IN THE FEDERAL SHARIAT COURT OF PAKISTAN
(Appellate/Revisional Jurisdiction)

Present:

MR. JUSTICE MUHAMMAD NOOR MESKANZAI, CHIEF JUSTICE
MR. JUSTICE SYED MUHAMMAD FAROOQ SHAH

Jail Criminal Appeal No.19/K of 2018

1. Muhammad son of Jumoon Manganhar,
r/o Ward No.4, Pir Malook Shah, Village Badin,
District Badin.

2. Muhammad Ashraf son of Natho Mallah
r/o Ward No.4, Pir Aalishah-Jo-Kot, Taluka Badin,
District Badin.

….. Appellants

VERSUS

The State …. Respondent

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Counsel for the Appellants	….	Syed Shahid Mushtaq, Advocate
Counsel for the State	….	Mr. Hussain Bux Baloch, Additional Prosecutor General, Sindh
Case FIR No. date	….	201/1999, dated 16.12.1999
& Police Station.	….	Badin, District Badin
Date of judgment of Trial Court	….	01.09.2007
Date of receipt of Appeal	….	03.03.2018
Date of hearing	….	12.06.2019
Date of decision	….	12.06.2019
Date of Judgment	….	

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JUDGMENT:

MUHAMMAD NOOR MESKANZAI, CJ--- This appeal calls in question the legality, validity and propriety of the conviction and sentence recorded by learned Sessions Judge, Badin vide its judgment dated 01.09.2007.

2. It is pertinent to mention here that earlier the appellants were found guilty and awarded capital sentence by the Trial Court vide judgment dated 31.03.2007. However, on appeal, the said judgment was set aside by the High Court of Sindh on 23.05.2007 on the ground that the judgment flagrantly militates against the mandatory provisions of the Section 367 of Cr.P.C. Resultantly, the case was remanded for re-writing of the judgment. The learned Trial Court after hearing the parties again found the appellants guilty of the offences and the following sentences was awarded:-

> *"hence they are convicted and sentenced under section 304(i)(b) PPC for committing the Qatle-e-Amad of deceased and convict them to suffer life imprisonment under section 302(b) PPC and also to pay compensation of one lac each to the legal heirs of deceased as provided under section 544(a) Cr.P.C. In case of default in payment of compensation, the accused shall suffer R.I for one year more. The accused are also convicted and sentenced under section 457 PPC to suffer R.I for 5-years and to pay fine of Rs.5000/- each to the legal heirs of deceased and in case of default in payment of fine, the accused shall suffer R.I for six months more. Both the sentences shall run concurrently. The benefit of section 382-B Cr.P.C is extended in favour of accused."*

3. The appellants feeling dissatisfied with their conviction and sentences, filed the Cr. Appeal No.S-199 of 2007 before Hon'ble High

Court of Sindh, Circuit Court, Hyderabad. It is pertinent to mention that besides the appeal filed through private counsel, the appellants and two other co-convicts filed a Jail Appeal bearing No. Cr. Jail Appeal No. S-220/2007, through Superintendent Central Prison, Hyderabad in the High Court of Sindh, Circuit Bench, Hyderabad. The present appellants filed an application for the suspension of their sentences which was granted by the Hon'ble High Court of Sindh, Circuit Bench, Hyderabad vide its order dated 18.08.2011.

4. It appears that the two appellants i.e. Khadim Hussain and Noor Muhammad served the awarded sentence and on completion of the sentence, came out of the prison on 04.04.2014 and 27.03.2015 respectively.

5. Later on, the Hon'ble High Court of Sindh, transferred the appeals to this Court on the ground that it had no jurisdiction to hear the matter, vide Administration Letter No.2740 dated 28.02.2018 of Assistant Registrar, High Court of Sindh, Circuit Court, Hyderabad. The two appeals i.e. Cr. Appeal No.S-199 of 2007 & Cr. Jail Appeal No. S-220/2007 received from Hon'ble High Court were registered in this Court, Bench Registry at Karachi as Cr. Appeal No.18/K of 2018 and Jail Cr. Appeal No.19/K of 2018 respectively. On 11.05.2018, both the appeals were admitted to regular hearing. However, the appeal of appellants Khadim Hussain and Noor Muhammad (Cr.A.No.18-K of 2018) was disposed of by this Court vide Order dated 23.10.2018, the operative portion of the order reads as under:-

> *"It has been pointed out that present appellant is also cited as appellant No.3 in Jail Appeal No.19-K of 2018, assailing the vires of same judgment recording conviction against him, already admitted for regular hearing.*
>
> *2. Further proceedings in the present appeal as such will be an exercise in futility.*
> *3. Disposed of accordingly."*

The appellants 1 & 2 did not press the appeal, so to such extent appeal was dismissed as withdrawn.

6. The learned Counsel for the appellants contended that there was no material, whatsoever in nature, available on record justifying conviction of the appellants. He maintained that admittedly the inmates of the house at initial stage categorically stated that three un-identified persons entered the house, chained the door of the room from outside and upon noise inmates got up. The victim tried to open the door which attracted the assailants and harsh-words were exchanged, meanwhile, the door on a kick of one of the assailants got opened and at that juncture one of the accused made straight firing on Uris, which resulted in his death. Upon cries of the inmates, Karim Bux and Atoo Sheedi, being immediate neighbours, reached and were apprised of the incident with a request to procure the attendance of Noor Muhammad, the uncle of victim. The edifice of the prosecution story got constructed on the basis of this version which appears in the FIR lodged by Noor Muhammad, whose attendance was procured in the house by Karim Bux and Atoo Sheedi. However, with the arrest of accused i.e. 11.01.2000, the three ladies came forward with a new fabricated story, which was accepted by the trial Court that culminated in conviction of the four innocent persons. It was maintained that two co-convicts, appeared before this

Court and stated that they are not interested to prosecute the appeal as they had already served their sentence. The learned Counsel stressed that there is no independent evidence available on record to connect the appellants with the commission of the alleged offence. Hence, they are entitled for acquittal.

7. The learned Additional Prosecutor General tried to controvert the contentions so raised by contending that the accused were identified but due to threat extended at the time of the commission of the offence they remained silent and did not disclose the names and the identity of the accused in their statements recorded under Section 161 Cr.P.C. He further submitted that after arrest of accused, identification parade was conducted, the witnesses identified the assailants with specific roles. The prosecution witnesses also recorded their statements under Section 164 Cr.P.C, which were produced by them before the Court. The learned trial Court, after proper appraisal of material available on record, rightly concluded that the accused have committed cold blooded murder of an innocent person by trespassing into his house. Hence, the sentence so awarded is not open to any legal exception.

