IN THE FEDERAL SHARIAT COURT
(Appellate/Revisional Jurisdiction)

PRESENT:

MR. JUSTICE IQBAL HAMEEDUR RAHMAN, CHIEF JUSTICE
MR. JUSTICE KHADIM HUSSAIN M. SHAIKH

JAIL CRIMINAL APPEAL NO.07-I OF 2022

1. KHADIM HUSSAIN SON OF MOHABAT KHAN
2. ABDUR REHMAN SON OF NASRULLAH
3. NASEEB ULLAH SON OF LAL FAROOSH

(ALL RESIDENTS OF SAWAMAD QILLA DHERI ZARDAD, DISTRICT CHARSADDA).

APPELLANTS

VERSUS

1. THE STATE.

RESPONDENT

CRIMINAL REVISION NO.01-I OF 2023

WARIS KHAN SON OF KAREEM JAN, CASTE AFGHAN, RESIDENT OF KALYAS, TEHSIL & DISTRICT CHARSADDA.

PETITIONER

VERSUS

1. KHADIM HUSSAIN SON OF MOHABAT KHAN
2. ABDUR REHMAN SON OF NASRULLAH
3. NASEEB ULLAH SON OF LAL FAROOSH

(ALL RESIDENTS OF SAWAMAD QILLA DHERI ZARDAD, DISTRICT CHARSADDA).

4. THE STATE

RESPONDENTS

CRIMINAL APPEAL NO.01-I OF 2023

WARIS KHAN SON OF KAREEM JAN, CASTE AFGHAN, RESIDENT OF KALYAS, TEHSIL & DISTRICT CHARSADDA.

APPELLANT

VERSUS

1. PERVAIZ KHAN SON OF NOOR GUL
2. NAZIR MUHAMMAD SON OF GHARIAT KHAN

(BOTH RESIDENTS OF SWAMAD QILLA DHERI ZARDAD, DISTRICT CHARSADDA).

3. THE STATE.

RESPONDENTS

Counsel for the appellants in Jail Cr.A.No.07-I of 2022	Khawaja Manzoor Ahmed, Advocate
Counsel for the petitioner in Cr. Revision No.01-I of 2023	Mr. Anees Muhammad Shahzad, Advocate
Counsel for the respondents in Cr.A.No.01-I of 2023	Mr. Wajid Ali Khan, Advocate

Counsel for the State	Mr. Zahid Younas, Law Officer on behalf of A.G. KPK.
FIR No., Date & P.S	388/2018, 29.07.2018 Sardheri, District Charsadda.
Date of impugned judgment	24.11.2022
Dates of Institution	15.12.2022 & 16.01.2023
Date of Hearing	01.02.2024
Date of Judgment	13.06.2024

J U D G M E N T

KHADIM HUSSAIN M. SHAIKH –J. By means of captioned Jail Criminal Appeal No.07-I of 2022 appellants Khadim Hussain, Abdur Rehman and Naseeb Ullah have called in question Judgment dated 24.11.2022, passed by the learned Additional Sessions Judge-I, Charsadda in Hadd Case No.07/HC of 2019 re-The State Vs. Khadim Hussain and others, emanating from Crime No.388 of 2018 registered at Police Station Sardhari, District Charsadda, for offences under Section 17(4) Harrabah of The Offences Against Property (Enforcement of Hudood) Ordinance, (VI) of 1979, **("The Ordinance")** and Section 412 and 202 of The Pakistan Penal Code, 1860 (XLV of 1860) **("The Penal Code")** whereby appellants Khadim Hussain, Naseeb Ullah and Abdur Rehman have been convicted and sentenced to life imprisonment as Tazir as per Section 20 of The Ordinance extending them benefit of Section 382-B of The Code of Criminal Procedure, (Act V of 1898) **("The Code")**, while through Criminal Revision No.01-I of 2023 re-Waris Khan Vs. Khadim Hussain and others, petitioner/complainant Waris Khan seeks enhancement of the above sentence by converting life imprisonment into death sentence awarded to appellants Khadim Hussain, Naseeb Ullah and Abdur Rehman and whereas by means of Criminal

Appeal No.01-I of 2023 re- Waris Khan Vs. Pervaiz etc appellant/complainant Waris Khan has assailed the acquittal of respondents Pervaiz Khan son of Noor Gul and Nazir Muhammad son of Ghariat Khan.

2. Briefly, the facts of the prosecution case are that on 29.07.2018, complainant Waris Khan reported the incident through mursaila handed down by SI Safdar Rahman at the place of incident, which was later on incorporated in book under Section 154 of The Code as the subject FIR and he has mainly stated therein that deceased Kamran was his elder brother while deceased Salman was his nephew. It is stated that his deceased brother Kamran at Asar Vela left his house through motorcycle bearing registration No.F-1215 Mardan for the house of his sister situated at Shahdhand. After offering Maghrib prayer in the house of his sister, Kamran and Salman both proceeded to his village Kalyas on the same motorcycle, thereafter their contact with them disconnected. The complainant party, were in search of them and on the following day they were told that their dead bodies are lying at Speen Irab near Mian Nisatta Road. They went to the pointed place where they found them lying dead with their hands and feet fastened. Initially the case was registered under Section 302 of The Penal Code, but later on through Ex.PW.12/14 (Parwana Ezadgi), Section 302 of The Penal Code was deleted and Section 17 (4) Harrabah alongwith 412/202 of The Penal Code were inserted by the police in the record on 14.08.2018. During the investigation all the five accused were arrested and after usual investigation they were sent up with the challan to face their trial. After completing all the formalities, a formal charge against the accused was framed to which they pleaded not guilty and claimed their trial.

