 wherein she had stated in clear words that five unknown accused persons had trespassed into her house, sprinkled acid upon both the deceased girls and while narrating the detail of her statement, firstly she had given an impression that she had suspected that the appellants alongwith their co-accused were involved in this occurrence as three days earlier they had extended threats and then at the end she had specifically stated that the accused persons, while entering into her house, had murdered both the deceased girls while sprinkling acid. She again made application before the learned Ex-officio Justice of Peace (Ex.DD) on 05.10.2011 seeking direction to the investigating officer for recording her statement stating therein that the said accused persons alongwith one Wazir Ahmad, the principal accused of the first crime report lodged by her husband, had taken active participation in the alleged occurrence with a quite different mode and manner of the occurrence. The said petition stood disposed of by the learned Ex-officio Justice of Peace vide order dated 15.10.2011 with no such direction. During cross-examination she was confronted with her both the aforesaid self-contradictory statements i.e. statement recorded under Section 161 Cr.P.C. and the contents of her petition under Section 22-A Cr.P.C. and in such confrontation, she had badly failed to justify her aforesaid contrary stances. By taking into account both the aforesaid statements, the complainant looks perplex jumping from one stance to another, being not certain on anyone of the same, to establish her version mentioned in the private complaint.

14. Admittedly, the instant private complaint had been filed on 23.01.2012 after more than five months of the occurrence having consumed sufficient time for consultation, deliberation and fabrication and despite having such long period she had no specific stance. The complainant had claimed that during the occurrence she had also received injuries but quite amazingly her medico-legal examination was conducted on 12.09.2011 after more than 40-days of the occurrence showing a simple acid burn injury on her back, establishing her presence at the venue of occurrence at the relevant time at odd hours of the night, which otherwise has not been denied by the defence but the question remains as to the identification of the actual

culprits. It was admittedly pitched dark-night occurrence, which had taken place at 1:00 a.m. and the complainant had mentioned no source of light in her examination-in-chief before the learned trial court. Muhammad Zubair (PW-2) had deposed in his cross-examination that the occurrence was visible due to the light of the nearby filling station but the said tube-light had admittedly not been taken into possession by the investigating officer at the time of his first visit of the place of occurrence on the same night.

15. Muhammad Tayyab (CW-2) had appeared before the investigating officer and got recorded his statement under Section 161 Cr.P.C. (Ex.DH) with regard to the alleged occurrence being an independent and natural witness. He was an employee of the filling station and one of the persons, who had shifted the injured girls to the hospital but his evidence was withheld intentionally by the complainant, however he was summoned and examined as CW-2 by the learned trial court where he deposed that he reached at the place of occurrence on hearing hue and cry, inquired about the matter from Muhammad Yar (complainant of the FIR), who replied that somebody had sprinkled acid on his daughters and requested him to inform the police and he called the police from his mobile phone. He further deposed that when he reached at the place of occurrence, Mst. Yasmin and Mst. Sanobar had received acid burn injuries and their cots were lying in the courtyard, on reaching the police force, the injured girls were shifted to the hospital in a private vehicle. In his presence, on the asking of the Station House Officer, Muhammad Yar had told that he had no suspicion against anyone, however in second thought he suspected Wazir Ali. The said statement of an independent witness though recorded by the investigating officer at belated stage on 24.10.2011 in support of the present complainant yet it clearly negates the version being claimed by the present complainant.

16. Another relevant material aspect of the discussion is that the investigating officer has recorded the statement of Mst. Yasmin under Section 161 Cr.P.C. on the same day, while in injured condition wherein she had fully supported the version as claimed by the complainant of the instant private complaint. Thereafter, Muhammad Umar Farooq, Magistrate (CW-14) had recorded the statement under Section 164 Cr.P.C. of the said injured on 17.08.2011 at Bahawal Victoria Hospital, Bahawalpur wherein

she had supported the stance taken by her father Muhammad Yar in the FIR. For taking the advantage of statement of Mst. Yasmin recorded under Section 161 Cr.P.C., complainant Mst. Kaniza Mai had firstly stated in her private complaint that the said deceased lady had supported her claim in statement under Section 161 Cr.P.C. but quite amazingly, at the same time, she had stated that statement under Section 164 Cr.P.C. of the said deceased lady had been maneuvered by the complainant of the FIR through deceitful means because in fact the deceased lady had received acid burn injuries when she was sleeping and she was not in a position to see anybody with her own eyes and unable to identify the real culprits. The self-contradictory stance of the complainant is sufficient to shake her credibility and, thus, the testimony of such witnesses cannot be safely relied upon.

17. The complainant had made divergent statements *firstly*, in her statement recorded under Section 161 Cr.P.C. (Ex.DA), *secondly* in her petition under Section 22-A Cr.P.C. made before the learned Ex-Officio Justice of Peace seeking direction for recording her statement before the police (Ex.DD) and *thirdly*, in the private complaint (Ex.PA) and *fourthly*, more specific that all the aforesaid stances are contradicting the version mentioned in the promptly lodged FIR registered at the instance of her husband Muhammad Yar, which was duly supported by the statement of injured Mst. Yasmin recorded under Section 164 Cr.P.C. in the hospital and thus, the testimony of the complainant is not worth reliance to maintain the conviction and sentence of capital charge.