8. We have heard the learned Counsel for the parties and gone through the available record with their valuable assistance.

9. The brief resume of the prosecution case is that on 16.12.1999, complainant got registered FIR No. 201-1999 with the allegation that some unknown persons have committed murder of his nephew Muhammad Uris. The complainant suspected one Muhammad

Moosa Memon as culprit because 10/11 days prior to the occurrence there was an altercation between Uris and Muhammad Moosa Memon, who extended threats of dire consequences. According to FIR, the inmates of the house were sleeping and on some noise they woke up. The victim Uris wanted to go outside by raising *lalkara* but the door was chained from outside and could not be opened. In the meanwhile, there was exchange of harsh words among the accused persons and Uris. The door got opened by a kick of one of the assailants, Uris was fired at with a pistol by a culprit and the assailants made their escape good. The hues and cries attracted the immediate neighbours Karim Bux and Atoo Sheedi. On their arrival, they were told the entire story by the three inmates i.e. Mst. Kalsoom PW.2, Mst. Kaz Bano PW.3 and Mst. Rukhsana PW.4 that un-identified persons made fire upon Uris and got him killed and Karim Bux and Atoo Sheedi were requested to procure the attendance of Noor Muhammad, the paternal uncle of the deceased. Karim Bux and Atoo Sheedi went to the house of Noor Muhammad, intimated him of the situation, who came alongwith said persons to the house of victim and in the meanwhile Muhammad Azam, brother of the deceased, also came from hospital. Noor Muhammad went to police station for lodging report.

10. That the Trial Court has recorded conviction at the strength of statements of three P.Ws i.e. 02 to 04 recorded u/s 164 Cr.P.C and that of recorded by the Court. Since the learned trial Court did not reproduce the gist of the evidence and merely referred to the theme of the statements recorded under Section 164 Cr.P.C and the statements

recorded before the Court, therefore, we deem it appropriate to reproduce the gist of both the statements, enabling the reader to asses, evaluate and find as to whether the conclusions drawn by the trial Court were not absolutely perverse and contrary to the gist and theme of the statements. To better understanding the matter, let first the FIR be reproduced and then the gist of statements.

> *"Today night I was sleeping in my house and I was awaken by Karim Bux son of Nago Kasai and Atto s/o Muhammad Sheedi on 16.12.1999 at about 03:15 and they informed that three persons have entered in your nephew's house and has murdered him. On such fact of Karim Bux and Attoo Sheedi, I, alongwith Karim Bux, Attoo Sheedi together came at the home of my nephew Muhammad Uris. Where I asked from Mst. Kalsoom wife of my nephew, she stated that she and her husband Uris were sleeping on the Bed inside the room. Mst. Kaz Bano has been guest in our house for the last 13/14 days. Mst. Kalsoom stated that when we were sleeping in the room at about 03:00 a.m we heard noise of the people outside the room in the Varanda in the cradle on which we awoke. Uris tried to go outside but the room was bolted from the outside on which he raised lalkara and said who are you and open the door and have quarreled. Meanwhile one person from the outside suddenly hit the door and door was opened, Uris was standing beside the window. The said person at once made straight fire upon Uris with pistol which hit Uris in the left side ribs and he fell down. Thereafter, we raised cries, the small girl Rukhsana saw through the window that three persons went outside the house while running. Thereafter, Rukhsana opened the door of room from the outside and we saw Uris was dead. We raised cries in the home. Meanwhile my nephew Azam who was with his father in Badin Hospital came in the house. Azam disclosed that about 10/11 days ago my brother has quarreled with Moosa Memon in the city, Moosa Memon issued threat to my brother that he (Mosa) would see him (Uris). My nephew Uris has no enmity with any other body except Mosa Memon. I did not know the names of persons but I have doubt that because of enmity Mosa Memon or any other person has murdered my nephew Uris in his home with the fire of pistol."*
>
> *(Emphasis supplied)*

11. Gist of the statements of PWs is as under:-

Complainant Noor Muhammad appeared as PW.1 and in his statement before the Court, stated as under:

> *"Deceased Uris was my nephew. The incident took place about four years back. I was sleeping in my house on 16.12.1999. There was knock on the door. I got up went outside by opening the door, I saw Akoo Sheedi and Abdul Karim Kasai standing. They informed me that few un-identified culprits entered in the house of my nephew Uris. They committed robbery. The culprits after committing robbery, chained the door of the room when Uris, and his family members woke up, they resisted and tried to open the door forcibly. The culprits pushed the window which was opened wherefrom one of the culprits fired at Uris as a result thereof he fell down on the cot. The P.W Rukhsana raised cries which attracted the neighbours. The culprits after firing at Uris decamped from the scene. The P.W Rukhsana came out from the window which was opened by forcible push of the culprits. The P.W Rukhsana also opened the outer door of the house. The other P.Ws on the cries of P.W Rukhsana also got up and raised cries. The neighbours came there including Akoo and Abdul Karim. I left the neighbourers in the house and went to the Police Post City Badin. The SHO Mohammad Soomar Solangi was present to whom I narrated the incident. Such entry was made in the record. The SHO Soomar Solangi left the City PP with the subordinate staff and including me went at the Police Station Badin. Where Soomar Solangi informed to Ali Raza Laghari duty Officer about the incident. Thereafter, we came to the house of Mohammad Uris, where the police observed the legal formalities. The Police removed the dead body for Civil Hospital for Post Mortem. Where the Dr. Hishmat Khawaja conducted the Autopsy over the dead body thereafter the dead body was handed over to us. I lodged the FIR at about 10-O A.M. I produce the FIR at Ex:12-A and say that it is same, correct and bears my signature. I also produce the NC vide Ex:12-B and say that it is same, correct and bears my signature. Police also prepared the mashirnama of place of vardat. After 20/25 days, Mohammad Manganhar came on the Cabin of Mohammad Salleh Abbasi after drinking the wine in intoxicating position, abused Mohammad Saleh Abbasi, who gave application to the PP Badin. Whereupon, Mohammad Soomar Solangi arrested the accused Mohammad Manganhar from his house. During search, the Police recovered one clothes bag. The accused Khadim Sheedi, Mohammad Manganhar, Ashraf Mallah committed*

the murder of deceased alongwith Nooro Chishti. The accused present in the court are same."