3. In order to prove its case, the prosecution examined in all 13 (thirteen) prosecution witnesses namely Anwar Khan, Farhad Ali, Rizwan Ullah No.1411, Farooq Shah ASI, Saleem Khan ASI, Dr. Waqas MO DHQ Hospital Charsadda, Safdar Rahman SI, Shoukat Khan ASI, Sheraz Firdous, Senior Civil Judge, Iftekhar Khan SI, complainant Waris Khan, Habib ul Hassan retired CIO/SI and Musafar Khan as PWs No.1 to 13 respectively and produced all the necessary documents including mursaila, inquest reports, forensic laboratory reports, postmortem reports, memos of recoveries, memo of securing clothes of deceased Kamran and Salman, arrest cards of the accused, alleged confessional statements of the three appellants namely Khadim Hussain, Naseeb Ullah and Abdur Rehman and then the prosecution closed its side. Whereafter the statements of the appellants under Section 342 of The Code were recorded, wherein they denying the prosecution allegations and recovery of alleged crime weapons, alleged robbed motorcycle, alleged robbed money and alleged robbed two mobile sets etc, professed their innocence. The accused neither examined themselves on oath under Section 340(2) of The Code, nor did they examine any person as their defence witness. At the conclusion of the trial and after hearing the parties' counsel, the learned trial Court has convicted and sentenced the appellants vide impugned judgment dated 24.11.2022 and acquitted the respondents Pervaiz Khan and Nazir Muhammad as discussed in paragraph-I *supra*.

4. Appellants Khadim Hussain, Naseeb Ullah and Abdur Rehman, being aggrieved by their conviction and sentenced, complainant Waris Khan being dissatisfied with the quantum of sentence of life imprisonment awarded to the above three appellants and the acquittal of respondents Pervaiz Khan and Nazir Muhammad vide impugned judgment dated

24.11.2022 have preferred the subject Criminal Appeals and Criminal Revision.

5. The learned Counsel for the appellant has mainly contended that the names of the appellants are not mentioned in the FIR; that the occurrence in this case is an un-witnessed one and it was after more than 30 days of the occurrence, PWs complainant Waris Khan and one Siraj Khan nominated appellants Khadim Hussain, Naseeb Ullah and Abdur Rehman **("the three appellants")** respondents Pervaiz Khan and Nazir Muhammad **("the respondents")** as accused in their statements under Section 164 of The Code recorded before Mr. Shaukat Ali, the learned Judicial Magistrate Charsadda on 27.08.2018; that the three empty shells secured from the place of incident were sent alongwith the three 30 bore pistols allegedly secured from the appellants at the time of their arrest on 12.08.2018; that the reports of FSL have no evidentiary value; that there are material contradictions in the evidence led by the prosecution; that the alleged confessional statements were retracted by the three appellants at the earliest moment; that the alleged confessional statements of the three appellants were also not recorded in accordance with the law and well settled principles; that the alleged confessional statements of the three appellants were extracted after extending threats to them by keeping their family members including women folk in wrongful restraint and the same were not with the freewill of the three appellants; that no incriminating articles whatsoever were recovered from the three appellants; that after the recording of the alleged judicial confessional statements of the custody of three appellants was handed over to the Investigating Officer; that the three appellants are innocent and they have been falsely implicated in this case by the police to show their efficiency and to release pressure of their high-

ups on account of the murders of two innocent persons, and, that the prosecution has failed to prove its case against the three appellants beyond reasonable doubt. Learned counsel for the three appellants have prayed that the Criminal Appeal may be allowed, the impugned judgment may be set-aside, and the appellants may be acquitted of the charge.

6. The learned counsel for respondents in appeal against acquittal filed by the complainant has mainly contended that the respondents are innocent and they have not committed the offence alleged against them; that there is absolutely no evidence to connect the said respondents with the alleged crime; that the learned trial Court rightly acquitted them of the charge; that after the acquittal the presumption of double innocence is created in favour of the respondents; and, that the Criminal Acquittal Appeal filed against the said respondents merits no consideration. The learned counsel prays for dismissal of the said criminal acquittal appeal.

7. Learned counsel for the complainant has mainly contended that the prosecution by examining 13 (thirteen) witnesses and producing all the necessary documents including post-mortem reports, memos of place of incident, recovery of three empty shells from the place of incident, recovery of robbed motorcycle, recovery of robbed money, recovery of crime weapons, inquest reports, blood stained material from the place of incident, blood stained clothes of both the deceased, postmortem reports, and Forensic Expert Reports etc, has proved its case against all the five accused beyond any shadow of doubt; and, that the learned trial Court has rightly convicted and sentenced the three appellants, but disputing the sentence of life imprisonment awarded to them and acquittal of the respondents, has prayed for dismissal of the instant appeal of the three appellants, seeks enhancement of the sentence by converting

imprisonment of life awarded to them into death penalty and for setting aside of acquittal of the respondents and has prayed for awarding them the similar conviction and sentence as that of the three appellants.

8. The learned State counsel, supporting the impugned judgment dated 24.11.2012, has mainly contended that the learned trial Court after appreciating the evidence, has passed the impugned judgment and he has prayed for dismissal of the captioned Criminal Appeals and the Criminal Revision.

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

10. From a perusal of the record, it would be seen that the names of the three appellants and the respondents do not find place either in the mursaila or in the FIR; the incident involved in this case was an unseen one and no one claimed himself to be an eye witness of the occurrence during the investigation, which has been admitted by PW.12 Investigating Officer, stating that ***"it is correct that the occurrence is unseen; it is correct that there is no eye witness of the occurrence nor during my investigation any independent eye witness came forward in order to verify the scene of occurrence to be witnessed by them";*** the incident was shown to have taken place on 28.07.2018 and report whereof as mursaila was made on 29.07.2018, which was culminated into FIR the same date on 29.07.2018 and it was after more than 30 days of the incident, complainant Waris Khan **("PW.11 the complainant")** and PW Siraj Ahmed (not examined) first time named the three appellants and the respondents as accused on the basis of hearsay evidence, stating that they

were searching for the real accused and now they are fully satisfied that the three appellants and the respondents have committed the offence involved in this case, but they have not shown any source of their satisfaction relating to the involvement of the three appellants and the respondents in the commission of the offence, in their supplementary statements before the police and in their statements under Section 164 of The Code recorded before Mr. Shaukat Ali, the learned Judicial Magistrate Charsadda on 28.08.2018 and there is no plausible explanation for such an inordinate delay of more than 30 days in naming the three appellants and the respondents as accused, which itself robs their credibility in view of well settled law that the credibility of the witness is looked with serious suspicion if his statement during investigation is recorded with delay without offering plausible explanation and there is plethora of judgments of the Superior Courts wherein it has been held that even one or two days unexplained delay in recording the statements of the witnesses without offering explanation would be fatal to the prosecution and testimony of such witnesses cannot be safely relied upon. Reliance in this context is placed on the case of ***MUHAMMAD ASIF VS. THE STATE [2017 SCMR 486]***, wherein the **Hon'ble Supreme Court of Pakistan** has held that:

> ***"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 statements of eye witnesses would be fatal and testimony of such witnesses cannot be safely relied upon".***

11. Apparently, the learned trial Court has convicted and sentenced the three appellants in the wake of their nomination as accused in the statements under Section 164 of The Code of PW.11 the complainant and PW Siraj; the alleged confessional statements of the three appellants; medical evidence; alleged recovery of snatched amount; alleged recovery

of crime weapons; alleged recovery of robbed motorcycle; and, the alleged recovery of two mobile sets and FSL reports etc.