18. The complainant had put different motives behind the occurrence that appellant Zafar had bad eye upon deceased Mst. Yasmin and was intending to marry her in order to run a brothel house, the accused persons were inimical towards Mst. Yasmin because she had earlier contracted love-marriage with one Wazir Ali whereupon said Mst. Yasmin had moved an application in her life time against the appellants for protection to her life. It was further averred that appellant Zafar had once made an attempt to commit murder of Mst. Yasmin at the Daira of one Allah Ditta but she luckily escaped from there. In her statement recorded under Section 161 Cr.P.C., on the direction of learned Ex-Officio Justice of Peace (Ex.DD), the complainant had given different motive stating that a few days prior to the

occurrence, a quarrel had taken place between Mst. Yasmin and Mst. Pathani Mai, Hamshir Mai and Ijaz on account of 'Rishta' and they had extended threats to Mst. Yasmin to kill her. In petition under Section 22-A Cr.P.C. seeking direction for recording her statement under Section 161 Cr.P.C., the complainant had stated that one Wazir Ali had abducted Mst. Yasmin, contracted marriage with her and the accused persons had provided assistance to Wazir Ali in this regard in order to make her life miserable, after marriage said Wazir Ali had ousted Mst. Yasmin from his house on account of her alleged bad character. Another motive was introduced in the said application that Mst. Pathani Mai had been demanding 'Rishta' of Yasmin from her to marry with appellant Ijaz but she refused due to the bad character of Mst. Pathani Mai etc. We have observed that the complainant had jumped from one motive to another at different forums as she herself was not certain as to what was the actual reason behind the murders in issue. Even otherwise, the complainant had not led any oral or documentary evidence in order to prove any one of the aforesaid motives. The actual cause of the murders in issue remained shrouded in mystery.

19. Dr. Aneela Ali (PW-4) had conducted medical examination of both the injured girls on 02.08.2011 and observed seven acid burnt injuries each on different parts of the body of each deceased (mentioned in the preceding paragraph No.5 of this judgment). She had conducted autopsy on the dead body of deceased Mst. Yasmin on 29.08.2011 and observed that almost 65% of body surface area was burnt and due to hypovolemic shock and wounds sepsis death was occurred in ordinary course of nature. The duration between injuries and death 27-days and between death and post mortem examination almost 3 ½ hours. She had also conducted post mortem examination on the dead body of deceased Mst. Sanobar on 07.09.2011 and observed that almost 40% to 45% of body surface area was burnt and due to hypovolemic shock and wounds sepsis death was occurred in ordinary course of nature. The duration between injuries and death one month and five days and between death and post mortem examination almost 6 ½ hours.

The purpose of post mortem examination is always to ascertain the number, nature and locale of injuries, kind of weapon used, cause of death,

duration between injuries and death as well as death and autopsy but it alone does not raise finger towards any specific culprit. Though it is proved that both the deceased girls had expired due to acid burn injuries yet sole medical evidence is of no beneficial for the prosecution in absence of confidence inspiring ocular account, which has already been discarded in the preceding paragraphs.

20. In sequel of above discussion, we have reached at an irresistible conclusion that the prosecution has badly failed to bring home guilt of the appellants beyond shadow of reasonable doubt through cogent, convincing or confidence inspiring evidence. The complainant filed the private complaint with the delay of 5 ½ months, which was nothing but an outcome of due consultation, deliberation and fabrication. The complainant had made statement contrary to her own version mentioned in her statement recorded under Section 161 Cr.P.C. and in her application under Section 22-A Cr.P.C. made before the learned Ex-Officio Justice of Peace wherein not only the set of accused persons was substituted but also the motive, set of the witnesses as well as mode and manner of the occurrence was changed to that of the promptly lodged crime report by her husband Muhammad Yar. The complainant had taken different stances at different forums contrary to the first version recorded in the FIR. Mst. Yasmin Bibi deceased remained alive for about one month, her statement under Section 164 Cr.P.C. was recorded under the supervision of Mr. Muhammad Umar Farooq, Magistrate Ist Class, Liaquatpur (CW-14) wherein she had not supported the version put by the complainant in her private complaint rather endorsed the version of her father (Muhammad Yar) mentioned in the promptly lodged FIR. The complainant had put different motives at different forums contrary to each other but she remained fail to prove anyone of the same through an independent source of oral as well as documentary evidence. Muhammad Zubair (PW-2) and Muhammad Qasim (PW-3) got recorded their statements under Section 161 Cr.P.C. before the investigating officer with unexplained delay of more than 2 ½ months, which by itself is not safe to be relied upon. The prosecution has badly failed to prove the charge of homicide death of the deceased ladies against the appellants through any piece of evidence. In criminal administration of justice, a single doubt has

always been considered sufficient to tilt the scale of justice in favour of an accused but the case in hand is replete with doubts. The accused is always considered to be entitled to the benefit of doubt as a matter of right and not grace. Reliance is placed on the case titled “MUHAMMAD AKRAM versus THE STATE” (2009 SCMR 230) wherein at page No.236, it has been held as under:-

“It is an axiomatic principle of law that in case of doubt, the benefit of 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 Pervaiz 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.”

21. For what has been discussed above, both the appeals in hand are **allowed**, the conviction and sentence of appellants Zafar, Zahoor and Ijaz are set aside and they are acquitted of the charge by extending the benefit of doubt to them. They are directed to be released from jail forthwith, if not required to be detained in connection with any other criminal case.

PSLA No.51 of 2014

22. For the reasons mentioned herein above, instant PSLA No.51 of 2014 filed by complainant/Mst. Kanizan Mai against acquittal of respondents No.2 to 6 is hereby **dismissed in limine**, being devoid of any merits.

(Syed Muhammad Kazim Raza Shamsi)
Judge

(Asjad Javaid Ghural)
Judge