HIGH COURT OF AZAD JAMMU AND KASHMIR

[Shariat Appellate Bench]

Crim. Appeal No: 14/2019.
Date of Institution:20.02.2019.
Date of Decision: 02.04.2024.

Liaqat S/o Muhammad Sadiq caste Thakyal R/o Baknara Tehsil Fatehpur Thakyala District Kotli.

(Convict-Appellant)

Versus

1. The State through Police Station Fatehpur Thakyala.
2. Muhammad Adeel Jarral S/o Mirza Ghulam Rasool, caste Jaral R/o Khand-Khaar Tehsil Fateh-Pur District Kotli.
3. Assistant Advocate General Azad Kashmir.

(Respondents)

CRIMINAL APPEAL

Before: **Justice Syed Shahid Bahar, J.**

In Presence of :
Sardar Ghulam Mustafa Khan, Advocate for the convict-appellant.
Abdul Qayum Sabri, A.A.G for State.
Mirza Tariq Mahmood, Advocate for respondent No.2.

Case-laws referred in a Chronological Order:-

Sr.No.	***Title***	***Citation***
1.	Ghulam Muhammad v. Crown	PLD 1951 Lahore 66
2.	Tawaib Khan v. The State	PLD 1970 SC 13
3.	Thulia Kali v. The State of Tamil Nadu	(1972) 3 SCC 393
4.	The State v. Mushtaq Ahmed	PLD 1973 SC 418
5.	Bakka v. The State	1977 SCMR 150
6.	Rehmat Ali v. The State	1994 P.Cr.L.J 475
7.	Mehmood Ahmed v. The State	1995 SCMR 127
8.	Salamat Masih v. State	1995 P.Cr.LJ 811
9.	Mushtaq Ahmed v. State	PLD 1996 SC 574
10.	Nooruddin v. Abdul Waheed	PLD 1997 Karachi 6
11.	Kamil Zaman v. The State	1999 P.Cr.LJ 1546
12.	Akhtar Ali v. State	PLJ 2008 SC 269
13.	Arshad Mahmood v. Raja M. Asghar	2008 SCR 345
14.	State of Rajasthan v. Babu Meena	AIR 2013 SC 2207
15.	Khalil v. State	2017 SCMR 960
16.	Notice to Police Constable Khizar Hayat	PLD 2019 SC 527
17.	Aqil v. State	2023 SCMR 831
18.	Lal Bux v. The State	2023 YLR 321.
19.	Abdul Majeed v. State	2023 P.Cr.LJ 331.

Supplemental source of reliance:-

1. Commentaries on the Laws of England by William Blackstone.
2. Al-Mughni, Volume X by Ibn Qudamah.
3. Black's Law Dictionary, 11th Edition by Bryan A.Garner.
4. The Law of Evidence, 10th Edition by M. Monir.
5. Law of Evidence, Volume I by Woodroffe and Amir Ali.
6. Islamic Criminal Jurisprudence by Cherif Bassiouni.

Judgment:

Ratio

It is better that ten guilty persons escape than that one innocent suffer.[1]

1. The rule of giving benefit of doubt to an accused is essentially a rule of caution and prudence and is deep rooted in jurisprudence qua safe administration of justice, which is based upon the above maxim.

2. In Islamic Criminal Law, concept of extending benefit of doubt to an accused takes breath from the sayings of Holy Prophet of Islam (PBUH).[2]

3. Avert punishments (Hudood) when there are doubts and drive off the ordained crimes from the Muslims as for as you can. If there is any place of refuge for him (accused) let him have his way, because the leaders mistake in pardon is better than his mistake in punishment.

4. Both the judgments passed by the Subordinate Courts are not maintainable. Occurrence allegedly took place at night. Story teller of the alleged occurrence is only complainant. Circumstantial hearsay evidence that too given by the close relatives as well as violation of Section 103, Cr.P.C are circumstances arising out from the case suffice to disbelieve the prosecution's story.