12. Patently, the complainant and/or PW Siraj (not examined) were not the eye witness of the occurrence and even no one else appeared and claimed himself to be eye witness of the incident during the course of investigation; PW.11 the complainant did not nominate the three appellants and/or any other person in his report which was handed down as mursaila on 29.07.2018 and it was after more than 30 days of the incident, PW.11 the complainant and PW Siraj Ahmed (not examined) first time named the three appellants and the respondents as accused in their supplementary statements before the police and in their statements under Section 164 of The Code recorded before Mr. Shaukat Ali, the learned Judicial Magistrate Charsadda on 28.08.2018 on the basis of hearsay evidence, stating that they were searching for the real accused and now they are fully satisfied that the three appellants and the respondents have committed the offence involved in this case and there is no plausible explanation for such an inordinate delay of more than 30 days in naming them as accused; when PW.11 the complainant in his evidence has stated that ***"later on, we came to the village and we were in search of real culprits. After our own satisfaction and being satisfied from the investigation of the police we charged the accused facing trial namely Khadim Hussain, Naseeb Ullah, Abdur Rahman for the murder of the deceased while Pervaiz was charged for abetment"***, but no source of their satisfaction about the involvement of the three appellants and the respondents has been disclosed by him, which is even admitted by PW.12 Investigating Officer, stating that ***"it is correct that the source of satisfaction has not been***

shown by the complainant regarding involvement of the accused in the instant case", and whereas PW Siraj, who having nominated the accused on the basis of hearsay evidence in his statements under Section 161 and 164 of The Code as discussed *supra*, was to be examined by the prosecution to substantiate such aspects of its case, but instead of examining him, the prosecution abandoned him taking plea that he was mentally sick vide statement dated 02.07.2020 of the prosecutor available at page 128 of the paper book in Jail Criminal Appeal No.07-I of 2022, but no proof about PW Siraj's such ailment was produced and even no prescription and/or a laboratory report etc, which could show such ailment of PW Siraj was brought on the record. In such view of the matter, it can safely be said that PW Siraj has not come forward to support the prosecution case and thus an adverse inference in this regard, could legitimately be drawn, under the illustration (g) to article 129 of the Qanuan-e-Shahadat Order, against the prosecution, even otherwise, the statements under Section 164 of The Code purported to be of PW.11 the complainant and PW Siraj (not examined) available at pages 257 and 258 respectively of the paper book contain the same words, phrases, full stops and commas etc, which from its face is outcome of copy paste process; a copy of the order dated 27.08.2018, passed by Mr. Shaukat Ali, the learned Judicial Magistrate-I Shabqasdar/MOD, Charsadda while recording the aforesaid statements under Section 164 of The Code of PW.11 the complainant and PW Siraj (not examined), available at page 259 of the paper book, would reveal that at the time of recording of the said statements the accused were not present; and, no notice or any document for production of the accused before the learned Judicial Magistrate was brought on the record and it appears that the purported statements under

Section 164 of The Code of PW.11 the complainant and PW Siraj (not examined) dated 27.08.2018 were recorded without giving them any notice despite their being in custody. This fact of their being in custody before recording the alleged statements of PW.11 the complainant and PW Siraj (not examined) was also admitted by PW.12 Investigating Officer, stating that ***"on 27.08.2018 the statement of complainant Waris Khan and one Siraj was recorded under Section 164 Cr.P.C, it is correct that this statement was recorded after 28/29 days of the occurrence, prior to this statement accused were arrested in the instant case".*** Sub-section (1-A) of Section 164 of The Code envisages that such statement be recorded by Magistrate in the presence of the accused, and the accused is given an opportunity of cross-examining the witness making the statement. The word *presence* used in the above provision of law implies actual physical presence of the accused at the time of recording of the statement of witness under Section 164 of The Code by affording him an opportunity of cross-examining the witness; further Section 265-J of The Code provides that the statement of a witness duly recorded under Section 164 of The Code, if it was made in the presence of the accused and if he had notice of it and was given an opportunity of cross-examining the witness, may, in the discretion of the Court, if such witness is produced and examined, be treated as evidence in the case for all purposes. Moreover, Mr. Shaukat Ali the learned Judicial Magistrate-I Shabqasdar/MOD, Charsadda, before whom, the aforesaid statements under Section 164 of The Code were recorded, was also not examined by the prosecution although his examination was essential so as to substantiate the recording of such statements of the PWs before him. In such view of the matter, the subject

statements under Section 164 of The Code of PW.11 the complainant and PW Siraj (not examined) have no value in the eye of law.

13. In so far the alleged confessional statements of the three appellants is concerned, the circumstances under which the same were recorded are to be examined carefully, as for placing reliance on the confessional statement of an accused it is well settled principle of law that it should not only be true, voluntary and believable, but it should be without fear, favour or any inducement and it must be consistent and coherent to the facts and the circumstances of the prosecution case; it is reiterated that the statement of an accused becomes confession only when it is recorded in compliance of provisions of Section 164 and 364 of The Code and necessary precautions and formalities are observed; the conviction can be based on sole confessional statement of accused provided the same is voluntary and true and necessary precautions and formalities are adhered to; the Court can accept a retracted confession after making inquiry into all the material points and surrounding circumstances and satisfying itself fully that the confession cannot be, but be true, and it is corroborated by clear, cogent and independent evidence; the corroboration of the retracted confession with the other pieces of evidence in the case that would establish the link of accused with the commission of offence with which he is charged; mere delay in recording confession, in principle, is not fatal to the prosecution when the confession is proved to be true and voluntary, but if there are circumstances which would cast shadow of doubt on its genuineness then it should be excluded from consideration and delay in recording of the judicial confession in such a case would be fatal.