(Emphasis supplied)

12. PW.2 Mst. Kalsoom in her statement before the Court stated as under:-

"Deceased Uris was my husband. The complainant is my paternal father-in-law. The incident took place about four years back. I, my husband, wife of brother of husband, Kazbano, P.W Rukhsana and children were sleeping in the house when at about 3-0 A.M we heard noise and voice of persons in the house, therefore, we got up. I saw four armed persons namely Khadim Hussain Sheedi, Nooro Sheedi, Mohammad Manganhar and Ashroo Mallah were present in the house. Accused Khadim Hussain Sheedi fired at my husband as a result thereof he fell down. We raised cries, the accused extended threats not to raise cries otherwise they will kill us. The Police came at our house after half an hour. We narrated the incident to Police. The complainant lodged the F.I.R. My statement was recorded by Police. My 164 Cr.P.C statement was also recorded before Magistrate. The accused present in the Court are same. I produce the 164 Cr.P.C statement at Ex:13-A and say that it is same, correct and bears my signature." *(Emphasis supplied)*

13. Mst. Kalsoom recorded her statement under Section 164 Cr.P.C and stated as under:-

"On 16.12.1999, me, my husband Uris, my husband's sister Kazbano and Rukhsana were sleeping in the house at about 3:00 a.m. We heard noise of fire, upon which we all woke up. My husband opened the door and went outside. The windows were open and through the windows we saw Khadim Sheedi with pistol in his hand made straight fire on my husband Uris who fell down. Nooro Kushti was having a revolver in his hand and Ashraf Mallah was having dagger in his hand. Muhammad Manganhar having in his hands our two boxes. They issued threats that if you disclosed we will murder you. Out of fear we did not disclose that to anybody. Thereafter police conducted investigation and arrested the accused persons and recovered stolen articles. Thereafter, we came out of fear and we narrated the same facts to police." *(Emphasis supplied)*

14. PW.3 Kazbano stated in her statement before the Court as under:-

> *"Deceased was my brother. Complainant Noor Muhammad is my uncle. This incident took place about 4 years back. My father Jumoon was suffering from paralysis, therefore, she came to his house on the night of the incident, I was also staying there and sleeping at the relevant time. I got up on the commotion. My brother Uris also got up and we were watching as to who had entered in the house when I saw Nooro Kashti was armed with dagger, Khadim was armed with pistol, Ashraf was armed with Revolver, and Mohammad Mallah was holding the theft articles. Khadim Sheedi fired from his pistol at my brother Uris as a result thereof he fell down on the ground. The accused threatened us if we disclose this fact, they will also kill us, therefore, we remained silent. The accused were arrested after 20/25 days, the Police recovered the theft articles from their possession. My statement was recorded by the Police. My statement U/S 164 Cr.P.C was also recorded before Magistrate. I produce the same at Ex:14-A and say that it is same, correct and bears my signature. The accused present in the court are same."* *(Emphasis supplied)*

15. Mst. Kazbano, in her statement under Section 164 Cr.P.C, stated as under:

> *"Since two months I have been residing in home of my father as my father has been paralyzed. On 16.12.1999, my brother Uris, my Bhabi Kalsoom and my sister Rukhsana were sleeping in the house. At about 3:00 a.m we heard noise of fire, upon which we all, my brother Uris, my Bhabi Kalsoom and my sister Rukhsana woke up. We saw in the light of bulb through the windows. We saw Khadim Sheedi with pistol in his hand, Nooro Kushti was having a revolver in his hand and Ashraf Mallah was having dagger in his hand. Muhammad Manganhar was having in his hands our two boxes. Khadim Sheedi with pistol in his hand made straight fire on my brother Uris who fell down. They issued threats that if you disclose they would murder them like Uris. Out of fear we did not disclose that to anybody. Thereafter, police conducted investigation and arrested the accused persons and recovered stolen articles. Thereafter, we came out of fear and we narrated the same facts to police."* *(Emphasis supplied)*

16. In statement before the Court PW.4 Mst. Rukhsana stated as under:

> *"Deceased was my brother. Complainant is my uncle. This incident took place about 4 years back. It was about 3-O A.M, I, my brother Uris, P.W Kazbano and children were sleeping in the house when at about 3-O P.M we heard noise and voice of persons in the house, therefore, we got up and saw four armed persons namely Khadim Hussain, Sheedi, Mohammad Manganhar and Ashraf Mallah were present in the house. Accused Khadim Hussain Sheedi fired at my brother as a result thereof he fell down. We raised cries, the accused extended threats not to raise cries otherwise, they will kill us. The Police came after half an hour to our house. We narrated the incident to Police. The complainant went to the Police Station and lodged such FIR. My statement under Section 161 Cr.P.C was recorded by Police. My statement under section 164 Cr.P.C. was also recorded before Magistrate. I produce the such 164 Cr.P.C statement at Ex:15-A and say that it is same, correct and bears my signature. The accused present in the Court are same."* *(Emphasis supplied)*

17. Mst. Rukhsana stated in her statement under Section 164 Cr.P.C as under:-

> *"At about 26/27 days back me, my brother Uris, my Bhabi Kulsoom and my sister Kazbano were sleeping in the house. At about 3:00 a.m we heard noise of fire, upon which me, my brother Uris and other woke up. My brother opened the door and hakkled. Meanwhile we saw Khadim Sheedi with pistol in his hand made straight fire on my brother Uris who fell down. We saw Nooro Kushti was having a revolver in his hand and Ashraf Mallah was having dagger in his hand. Muhammad Manganhar having in his hands our two boxes. Khadim Sheedi with pistol in his hand made straight fire on my brother Uris who fell down. They issued threats that if you disclose they would murder them like Uris. Out of fear we did not disclose that to anybody. Thereafter, police conducted investigation and arrested the accused persons and recovered stolen articles. Thereafter, we came out of fear and we narrated the same facts to police."*
>
> *(Emphasis supplied)*

18. PW.5 Azam stated in his statement before the Court as under:-

> *"This incident took place about 5 years back. At the time of incident, I was present in Civil Hospital Badin alongwith my father Mohammad Juman. When I came at 3.30 A.M, I saw deceased Mohammad Uris lying on Palang received bullet injuries on the chest. Mst. Kazbano informed me that three persons came in the house and fired with pistol upon the deceased. PW. Karim Bux and Atoo Sheedi came there. At the time of incident, my sister Kazbano, Mst. Rukhsana, brother's wife Kalsoom and other family members were sleeping in the house. My sister Mst. Kazbano informed me that accused Khadim Hussain armed with pistol fired with deceased Mohammad Uris. Prior to this incident, there was no exchange hot words with accused and deceased Mohammad Uris. Thereafter, my uncle complainant went to the Police Station and lodged such FIR. My statement under section 161 Cr.P.C. was recorded by Police. I had not seen the accused at the time of incident."* *(Emphasis supplied)*

19. PW.6 Karim Bukhsh while recording his statement before the Court stated as under:-

> *"This incident took place on 16.12.1999. It was about 3-0 A.M, I raised cries towards the house of Mohammad Uris. I, Atoo, Shoukat, Aloo rushed towards the cries, and saw deceased Mohammad Uris lying on the Palang. Mst: Kalsoom and Kazbano were present and informed me that the un-known persons fired with pistol and killed Mohammad Uris. I then called Noor Mohammad from his house, came there. Kalsoom further informed that three un-identified persons killed Mohammad Uris. Complainant Noor Mohammad went to the Police Station and lodged such F.I.R. My statement under section 161 Cr.P.C was recorded by Police. The accused present in Court had not seen by me at the time of incident."* *(Emphasis supplied)*

20. PW.7 Muhammad Hanif stated in his statement before the Court as under:-

> *"I knew deceased Mohammad Uris. This incident took place about 5/6 years back. Police prepared Danishnama of dead body of deceased Mohammad Uris. Police prepared such mashirnama. I produce the same at Ex:19-A and say that it is same, correct*

and bears my signature. Voluntarily says, that the Police obtained my signature on empty paper as Ex:19-A. Police prepared the Danishnama of dead body of deceased. I produce such mashirnama at Ex:19-B and say that it is same, correct and bears my signature. Police prepared the mashirnama of place of Vardat which was shown by me to P.Ws. I produce the same at Ex:19-C and say that it is same, correct and bears my signature. I showed the empty bullet of pistol. Police prepared such mashirnama. I produce the same at Ex:19-D and say that it is same, correct and bears my signature. Police prepared the mashirnama of cloths of deceased, in my presence. I produce the same at Ex:19-E and say that it is same, correct and bears my signature. The accused Khadim Hussain, Noor Muhammad, Mohammad, Mohammad Ashraf were not arrested in my presence. Police only obtained my signature on empty paper. I produce such mashirnama at Ex:19-F and say that it bears my signature. Police has also not recovered dagger from accused Ashraf. Police only obtained my signature on empty paper. I produce such mashirnama at Ex:19-G and say that it bears my signature. Police has not recovered the stolen cloths in my presence. Police only obtained my signature on empty paper. I produce such mashirnama at Ex:19-H and say that it bears my signature. Police has not recovered any Pistol from the possession of accused Khadim. Police only obtained my signature on white paper. I produce such mashirnama at Ex:19-I and say that it only bears my signature. I had not identified the accused in identification parade. Police only obtained my signature on white paper. I produce such mashirnama at Ex:19-J and say that it bears my signature. Police has not recovered the Pistol and its licence in my presence. Police obtained my signature on white paper. I produce attested P/S copy of mashirnama of recovery of Pistol and its at Ex:19-K, and say that it bears my signature on white paper. Police has not recovered golden ornaments in my presence. Police only obtained my signature on white paper. I produce such mashirnama at Ex:19-L and say that it bears my signature. The accused present in Court are same. The property produced in Court were not shown me by the Police. Police only obtained my signatures on respective mashirnamas.

Note:- *At this stage, the learned DDA for the State declares witness hostile and request for permission to cross-examination from witness."* *(Emphasis supplied)*

21. The record reveals that during the course of investigation, Moosa and two other persons were arrested. However, were let off. The present convicts were arrested on suspicion. Complainant when appeared as PW.1 before the Court, he, though, mainly stuck to his gun, however, made dishonest improvements in his statement. Nevertheless, the PW.1 conceded that he has neither nominated the appellants in the FIR nor in his statement recorded under section 161 Cr.P.C. he further stated that the accused/convicts are already known to him as they are their neighbours since long. According to PW.1, he lodged the FIR at 10:00 a.m, with the delay of six hours and that too with deliberation and without explanation.

22. The statement of P.W.2 does not help the prosecution nor inspires confidence. Admittedly, a very poor, inefficient, inadequate and scanty cross-examination has been conducted and the reason for such unhealthy and un-warranted professional attitude and conduct will be discussed at later part of this judgment. Notwithstanding the poor and scanty cross by the Defence Counsel, even then the statement of PW.2 does not ring true and deserves rejection for more than one reason. Firstly, because the statement recorded before the Court is not reconcilable with the statement recorded under section 164 Cr.P.C/ Ex.13-A. For instance before the Court she states that they woke up on hearing of voice and noise of persons and found the four culprits in the house who were armed and Khadim Sheedi made a straight fire upon her husband and he fell down. Meaning thereby that they woke up upon hearing of noise and voice of persons; that the murder was committed

inside the room, whereas in the statement under section 164 Cr.P.C she states that they heard the noise of fire and woke up; that her husband opened the door and went outside the room and the accused made a straight fire on him and he fell down, which they observed from window. Meaning thereby that there were two fires; that they woke up upon fire report; that the incident took place outside the room. Secondly, in the Court statement though the accused were alleged to be armed but without describing the nature and kind of weapon, whereas in the statement under section 164 Cr.P.C she describes the kind of weapon and also attributes holding of two boxes by Mohammad. Thirdly, in the Court statement she states that after half an hour police came and they narrated the incident to the police. Meaning thereby that they made statement to Police and described the incident. Whereas, under section 164 statement she states that due to fear they did not disclose the incident to anybody and after arrest of the accused they came out of fear and narrated the same facts to police, meaning thereby for the first time, they made statement under Section 161 Cr.P.C to police after arrest of accused and nominated the accused. Admittedly, the statement under Section 164 Cr.P.C was recorded on 13.01.2000 after the delay of 27 days. With the result, the statement is belated and the contradictions noted and pointed hereinabove are quite grave, glaring and render the statement untrustworthy, unbelievable and irreconcilable with statement under Section 164 Cr.P.C. The PW has lied on each and every material particular and thus shaked the worth, value and legal weight of the evidence.