14. From the material brought on the record, it would be seen that the three appellants whose confessional statements were allegedly recorded,

by denying the charge framed against them and pleading not guilty, had retracted their alleged confessional statements at the earliest stage of the case, and they in their statements under Section 342 of The Code, have also denied to have confessed their guilt before the learned Judicial Magistrate.

15. Furthermore, the alleged confessional statements of the three appellants produced at Ex.PW.9/1 to Ex.PW.9/9 reveal that the same besides being vague in nature, lacking in material particulars, are also self-destructive and contradictory to the prosecution case; for, the ages of the three appellants are not mentioned therein and even the date and time of the incident was also not disclosed therein, per prosecution while arresting the three appellants, three 30 bore pistols with live cartridges etc were shown to have been recovered from them on 12.08.2018 and then the alleged snatched money of Rs.1850/-, Rs.1300/- and Rs.1300/- was shown to have been recovered from appellants Khadim Hussain, Naseeb Ullah and Abdur Rehman respectively, but the aforesaid alleged recoveries etc have not been mentioned in the alleged confessional statements of the three appellants, although the same were recorded after the aforesaid alleged recoveries. The alleged confessional statements would reveal that the same are more or less in the same sequence, containing almost the same words and phrases, which in ordinary course was not possible unless copied from each other or referred to at the time of their recording.

16. Apparently, PW.9 the learned Judicial Magistrate recorded the alleged confessional statements of the three appellants, in a slipshod manner dealing with this case in a casual and perfunctory way although it involves capital punishment, for, neither repeated time for reflection nor proper warnings as required by sub-section 3 of Section 164 of The Code

and in view of well settled principles laid down by the learned Superior Courts for recording confessional statement of an accused, were given to the three appellants before recording their alleged confessional statements, furthermore, PW.12 Investigating Officer produced all the three appellants together before PW.11 the learned Judicial Magistrate for recording their confessional statements and the three certificates under Section 364 of The Code, depict that only 30 (thirty) minutes time was shown to have been given to each appellant, which rendered the alleged confessional statements involuntary and invalid on this score alone. PW.9 the learned Judicial Magistrate, is shown to have recorded their alleged confessional statements each containing three pages by consuming only 15 minutes in each alleged confessional statement as is evident from the certificates appended on the foot of the alleged confessional statements, that being incomprehensible does not appeal; the learned Judicial Magistrate has stated that after recording the alleged confessional statements the custody of the three appellants was handed over to Naib Qasid of the Court for committing their custody to jail and PW.12 Investigating Officer, who was present in the Court, has stated that ***"I have examined medically the accused facing trial before producing to Judicial Magistrate for recording their confessional statement and before sending them to Jail; I have not medically examined the accused facing trial from doctor; on 15.08.2018 I remained in the court premises for about two to three hours; It is correct that I have produced all the four accused at the same day and time before the judicial magistrate concerned for recording their confessional statement*****; the witness volunteered that three accused had confessed their guilt while one accused refused to confess his guilt".*** PW.9 Mr. Sheraz Firdous, the learned Senior Civil

Judge Batagram, who recorded the alleged confessional statements of the three appellants, has made material admissions in his evidence by stating that ***"it is correct that the questions and answers in the questionnaire were not in my hand writing. Self-stated that the questions were dictated by me to KPO and thoroughly asked from all the accused and thereafter the same were written by the KPO in my presence; I do not remember that whether the accused were associated by their relatives or any counsel etc; it is correct that a particular question regarding that what are the reasons for wishing to make a confessional statement has not been asked; it is correct that the questions and answers in the questionnaire are in English language; self-stated that as mentioned above the accused was explained in his mother language and thereafter the same were scribed in English; It is correct that the answers given in the questionnaire are in affirmative and negative; It is correct that I have not mentioned in my certificate that I have explained to the accused the question in their native language i.e. Pashto; it is correct that I have not mentioned in my certificate regarding the confessional statements of accused in their mother language. i.e. pashto and thereafter recorded by me in urdu; it is correct that the above fact regarding sending the accused to jail by the Naib Court has not mentioned in my order or in certificate; it is correct that statement of all accused were written in urdu while the mother language of all the accused is Pashto; after recording confessions, I handed over the accused to Naib Court to commit them to judicial lockup; it is correct that the above fact regarding sending the accused to jail by the Naib Court is not mentioned in my order or in certificate".***

17. Admittedly, the questionnaires with all the answers of the three appellants and the requisites certificates appended on the foot of all the three alleged confessional statements besides being vague are also typed ones and they from their face do not conform the requirements of law as contained in the provisions of Section 364 of The Code, which, needless to say, were enacted to safeguard the interest of the accused, the words and terms used therein are so clear and unambiguous, leaving no room of doubt that the answers given by the accused, are to be taken into consideration and the expression every question put to him (accused) and every answer given by him (accused) shall be recorded in full as mandated by sub-section (1) of Section 364 of The Code, is of great importance, the confessional statement has to be read over to the accused to accord assurance that his words have been faithfully taken down, thereafter the signature of the accused be taken at the end of his statement in token of its correctness, making it conformable to what he declares to be the truth; sub-section (2) of Section 364 of The Code in unambiguous term requires and mandates that the learned Judicial Magistrate after examining the accused and recording his confessional statement has to certify under his own hand that the examination was taken in his presence and hearing and that the record contains full and true account of the statement made by the accused, while sub-section (3) of the Section 364 of The Code mandates that in case in which the examination of accused is not recorded by the Magistrate himself he shall be bound as the examination proceeds to make a memorandum thereof which shall be written and signed by the Magistrate with his own hand and shall be annexed to the record and if the Magistrate is unable to make a memorandum as required he shall record the reasons of such inability. It is worthwhile to mention here that words or terms used

in the statute when are clear and unambiguous, the Court cannot go beyond them and is obliged to take them in their ordinary dictionary meaning and the interpretation to be adopted must be such as advances purpose of act rather than to defeat the object thereof. It is reiterated that it is the duty of a Judge to ensure that not only he dispenses justice, but what is equally of vital importance, that justice also seems to have been done and the law never allows the Judge to make departure from the mandatory procedure and to ignore settled principle of law. The course adopted by PW.9 the learned Judicial Magistrate in recording the alleged confessional statements of the three appellants completely in negation of the mandate of the law, cannot be approved in view of the well settled law that where the law provides a procedure for doing a thing in particular method and manner that thing should be done in that prescribed manner and in no other way and if anything is done contrary to that manner, it shall be taken as if it has never been done. Reliance in this context is placed on the case of ***MUHAMMAD ISMAIL V. STATE (2017 SCMR 713),*** the Hon'ble Supreme Court of Pakistan has held that:-