23. Coming to the statement of PW.3. Admittedly, both the statements i.e. Court statement and statement under section 164 Cr.P.C are divergent, contradictory and conflicting. In main statement she states that on commotion she and her brother woke up whereas in statement under Section 164 Cr.P.C she states that she, her sister, sister in law and brother woke up upon hearing noise of fire, meaning thereby that there were two fires. Whereas, only one empty shell was recovered from the house. In statement under section 164 Cr.P.C states that in the light of bulb through the window she found that the accused were armed and accused Khadim Sheedi made a straight fire on her brother who fell down, meaning thereby that either the victim or the witness, one was out of room and none of the witness state about the availability of bulb-light. She further states that out of fear they did not disclose that to anybody, meaning thereby that she did not record her statement under Section 161 Cr.P.C. But in the statement under Section 164 Cr.P.C states that Police arrested the accused and recovered the stolen articles and they came out of fear and narrated the story to the Police. So again re-affirming the fact that prior to arrest of the accused she did not nominate accused nor made any statement under Section 161 Cr.P.C. against the accused persons before 13.01.2000. Hence, on the analogy discussed in the preceding para, the evidence of P.W.3 is unbelievable and unacceptable, as such discarded.

24. As far as the statement of P.W.4 is concerned if the statement recorded u/s 164 Cr.P.C and that of recorded before the Court kept in juxtaposition, one must note certain inherent and basic

contradictions, which are irreconcilable. For instance, in Court statement, she does not mention the presence of Mst. Kulsoom; that she speaks of four armed persons present in the house without describing the kind and nature of weapons; that no assertion with regard to kind of weapon allegedly used by the alleged accused Khadim Hussain; that no allegation of alleged stolen property in the hands of any of the alleged accused; that the police reached at venue after half an hour and she narrated the incident to police and recorded her statement u/s 161 Cr.P.C. Whereas, in the statement recorded u/s 164 Cr.P.C absolute U-turn has been taken; i.e. that the presence of Mst. Kulsoom is mentioned; that all the alleged accused have been specifically nominated being armed with different kinds of weapons; that one accused was described to be holding stolen property; that they did not disclose the names of accused to anybody due to fear; that after the arrest of the accused they came out of fear and narrated the same facts to police. Meaning thereby for the first time, this PW made a statement against the accused before Judicial Magistrate after lapse of more than 25 days. It is far from comprehension, beyond imagination and contrary to human behavior and natural conduct that the wife and two sisters while watching murder of husband/brother despite knowing culprits would not disclose the name and identity of culprits on lame excuse and pretext of fear or extension of threat. So, it can safely be concluded either P.W.2 to 4 have not seen the culprits or they did not know and identify the culprits, in any case, they are not telling the truth. In these circumstances either of the statement is not believable, as the acceptance of one is bound to

culminate in rejection of the other. Furthermore, it is un-ascertainable whether the victim sustained injury inside the room or out of the room. PW.2 to 4 state that after sustaining injury the victim fell down on the ground, if it is so, then the site plan does not show where he fell nor any blood has been secured showing the place where the victim fell down on the ground. PW.1, PW.5, PW.6 state and the mashirnama shows that the victim was lying on the Plung, but nobody states that after sustaining injury and falling on the ground, either the victim himself moved to the bed and whether he could move or was removed by whom, when and under what condition.

25. The overall perusal of the statements referred to hereinabove, leave no room for doubt that PW.1 is not an eye-witness of the incident but the information conveyed to the police rests on the information passed on to him in the presence of PW.5 & PW.6 by PW.2 to PW.4 and clearly it was stated by them that the assailants were un-identified. To this extent, neither PW.1 was declared hostile nor cross-examined by the prosecution. So far as the statements of PW.2 to PW.4 are concerned, a detailed discussion, vide paragraphs No. 21 to 24 of the judgment, has been made and the statements of PW.2 to PW.4 being belated, contradictory, self-destructive are unbelievable. So far as the statement of PW.5 is concerned, the opening words of his statement are to the effect that he was informed by Mst. Kazbano that three un-identified assailants entered the house and committed murder of Uris. However, in the later part he states that Mst. Kazbano told him that Khadim Hussain Sheedi committed murder of Uris. In reply to cross

question he admits that he has not nominated the accused in his statement recorded under Section 161 Cr.P.C, so meaning thereby that the later portion of the statement is an improvement. Furthermore, there is no mention of the rest of the three accused. The only impartial and uninterested witness produced by the prosecution is PW.6 who, though, is not an eye-witness, yet his statement is relevant under Article 19 of the Qanoon-e-Shahadat Order, 1984, on the principle of 'Res gestae', as soon after the incident they were attracted on the hue and cries of the inmates of the house and on their arrival, they were informed that un-identified persons had committed murder of Uris with a request to procure attendance of complainant Noor Muhammad. It is pertinent to mention here that the inmates of the house did not express any apprehension or fear or extension of threat by the assailants asking them not to disclose their names and identification. This witness was not declared hostile. The statement of this PW alone is sufficient to dismantle the entire edifice of the prosecution case introduced by PW.2 to PW.4. Reliance is placed on the dictum laid down in AIR 1955 ALLAHABAD 328 "MAHENDRAPAL AND ANOTHER VS. THE STATE". The relevant portion is reproduced hereunder:

> *"The ahata was occupied by a number of persons, apart from the deceased and the eye-witnesses, and it is in evidence that they were sleeping there. It is further in evidence that <u>those persons came up immediately after and it is alleged that they were informed by the eye-witnesses as to who the two culprits had been, namely, the two appellants.</u> Amongst those persons were Onkar Nath Tewari, an Assistant Public Prosecutor, Rajendra Singh Amin, Bhagwat Singh and certain others. These persons were not produced as witnesses in the case. They were, however, examined by the investigating Officer on 2-7-1953, as stated by him. There non-production has been*

> *explained upon the hypothesis that they did not actually see the culprits.*
>
> *Assuming that they did not, their evidence was material, not with a view to prove the actual fact of murder, which was 'in issue', but to prove the relevant fact' namely that just after the event the eye-witnesses disclosed the names of the culprits to those who came _____, this relevant fact having been so connected with the fact in issue in view of S.6, illustration (a), Evidence Act, as to have necessitated the giving of evidence on that relevant fact itself as required by S. 5 of that Act. S.5, Evidence Act, says that evidence may be given of the existence or non-existence of every fact in issue and of such other facts as are declared in the Act itself to be relevant." (Emphasis supplied)*

The appraisal of the material collected by the prosecution reveals that not only the involvement of appellants is doubtful, rather a case of no evidence qua involvement of appellants No.1 to 4. As observed earlier, that the P.Ws did not corroborate each other on material particulars and important points. Beside, for the first time after 27 days a new story by involving the appellants was introduced. The intentional suppression of material facts and recording belated statements by taking U-turn and making dishonest improvements to their earlier narrations, adversely reflect upon the bona-fide and honesty of three P.Ws i.e. 2 to 4 and seriously shakes their credibility. Gone are the days when a piece of statement of a witness was accepted and the other piece rejected though made in the course of same proceedings on the analogy of "sifting the grain from the chaff", because fortunately the same is no more the law of the land. By now, it is settled that if a witness is found lying in respect of a particular matter regarding the same incident, his/her rest of the statement regarding the same incident shall not be believed, as of now, our criminal jurisprudence rests on the principle 'falsus in uno falsus in

omnibus'. Applying the universal legal principle 'falsus in uno falsus in omnibus', we feel no difficulty to discard the statements of PW.2 to PW.4, by relying on the dictum laid down by Hon'ble Apex Court reported in PLD 2019 Supreme Court 527 *"NOTICE TO POLICE CONSTABLE KHIZAR HAYAT SON OF HADAIT ULLAH ON ACCOUNT OF HIS FALSE STATEMENT."*

> *"We may observe in the end that a judicial system which permits deliberate falsehood is doomed to fail and a society which tolerates it is destined to self-destruct. Truth is the foundation of justice and justice is the core and bedrock of a civilized society and, thus, any compromise on truth amounts to a compromise on a society's future as a just, fair and civilized society. Our judicial system has suffered a lot as a consequence of the above mentioned permissible deviation from the truth and it is about time that such a colossal wrong may be rectified in all earnestness. Therefore, in light of the discussion made above, we declare that the rule falsus in uno, falsus in omnibus shall henceforth be an integral part of our jurisprudence in criminal cases and the same shall be given effect to, followed and applied by all the courts in the country in its letter and spirit. It is also directed that a witness found by a court to have resorted to a deliberate falsehood on a mater aspect shall, without any latitude, invariably be proceeded against for committing perjury. (Emphasis supplied)*

26. Of-course, the investigation was very poor, inefficient, incompetent rather dishonest. No site plan, no sketch, merely some observations and that too have been drawn at the instance of informant, who is not an eye-witness of the incident. Amazingly, no blood stained earth was collected from the venue on the pretext of flooring of the room. Secondly, the PWs claim to have seen the accused firing through windows, the observation do not contain any statement as to whether was it practicable to watch; and were the accused visible. Thirdly, one of the PW claims to have seen the accused through bulb-light but no

observation regarding source of light nor the bulb was secured into possession. Unfortunately, none of these inherent defects and lapses that create serious doubt regarding veracity of the statements and the manner of the commission of offence prevailed upon the trial Court. It appears that the trial Court in its lengthy judgment instead of legally analyzing and properly appreciating the facts and evidence in its true perspective discussed the citations referred to by the learned Defence Counsel out of context and declared the same inapplicable. For instance, the delay in the statements of PWs was rejected on the ground that the statements were recorded soon after occurrence. The PWs 2 to 4 in their statements under Section 164 Cr.P.C stated that they did not disclose the name of accused due to fear, whereas in their statements before the Court, state that they stated the incident to the police. Hence a question arose, as to whether the P.Ws recorded statement u/s 161 Cr.P.C and any supplementary statement? To resolve the issue, we for our satisfaction, perused the Zimnies by restoring to Section 172 Cr.P.C and noted that none of the PWs had ever nominated the accused nor claimed to have identified or would identify if seen again. No supplementary statement was recorded by any of the PW including informant. No impression nor any apprehension or fear was ever expressed/shown or recorded before the police by any PW. The police arrested the accused on suspicion and for the first time PWs 2 to 4 made statements under Section 164 Cr.P.C and involved the accused. So from this perspective the citation regarding belated statements by the PWs was very much relevant and applicable in all fours. Moreover, this has never been the case of prosecution that the

accused were enjoying bad reputation or they were notorious, hardened and desperate criminals, as no one could dare name them even before police. No case/record showing the criminal history of any accused was produced. It appears to justify the belated statements a false and frivolous story of fear was staged, whereas, the accused were so helpless, that three of them even could not apply for bail before the higher forum till conclusion of the trial. So much so, two accused served out their complete sentence. Similarly, the non-production of I.O was also prejudicial to their interest. The DDA sought exemption on the ground that the I.O is paralyzed, whereas PW.13 stated that he is retired. The non examination of I.O on such flimsy and contradictory ground was a serious irregularity. Reliance in this regard can be placed on the following case laws:

> PLJ 1987 FSC 28 "*MUHAMMAD YAMEEN vs THE STATE*
>
> *Yet another defect in the trial is non-production of complainant Muhammad Saqlain, the investigating officer. Secondary evidence was produced to prove handwriting of Muhammad Saqlain by producing PW.5 Malik Ashraf. There is no evidence to show that Muhammad Saqlain was not available or that he had absconded or was a proclaim offender.----"*

> 1996 P.Cr.L.J 616 "*MUHAMMAD RAZZAQ vs THE STATE*
>
> *"It may be observed that the Investigating Officer is not a formal witness. He is an important witness and, through him, the defence is able to obtain information to test the veracity of the evidence given by the other prosecution witnesses. The Investigating Officer plays an important role in arriving at the truth during a criminal trial. From the cross-examination of Constable Muhammad Ilyas it follows that several answers given by him required corroboration. In the facts and circumstances of this case, it was unsafe to*

base the conviction of the appellant on the solitary uncorroborated statement of Constable Muhammad Ilyas."

1972 P.Cr.L.J 1259 *MUHAMMAD SHARIF & ANOTHER vs THE STATE*

"The only question raised before me is that since the police officer, who recorded the statement of Muhammad Moonas and the other police officers, who subsequently carried out the investigation, have not been produced, the petitioners have been prejudiced in their trial. They have not been in a position to bring out the discrepancies, if any, in the statements of the prosecution witnesses. Learned Counsel for the State agrees, that the non-production of the police officers has caused prejudice to the petitioners."

27. In the light of above discussion, we do not feel any hesitation to hold that the prosecution has miserably failed to prove its case against the appellants and the conclusions drawn by the trial Court are based upon misreading and non-reading of the evidence available on the record. Similarly, the facts have been mis-appreciated and the law has been mis-applied. Thus the impugned judgment, being perverse, illegal and contrary to the norms of natural justice, is hereby set aside. Resultantly, the conviction and sentence recorded against the appellants is set at naught. The appellants and the two co-convicts namely Khadim Hussain and Noor Mohammad are hereby honorably acquitted of the charge. The appellants are on bail, their bail bonds stand discharged.

28. Before parting with the judgment, we are constrained to observe that this was one of the worst kind of murder trials conducted by the Trial Court, as it took long seven years to conclude.