> ***"It is a bedrock principle of law that, once a Statute or rule directs that a particular act must be performed and shall be construed in a particular way then, acting contrary to that is impliedly prohibited. That means, doing of something contrary to the requirements of law and rules, is impliedly prohibited."***

In view of the above, it is manifest that the alleged confessional statements purported to be of the three appellants besides being involuntary, untrue and unbelievable, have also not been recorded in accordance with the law and thus are of no help to the prosecution, which deserve to be excluded from consideration.

18. As far as the medical evidence is concerned, PW.6. Dr. Waqas Medical Officer District Head Quarter Hospital Charsadda, who had conducted postmortems of both the deceased namely Salman and Kamran, found one firearm injury i.e. entry wound on right side of neck with exit wound on occipital region of skull of deceased Salman with one small bruise on his right knee about 02 cm and according to his opinion, the said deceased died due to injury to main blood vessels in neck and injury to brain matter and skull fracture at occipital region; likewise he found one firearm injury i.e. entry wound on lower right side of neck with exit wound on the lower side of neck at the back side of deceased Kamran and according to his opinion the said deceased died due to injury to the main blood vessels in neck due to which blood lost a lot, even otherwise unnatural deaths of both the deceased caused by firearm injuries, has not been disputed by the defence. In any case the medical evidence is a mere an opinion of an expert and is confirmatory in nature and not corroboratory except those observations of the medico-legal officer, which were based on physical examination, which served as a corroboratory piece of evidence and that at the best would confirm the ocular account with regard to the seat and nature of injury, kind of weapon used in the occurrence, but could not identify the accused and thus the medical evidence is also of no help to the prosecution for connecting the appellants with the commission of the offence. Reliance in this context is placed on the cases of ***MUHAMMAD TASWEER VS. HAFIZ ZULKARNAIN AND 2 OTHERS (PLD 2009 SC 53***) and ***ABDUL MAJEED VS. MULAZIM HUSSAIN AND OTHERS (PLD 2007 SC 637).***

19. Record reflects that the three appellants were shown arrested on 12.08.2018 vide card of arrest Ex.PW.10/1 by police party headed by PW.10 Iftekhar SI, SHO police station Sardhari, who has stated that ***"I received information that accused facing trial of the instant case namely Naseeb, Khadim and Abdur Rehman were going toward Mardan on the relevant day. In pursuance to the said information I alongwith other police officials came to the place of arrest and made barricade for the purpose of their arrest. In the meanwhile the accused facing trial came via motorcycle which were intercepted. They tried to escape but due to other police officials they could not and were arrested there. Accused Naseeb and Abdur Rehman were riding on one motorcycle while Khadim was riding on other motorcycle. The Accused were searched which lead to the recovery of 30 bore pistol bearing A9520 with spare magazine and a leather holster having eight live rounds from accused Khadim while 30 bore pistol alongwith 04 live rounds from accused Abdur Rehman, similarly 30 bore pistol alongwith 03 live rounds of the same bore from accused Naseeb. I issued card of arrest Ex.PW.10/1 of all the above mentioned three accused. On return to the police station I handed over the recovered pistols alongwith the motorcycle to the Moharrir of the police station for further proceedings"***, but it is strange enough that neither any memo for the alleged recovery of the aforesaid pistols from the three appellants was shown prepared nor was produced in evidence; even the aforesaid weapons and live cartridges etc shown to have been recovered from the three appellants were not sealed at the spot, no document i.e. receipt or entry of the Daily Diary showing the handing over of the aforesaid pistols and cartridges etc to Moharrir by PW.10

Iftekhar Khan SI was produced in evidence; even name of that Moharrir to whom PW.10 Iftekhar Khan allegedly handed over the aforesaid pistols etc has not been disclosed by him in the evidence, however, in cross examination the said PW.10 Iftekhar Khan has admitted such discrepancies and infirmities by deposing that ***"it is correct that uptill 12.08.2018 column No.5 of the FIR was blanked and no one was charged therein as accused; I have not mentioned any belonging to the accused facing trial during the personal search of them i.e. CNICs, cash money etc except pistols. Similarly I have not mentioned "made" of the above-mentioned pistol; it is correct that there is nothing on the whole file regarding the receiving of the above-mentioned articles by the Moharrir concerned***". Although the alleged place of recovery is a thickly populated area situated near village abadi, but PW.10 purposely did not disclose the alleged place of arrest of the three appellants and he also purposely did not disclose the names etc of the nafri or police officials, who accompanied him to that place and no one among those police officials was either cited as witness or even examined by the prosecution to substantiate such stance of the prosecution; even no independent private person was associated with the alleged recovery proceeding by him although he alongwith his staff, went to the pointed place on an advanced information received by him at the police station and in cross examination, taking shelter of his memory, he has stated that ***"I do not remember as to whether there is village abadi near the place of occurrence. It is correct that I have not cited any private witness in the whole proceeding. It is correct that there is nothing on the whole file regarding the receiving of the abovementioned articles by Moharrir concerned. I do not remember the time and place where I received***

information from the spy. I was accompanied by my nafari at the time of receiving information. It is a fact that I have not mentioned the names and numbers of police officials in Mad No.22 vide which I came to the police station after the arrest of the accused. After receiving information from the informer I contacted the SHO of the police station Nisatta namely Sami Ullah who came there. It is a fact that I have not mentioned the name of said SHO in the Mad No.22. Additional police officials came to the place of nakabandi from police station on my request. I do not remember the source through which I received information from the informer. The witness volunteered that as sufficient time is lapsed therefore, I do not remember. I do not remember that who bodily searched the accused facing trial. Probably the police officials searched them at the time of arrest. I was present at the time of arrest with the nafri on the spot/nakabandi. It is correct that except recovery of pistols from body search nothing else was recovered from the accused facing trial. I have not arranged any private person as witness of the search and recovery despite the prior information. It is correct that the said pistols were not taken vide recovery memo. It is correct that all the recovered pistols and live rounds were not sealed on the spot on 12.08.2018. It is also correct that after the recovery of pistols and live rounds I did not put any signature/mark on the recovered pistols. I have not sent the recovered pistols and live rounds to the FSL by myself. The witness volunteered that the above-mentioned recoveries were handed over to Moharrir of the police station for onwards legal proceedings. I do not remember as to when the said pistols and live rounds were sealed into parcel by the CIO" and he also did not state about keeping the

departure entry for the purpose of arrest of the three appellants and recovery of alleged crime weapons at the police station Sardhari, which needless to say, was essential so as to establish the movements of the police party for such purposes and it was also bounden duty of PW.10 to have made efforts for associating independent persons from the locality to act as mashirs for that he was obliged to have called some independent persons and persuaded them to act as mashirs and in case of failure of his efforts, he should have mentioned such facts in police diary, but nothing alike was done by him, therefore, it can safely be said that PW.10 has not made any effort to procure the association of independent persons to act as mashirs, despite the fact that the police party headed by him allegedly went to the pointed place from the police station with an advanced aim for the purpose of arrest of the three appellants and recovery of the alleged weapons and cartridges etc. PW.5 ASI Saleem Khan has stated in evidence that ***"I am also marginal witness to the recovery memo Ex.PW.5/3 vide which the I.O took into possession one pistol 30 bore bearing No.A9520, one spare charger alongwith bandolier and 08 cartridges of the same bore belonging to the accused Khadim Hussain, a pistol 30 bore without number alongwith 04 cartridges of the same bore belonging to the accused Abdur Rehman, one pistol 30 bore without number and 03 live rounds of same bore belong to the accused Naseeb Ullah, being weapon of offence produced by Muhammad Ibrar Moharrir of police station and sealed the said pistols into parcels No.1 to 3 and the live rounds in parcels No.8, 9 and 10 respectively in my presence as well as in the presence of other marginal witness; it is correct that pistols in question mentioned in the recovery memo Ex.PW.5/3 were not recovered in my presence***

from the accused. Similarly I am not marginal witness to those recovery memos vide which the pistols were recovered. I cannot say about the date to the recovery of the pistols mentioned above. I do not know about the FIR number, date of the recovery memos about pistols which I have stated in my volunteered statement above. Similarly I do not know the names of witnesses of the recovery memo mentioned above. The pistols as well as cartridges mentioned above in Ex.PW.5/3 were not in sealed condition". Similarly, PW.12 Investigating Officer has admitted in his evidence that ***"it is correct that the pistols mentioned in the recovery memo Ex.PW.5/3 were not in a sealed condition and I prepared recovery memo and sealed the said pistols on 14.08.2018; it is correct that I have not recorded the statements of the police officials nor included their names in the list of witnesses in the instant case in whose presence the recovery were made".*** Undoubtly, all the alleged three pistols and live cartridges etc remained unsealed and after their production by Muhammad Ibrar Moharrir of police station the same were allegedly sealed on 14.08.2018 after two days of their alleged recovery shown to have been made on 12.08.2018. Over and above all, Moharrir Muhammad Ibrar of police station, who allegedly produced and handed over the said weapons and cartridges etc to the PW.12 Investigating Officer was neither cited as witness nor was examined by the prosecution although his examination was very essential so as to establish as to how he came into possession of the aforesaid three pistols and cartridges etc and so also as to where the said three weapons and live cartridges etc were kept for two days in such an unsealed condition. Under these circumstances, it is crystal clear that the

prosecution has miserably failed to establish the recovery of the alleged aforesaid three weapons and live cartridges etc from the three appellants.

20. Moreover, the three empties of 30 bore pistol shown to have been secured from the place of incident on 27.09.2018 were earlier received in the office of ballistic expert on 02.08.2018 as is revealed from FSL report dated 10.08.2018 Ex.P2 available at page 168 of the paper book in Jail Cr.A.No.07-I of 2022, but it is strange enough that again on 31.08.2018 three 30 bore crime empties marked C1 to C3 alongwith three 30 bore pistols namely pistol No.A9520 marked A, 30 bore pistol No. Nil marked as B and 30 bore pistol No. Nil marked as D together with fifteen 30 bore live cartridges were received in the office of FSL as is evident from the FSL report dated 13.09.2018 Ex.P2/2 available at page 171 of the paper book and there is absolutely no evidence or explanation furnished by the prosecution as to how the same three 30 bore empties earlier sent to the ballistic expert on 02.08.2018 were again sent to the ballistic expert on 31.08.2018 i.e. after 32 days of the incident and 19 days of the alleged arrest of the three appellants and there is also no explanation for such an inordinate delay in sending the pistols and crime empties to the ballistic expert and as to who had delivered the alleged weapons and three empty shells in the office of FSL is nowhere mentioned in the FSL report Ex.P2 and Ex.P2/2 and it is also not known as to when the three empty shells, which were allegedly earlier sent to ballistic expert vide FSL report Ex.P2 were returned to the Investigating Officer etc, has also not been disclosed anywhere by the prosecution and even roznamcha entries etc in this regard were neither shown kept at the police station nor were produced in evidence. Moreover, PW.10 Iftekhar Khan, SI the then SHO of PS Sardhari, who allegedly secured the aforesaid three 30 bore pistols while