The following chart shall show the nature of proceedings and the frequent adjournments, granted by the Court:

Purpose of hearing	**Dates of Hearing**	**Period consumed**
For formal hearing	69	**Challan submitted on 25.01.2000** 08.05.2000 to 10.12.2001
For framing of Charge	33	24.12.2001 to 08.01.2003 **Charge framed on 22.01.2003**
For attendance of PWs	48	19.02.2003 to 24.04.2004 **First evidence was recorded on 13.05.2004**
For Judgment	4	10.03.2007 to 31.03.2007
Adjournment sought by Defence Counsel	37	
Presiding Officer not available	39	

29. As reflects from the chart vide Para 28, challan was submitted on 25.01.2000. 69 dates were fixed for FORMAL HEARING ranging from 08.05.2000 to 10.12.2001. Formal hearing is a term absolutely alien to criminal jurisprudence and Cr.P.C, but how was brave and bold the learned Judge who granted judicial remands to UTPs only for formal hearing. 33 hearings were fixed for framing of charge and the charge was framed on 22.01.2003. 48 dates were fixed for production of prosecution evidence. The announcement of judgment took 04 hearings.

37 adjournments were granted at the requests of defence counsel and the presiding officer was not available on 39 days of hearing. 03 accused persons remained under trial prisoners. So, it can safely be concluded that the proceedings were conducted contrary to the dictum laid down by the Hon'ble Apex Court in its judgment reported in PLD 1983 SC 426 *"MUHAMMAD RAFIQ vs. MUHAMMAD RAFIQ & ANOTHER"*. The relevant portion is reproduced as under:-

> *"It has been provided in Part-B, Chapter 24-B, V-III, of the High Court Rules and Orders that the Sessions Judges should reserve several days in each month exclusively for Sessions trials and that he should fix the dates of each case and inform the relevant agency to ensure the attendance of the prosecution witnesses on that date. The trial of such cases is normally to proceed from day to day. Rule 6 of the aforementioned rules provided as follows:-*
>
> *(6). The High Court requires explanations to be furnished in monthly Sessions statements of any cases pending over two months."*

The tools, ranging from investigator, prosecutor, defence counsel and the Court responsible for providing and doing justice turned toothless, remained ineffective, inefficient and incompetent. Each one of the organ miserably failed to discharge its function and perform its legal, moral and professional obligations in accordance with law. The more painful, pinching and saddening is the fact that 03 of the accused remained behind the bars as UTP till their conviction and almost all of them completed their awarded sentences in jail. The conduct of I.O hopelessly remained shameful, according to P.W.1, he lodged the FIR at 10:00 a.m., whereas the FIR contains the time of lodging of FIR at 04:00 a.m. The I.O did not prepare the site plan (No map, no sketch). He did not collect

blood stained earth on the pretext of flooring of house. He did not submit challan within 14 days as required u/s 173 Cr.P.C. or interim challan within 17 days as contemplated by Act XXV of 1992. He obtained the signature of Musheers on plain papers as reflects from the statement of P.W.7. On account of motive contained in the FIR, he arrested Moosa Memon and two other persons. However, later on, they were released on bail but the challan does not contain a single word in respect of said three persons. He did not produce the prosecution witness in time and the first statement was recorded on 13.05.2004.

30. He almost remained absent on various dates of hearing and eventually did not record his statement before the Court on the pretext he is paralyzed, whereas, according to D.A, he was retired.

Instead of tracing the real culprits, he booked innocent persons and on account of dishonest investigation, three accused remained behind the bars for a longer, beautiful and precious part of their life. Similarly, the learned DDA did not take care of the matter. Instead of prosecutor, he became a persecutor. The P.Ws were not produced before the Court in time without any plausible reason. Had he been vigilant and interested to complete the trial, he could have achieved the object within 03 months by procuring the attendance of P.Ws and resisting the frequent adjournments sought by defence counsel. Similarly, the defence counsel was also sailing in the same boat. His conduct appears to be dubious, doubtful and controversial. The record shows that he sought more than 37 adjournments. He remained absent without any plausible reason on the crucial dates of hearing, particularly

when the prosecution witnesses were in attendance. He remained casual in his attendance and conducted poor, scanty and dishonest cross-examination. He did not bring on record any contradiction, improvement thought the P.Ws, particularly 2 to 4, have almost taken absolute U-turn to their previous narration. Not only he did not resist the production of P.W.13 who illegally exhibited investigation record but did not cross-examine the P.W.13, as is reflected from the following observation:-

"CHANCE GIVEN, CROSS NIL."

He remained casual in his attendance, withdrew the bail application when the accused persons were behind the bars for a period of more than two years and were entitled to bail as a matter of right because there were no fault on their part. However, if there was any fault, it was on the part of counsel as he sought unauthorized, unwarranted, unjustified and frequent adjournments, which the Trial Court was required to have refused. In the given circumstances of this case, no doubt, the conduct of the defence counsel was painful, shameful and unfortunate, with the result, can be termed and treated as the worst kind of professional misconduct.

31. Coming to the conduct of the Trial Court, particularly Mr. Sadiq Hussain Bhatti, the then 1st Additional Sessions Judge, Badin, is actually unwarranted and contrary to the norms of administration of justice and code of conduct, therefore, amounts to misconduct. Administration of justice is the prime and paramount function and legal obligation of the Court. The Court is required to ensure that not only justice is done between the parties but appears to have been done. It is

possible, where the judge remains cautious and conscious by strictly adhering to legal procedure prescribed by the High Court rules and Orders, particularly that relates to murder trials. The High Court rules and orders require that once a murder case starts that continues 'DE DIE IN DIEM', until it finishes. But, this case took long 07 years to conclude. Legally no adjournment is granted, except inevitable and that too for valid, viable and justifiable reasons in the greater interest of justice. But the record shows that request for adjournment on any pretext or even without any reasons, were frequently entertained in a casual and mechanical manner.

32. It is painfully observed that the Trial Court did not perform its legal obligation by remaining cautious towards the proceedings. Admittedly, the accused were illiterate and unaware of their legal rights. The conduct of defence counsel transpires that the accused stood deprived of their right of defence contemplated by Section 340 Cr.P.C and guaranteed by Art. 10-A of the Constitution. The Court being the guardian of the rights of the parties was required to take notice of any foul play or joining of the hands on the part of players either to dismantle the case of prosecution or to book an innocent person like the one in hand. Legally, the Courts are not supposed to remain silent spectator but are under legal obligation to remain alive with and take notice of the proceedings. Reliance is placed on 1981 SCMR 294 *"ABDUR RAHIM & 14 OTHERS vs THE STATE & ANOTHER"*. It was held as under:-

> *"The Court cannot, however, be expected to sit as a silent spectator even when it notices that the non-production of*

> *certain witnesses is likely to result in miscarriage of justice. As rightly observed by the learned Judge in Chamber, every Judge has inherent powers to ensure the justice is done and that for this purpose he can require the Public Prosecutor to ascertain whether the witnesses sought to be given up are in fact not prepared to support the prosecution case. In proper cases when he smells foul play the learned trial Judge would not only be justified, but would in fact be duty bound, in the interest of justice, to ascertain this fact himself directly from the witnesses."*

Keeping in view the dubious, collusive or incompetent conduct of the defence counsel, it can safely be observed that each and every illegal effort on the part of the prosecution to book these innocent people were countenanced without any legal resistance. The P.W.02 to 04 took almost U-turn to their earlier narrations. In such circumstances, the Trial Court was required to himself had probed by exercising the power vested in it under Article 161 of Qanoon-e-Shahadat, Order 1984. The Trial Court in order to reach at just conclusion by digging the truth, was itself duty bound to have cross-examined the prosecution witnesses, but the Trial Court failed to discharge the legal burden as contemplated by Article 161 of Qanun-e-Shadat, Order 1984. For holding the view, we are supported by the dictum laid down in following Judgments reported as 1997 MLD 1632 (Karachi) *"QALANDRO alias NAZRO vs. THE STATE"*, the relevant portion is reproduced hereunder:-

> *"The question that warrants consideration is whether in the instant case the failure of the trial Judge to cross-examine the prosecution witnesses himself when the accused appellant was unrepresented would violate either section 340 of the Code of Criminal Procedure, 1898, or any other provision of law. It is of course not the case of the appellant that he himself engaged a counsel who was denied proper opportunity by the learned Additional Session Judge. In fact, the pertinent question is as to how a criminal trial Court should construe lack of legal representation on part*

of an accused who perhaps for some reason is not able to engage a counsel. In cases pertaining to capital punishment the answer lies in the High Court Rules and Orders Volume III, Chapter 24, Rule 1, and the Federal Capital and Sindh Courts Criminal Circular issued by the Sindh Government, Chapter VII, paragraph 6 which provide for a pauper accused a counsel at State expense. No doubt in matters other than entailing a capital punishment no such right is explicitly available by statute or rules to the accused to secure legal representation at State expenses, however, I feel in such cases it then becomes the duty of the trial Judge himself to put up a cross on behalf of the accused. In tis respect if there is any authority needed it is the case of Nazir Hussain v. Muhammad Yaqub KLR 1986 Cr.C. 100. It would appear to me that till such time the Court puts up such a cross-examination on behalf of an unrepresented accused it would not discharge its duty embodied in section 340 of the Code of Criminal Procedure. I am aware of the fact that the terms of section 340 of the Code of Criminal Procedure provide stipulation in terms of right of the accused to be defended and not the duty of the Court as such. However, wherever right of the accused in criminal trials is construed the corollary by and large results in the form of a duty placed upon the Court. It is not section 340 of the Code of Criminal Procedure alone but also Article 161 of the Qanun-e-Shahadat which ordains a trial Judge to discover or obtain proper proof of relevant facts and in doing so authorizes him to put questions two witnesses. In the case of Abdul Rahim and other v. U.B.L. and others unreported being 1st Appeal No.26 of 1995 to 1st Appeal No.61 of 1995 from the Hyderabad Bench) a Division Bench of this Court comprising Ghulam Hyder Lakho, J., and myself (the judgment was written by me) has emphasized the need of the Courts in Pakistan operating under the written Constitution to discharge a higher duty to do complete justice. In the present circumstances such higher duty could only have been performed if the Court had scrutinized the testimonies by confronting and cross-examining witnesses to ascertain the truth. Such duty exists even when the accused is represented through competent counsel while the vigour of such duty can well be appreciated in cases where the accused is unrepresented.

(7) Our own Supreme Court has categorically deprecated the practice of trial Court to accept unrebutted testimonies of prosecution witnesses in cases of unrepresented accused. In this regard the case of S. Muhammad Alam Shah v. The State PLD 1987 SC 250 can be cited as authority wherein Zaffar Hussain Mirza, J. as he then was) in a Full Bench has been pleased to observe as under:--

> *'The Courts below seem to have been greatly influenced in arriving at their conclusions by the fact that the accused did not direct any cross-examination to challenge the testimony of these witnesses. They have ignored to take into consideration that the accused was unrepresented in the trial Court. We cannot approve of such an approach to the appreciation of evidence in criminal cases. It is the obligation of the Court to take into consideration all matters placed before it in a trial before arriving at the conclusion whether a fact is proved or not. The proof of a fact depends not upon the accuracy of the statement but upon the probability of it having existed.'*
>
> *Even if in the present case had the accused himself cross-examined the witnesses that would not have been a substitute to a cross-examination by a counsel, (see Syed Saeed Muhammad Shah v. The State 1993 SCMR 550). Accordingly, the duty of the Court itself to make an attempt in cases where the accused is unrepresented and does not conduct a cross-examination to extract the truth from the material available cannot but be overemphasized."*
>
> *(Emphasis supplied)*

In another case reported as AIR 1954 Calcutta 305 *"SUNIL CHANDRA ROY & ANOTHER vs. THE STATE*".

33. The above painful discussion would show that how the trial was mishandled and mis-conducted by violating the High Court rules and orders, ignoring the dictums on the subject laid down by the Hon'ble Apex Court, violating the human rights, values and morality. The difficulties and miseries of the accused were never appreciated and taken into consideration, with the result it speaks volume that how did this Zenith work.

34. The Registrar of this Court to send a copy of this judgment to the Hon'ble Chief Justice of High Court of Sindh, Karachi for placing copy of the judgment in the personal file of Mr. Sadiq Hussain Bhatti, the then 1st Additional Sessions Judge, Badin.

35. These are the reasons for our short order dated 12.06.2019.

MR. JUSTICE MUHAMMAD NOOR MESKANZAI
CHIEF JUSTICE

MR. JUSTICE SYED MUHAMMAD FAROOQ SHAH
JUDGE

Dated, Quetta, the
6th September, 2019
*Imran/***

Approved for reporting.

MR. JUSTICE MUHAMMAD NOOR MESKANZAI
CHIEF JUSTICE