arresting the appellants has admitted that ***"I have not sent the recovered pistols and live rounds to the FSL by myself. The witness volunteered that the above-mentioned recoveries were handed over to Moharrir of the police station for onwards legal proceedings. I do not remember as to when the said pistols and live rounds were sealed into parcel by the CIO"*** PW.12 Investigating Officer made vain attempt to establish that the parcels were sent through constable Qasim Shah to FSL by first time stated in his cross examination during the course of his evidence recorded on 16.05.2022 i.e. after more than 45 months of receiving of the parcels in question in the office of Forensic Science Laboratory by stating that ***"the said parcels were handed over to Qasim Shah No.1368 by Moharrir for taking to the FSL; I do not remember as to whether I have recorded the statement of said Qasim Shah No.1368 regarding handing over parcels; it is correct that I have not mentioned the date on the application for sending the parcels to FSL; the witness volunteered that I mentioned detailed in the ziminis";*** neither any zimini in this regard was produced in evidence nor constable Qasim Shah was examined by the prosecution and even Moharrir, who allegedly handed over the parcels to constable Qasim Shah for taking them to FSL was not examined by the prosecution, the FSL reports Ex.P2 and Ex.P2/2 also do not reveal either the name of constable Qasim Shah or any other person, who delivered the alleged parcels to the office of Forensic Science Laboratory. And thus, the safe custody and safe transmission of the three empty shells allegedly secured from the place of incident and the alleged crime weapons namely three 30 bore pistols, has not been established by the prosecution by producing any sort of documentary evidence and/or by examining any person in this regard, and as such no reliance can be placed on the FSL

reports Ex.P2 and Ex.P2/2, which even otherwise in the wake of failure of the prosecution to prove recovery of alleged pistols from the three appellants including appellant Khadim Hussain is inconsequential.

21. So far the recovery of currency notes alleged to be the snatched money is concerned, it is the matter of record that the three appellants were allegedly arrested on 12.08.2018 and at the time of their arrest except three pistols and live cartridges etc, which has not been proved by the prosecution as discussed *supra,* nothing else was shown to have been secured from them, which has been admitted by PW.10 Iftekhar Khan SI, the then SHO police station Sardhari by deposing that ***"it is correct that except recovery of pistols from body search nothing else was recovered from the accused facing trial"*** and that alleged currency notes were not recovered from the possession of any of the appellants, who after their arrest were committed to custody, but it is strange enough that during the investigation the cash amount purported to be the alleged snatched money of Rs.1850/-, Rs.1300/- and Rs.1300/- were shown to have been recovered from the said appellants Khadim Hussain, Naseeb Ullah and Abdur Rehman respectively during the investigation and the numbers and denomination of the currency notes as well as the time and place where the said recovery of alleged snatch currency notes was made, are neither mentioned in the memo of recovery Ex.PW.5/6 nor were disclosed during the trial, PW.5 Saleem Khan, who is marginal witness to the recovery memo, has admitted in his evidence that ***"it is correct that the recovery memo Ex.PW.5/6 does not mention the denomination of the notes in question; it is correct that the recovery memo does not found mention that the I.O has put his signature on the notes; I do not remember as to when the accused were arrested, similarly I do not***

***know the executing officer; I cannot say as to the time of preparation of recovery memo; it is correct that the recovery memo does not found mention the place of its preparation however, it does not found mention that it was prepared during interrogation which normally takes place in the police station; it is correct that interrogation normally takes place in the police station again stated that sometimes it takes place out the police station; the interrogation in this case was conducted in the varanda situated in the portion being use by the investigation of staff'*;** moreover, there were no specific marks of identification i.e. numbers and denominations of the stolen currency notes that could in any way render help in their precise identification; the alleged secured currency notes, which are of common pattern, cannot be termed to be the robbed money. It is further added that neither any entry relating to such recovery was kept in the Daily Diary nor was produced in the evidence by the prosecution. And thus the prosecution has also failed to prove that the alleged currency notes were recovered from the three appellants.

22. As regards, the alleged recovery of robbed motorcycle is concerned, per prosecution the motorcycle on which deceased Kamran accompanying other deceased namely Salman went to the house of his sister and while was returning on the said motorcycle, the culprits allegedly snatched motorcycle of deceased Kamran, two mobile sets belonging to both the deceased Salman and Kamran and cash amount of Rs.4500/- from them after committing their murders, but the alleged motorcycle belonging to deceased Kamran was shown recovered in pieces from the land of respondent Nazir vide memo of recovery produced as Ex.PW.4/1, from that recovery memo and the evidence of PW.4 Farooq Shah Khan ASI, who is

marginal witness of the said recovery memo it would reveal that a motorcycle having black color was secured in pieces, and whereas the registration document purportedly of the subject motorcycle produced at Ex.PW.13/2 reveals that the said document stands in the name of Musafar Khan son of Fazal Kareem, which shows the color of the motorcycle as red and that registration is not the name of deceased Karman; PW.11 the complainant in his evidence before the learned trial Court has stated that ***"on 28.07.2018 my deceased brother at Asar Vela left his house through motorcycle bearing registration No.F1215 Mardan for the house of his sister"*** and whereas the registration number of motorcycle, shown in the registration documents Ex.PW.13/2 and Ex.PW.13/3 is 2014-03-1914 and not F1215 as claimed by the complainant, even otherwise it has not been established by the prosecution that the documents produced at Ex.PW.13/2 and Ex.PW.13/3 are of the motorcycle allegedly secured from the field i.e. the land of acquitted respondent Nazir; it is also difficult to believe that after snatching the motorcycle and that too by committing murder of two persons during the course of robbery, accused had abandoned that motorcycle by converting it into pieces; the alleged secured pieces of motorcycle were not sealed and preserved and even PW.11 the complainant, who happened to be the real brother of deceased Kamran in his evidence, has shown his inability about the material particulars such as color, make, model and chassis number etc of the alleged motorcycle belonged to deceased Kamran by deposing that ***"I have correctly stated in my statement that the police had recovered the motorcycle during investigation, however, I was not present with them at the time of recovery. Similarly, I had not seen the fields of Nazir as well as not aware about the ownership of the same property;***

***I do not remember the chassis number of the motorcycle; I cannot say about the model, color, make of the motorcycle nor I have disclosed the same in my report*”,** and PW.12 Investigating Officer has also not uttered a single word about the identification of the motorcycle in question through the complainant party and in such view of the matter, recovery of alleged pieces of motorcycle is also of no help to the prosecution in this case.

23. As regards, the alleged mobile sets of deceased Kamran and Salman is concerned, none of the mobile sets was recovered from the possession or on the pointation of any of the three appellants, however, PW Daulat Khan, who allegedly produced and handed over the alleged stolen mobile of deceased Kamran, stating that the said mobile set was given to him by respondent Pervaiz, being a material witness was necessarily to be examined, but the prosecutor and learned counsel for the complainant by filing joint statement before the learned trial Court gave him up on the plea that he had been won over, although there is nothing on the record to show the said witness had been won over and therefore it can be said that he did not come forward to support the prosecution case in this regard before the learned trial Court. Needless to say that a mere declaration of the prosecutor would not be enough to abandon to such a material witness on that stance, for, if the witness, after appearance, does not support the prosecution, he can be declared hostile on such stance of witness’s having been won over and subjected to cross examination by the prosecutor to find out the truth, but the prosecution did not adopt such procedure for the reasons best known to it, although the prosecution was under its duty to prove its case beyond any shadow of doubt on the basis of best possible evidence. In such view of the matter, an adverse inference

in this regard, could also be drawn, under the illustration (g) to article 129 of the Qanuan-e-Shahadat Order, against the prosecution; even otherwise it is rather difficult to believe that accused Pervaiz after committing offence had given the alleged mobile set of deceased Kamran to PW Daulat Khan (given up). Further it also seems to be strange enough that PW Daulat Khan, who was found in possession of stolen mobile set, which he handed over through his son to the PW.12 Investigating Officer on 07.08.2018, at the door of his house when police party headed by PW.12 Investigating Officer went there for the purpose of raid of his house for recovery of the alleged mobile set in question belonging to deceased Kamran, as is deposed by PW.12 Investigating Officer by stating that ***"we knocked the door of the house of Daulat Khan and accordingly his Son namely Abu Zar came out from the house and his son was asked about father to call his father to come out but he responded that his father is not available and then we asked that your father had mobile of Pervaiz belonging to deceased to which he stated the same is available in our house and he produced the same"***, which has been belied by PW.5 Saleem Khan ASI, stating that ***"I am marginal witness to the recovery memo PW.5/1 vide which the I.O took into possession the mobile phone of the deceased Kamran presented by Daulat Khan son of Habib Gafoor having IME No.355300607650 in my presence as well as in the presence of other marginal witness constable Qasim Shah".*** In such of the matter, PW Daulat Khan was deserved to be dealt with in accordance with the law by associating him with the investigation for offence punishable under Section 411 or under Section 412 of The Penal Code, PW.12 Investigating Officer in his evidence has admitted that ***"I have not arrayed this Daulat Khan in the instant case as accused;***

according to my knowledge if the stolen property is recovered from the possession of a person he will be prosecuted under Section 411/412 PPC", while the other mobile set was allegedly secured from the acquitted respondent Pervaiz. Even otherwise neither any proof relating to the ownership of the deceased persons over the alleged mobile sets has been produced nor the alleged mobile sets on recovery were got identified through the complainant party that fact has also been admitted by PW.12 Investigating Officer in his evidence by stating that ***"it is correct that I have not put the recovered mobile phones for the identification parade from the complainant's family".*** And thus the recovery of the alleged mobile sets is also not helpful to the prosecution.

24. The aforementioned infirmities, material & glaring contradictions, admissions adverse to the prosecution case, dishonest & deliberate improvements to strengthen the prosecution case made during the trial in the statements by the PWs qua the contents of the mursaila and FIR rendered the credibility of the prosecution witnesses doubtful and their evidence unreliable. Reliance in this context is placed on the case of ***AKHTAR ALI and others V. The State (2008 SCMR 6)***, wherein the Hon'ble Supreme Court of Pakistan has held that:-

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

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

> ***"It is well-settled principle of law that where evidence creates doubt about the truthfulness of prosecution story, benefit of such a doubt had to be given to the accused***

without any reservation. In the result, there is no alternative but to acquit the appellant by giving him benefit of doubt".

25. In view of what has been stated above, it is crystal clear that there is absolutely no evidence worth consideration against the three appellants and the respondents to connect them with the offence alleged against them and the entire case of the prosecution is shrouded in mystery. And, thus, the prosecution has miserably failed to prove its case against the three appellants and the respondents beyond a reasonable doubt, but the learned trial Court without appreciating the evidence brought on the record in its true perspective, has convicted and sentenced the three appellants vide impugned judgment dated 24.11.2022, which suffers from mis-reading and non-reading of the evidence. it needs no reiteration that a single circumstance, creating reasonable doubt in the prudent mind about the guilt of the accused, benefit thereof is to be extended to the accused not as a matter of grace or concession, but as matter of right. Reliance in this context is placed on the case of ***GHULAM QADIR and 2 others Vs. THE STATE (2008 SCMR 1221)***, wherein the Hon'ble Supreme Court of Pakistan has held that:-

"16. It needs no reiteration that for the purpose of giving benefit of doubt to an accused person, more than one infirmity is not required, a single infirmity creating reasonable doubt in the mind of a reasonable and prudent mind regarding the truth of the charge-makers the whole case doubtful. Merely because the burden is on the accused to prove his innocence it does not absolve the prosecution from its duty to prove its case against the accused beyond any shadow of doubt end this duty does not change or vary in the case. A finding of guilt against an accused person cannot be based merely on the high probabilities that may be inferred from evidence in a given case. Mere conjectures and probabilities cannot take the place of proof. Muhammad Luqman v. The State PLD 1970 SC 10."

In the case of ***MUHAMMAD MANSHA Vs. The State (2018 SCMR 772)****, the Hon'ble Supreme Court of Pakistan has observed that:*

"4. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which

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

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

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

26. Under the above circumstances, we are of the considered view that the conviction and sentenced awarded to three appellants Khadim Hussain, Naseeb Ullah and Abdur Rehman cannot sustain, therefore, the captioned Jail Criminal Appeal No.07-I of 2022 is accepted, the conviction and sentence awarded to them vide impugned judgment dated 24.11.2022, are set-aside and the above-named three appellants are acquitted of the charge, extending them benefit of doubt. They are directed to be released forthwith, if their custody is not required in any other case. Resultantly, the captioned Criminal Acquittal Appeal No.01-I of 2023 and Criminal Revision No.01-I of 2023 are dismissed. The Criminal Miscellaneous Application No.10-I of 2022 seeking suspension of sentence having become infructuous is dismissed as such.

(JUSTICE KHADIM HUSSAIN M.SHAIKH)
JUDGE

(JUSTICE IQBAL HAMEEDUR RAHMAN)
CHIEF JUSTICE

Islamabad
13.06.2024
Khurram