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[1]. It is known as "Blackstone's ratio", expressed by the English jurist William Blackstone in his seminal work "Commentaries on the laws of England", published in 1765.

[2]. Prevent punishment in case of doubt. (Ibn Qudamah, Al Mughni, Volume X, page 210).

FACTS IN BREVITY

5. An FIR bearing No.68/13 under Sections 337/F1, 34, APC and Section 20 of The Offences against Property (Enforcement of Hudood) Act, 1985 was registered against the appellant and another. After completion of investigation, the challan was submitted against the appellant/convict before Tehsil Criminal Court Fathepur Thakyala *(hereinafter shall be referred as trial Court)*. The appellant was examined under section 242,Cr.P.C who pleaded not guilty and claimed trial, therefore, the prosecution was ordered to produce evidence. Seven P.Ws. got recorded their statements before the trial Court. After completion of evidence, the appellant/convict was examined under section 342,Cr.P.C. The appellant/convict once again negated the allegations leveled by the prosecution.

ENSUING PROCEEDINGS

6. The learned trial Court after hearing the arguments of the counsel for the parties, **awarded the sentence of three years rigorous imprisonment under Section 20 EHA and 382, APC alongwith fine of Rs.5,000/- while in offence under Section 34, 337/F-1 APC he was awarded the sentence of "Daman" Rs. 10,000/- alongwith 6 months simple imprisonment while benefit of Section 382-B,Cr.P.C was also granted to the appellant-convict vide judgment dated 18.05.2017**. Feeling aggrieved, the convict-appellant filed an appeal before District Court of Criminal Jurisdiction Kotli, which was made over to the learned Additional District Criminal Court, Kotli. The learned Court below after hearing parties, set-aside the sentence to the extent of offence under Section 337/F-1/APC while the sentence awarded under Section 382 of the APC in view of 20 EHA, was **maintained** vide impugned judgment

dated 22.01.2019 and benefit of Section 382-B,Cr.P.C was also extended to the appellant.

APPELLANT'S ARGUMENTS

7. Sardar Ghulam Mustafa Khan, learned counsel for the convict/appellant contended that the learned trial Court has not appreciated the evidence produced by the prosecution in its true perspective and did not apply its judicial mind and reached at wrong conclusion while passing the impugned judgment by awarding sentence to the appellant. Learned counsel argued that there are major contradictions in the statements of prosecution witnesses and the same create doubts upon the truthfulness of the prosecution's story as well as requirement of Section 103, Cr.P.C has not been complied with. Learned counsel finally prayed that by accepting the appeal, the impugned judgment dated 22.01.2019 to the extent of awarding punishment under Section 20, EHA and 382, APC may be set-aside; thus, appellant may be acquitted from the charges. He placed reliance upon the following authorities:-

i. 2014 P.Cr.LJ 1123.
ii. PLD 2008 SC 859.
iii. PLJ 1997 Cr.C. 217.
iv. 1995 P.Cr.LJ 248.
v. PLD 1996 Supreme Court 574.
vi. 1994 P.Cr.LJ 1516.
vii. 2014 P Cr. L J 1123.

RESPONDENTS' ARGUMENTS

8. Au contraire, learned counsel for the respondent No.2 as well as the learned A.A.G while controverting the arguments advanced by the learned counsel for the appellant contended that the impugned conviction order passed by the learned Court below is just and proper which needs no indulgence by this Court. They contended that the prosecution has proved its case through cogent and convincing evidence and the Court below has rightly convicted the appellant. They vehemently

contended that the statements of the P.Ws are supporting the version of the prosecution. They defended the impugned judgment on all counts and prayed for dismissal of the instant appeal.

9. I have heard the learned counsel for the parties and taken stock of the instant case's record with due care.

DETERMINATION OF THE COURT

10. Perusal of record reflects that in the case in hand, the learned trial Court (Tehsil Criminal Court, Fatehpur Thakyala) after due procedure of law and hearing arguments of the parties, awarded the punishment to the convict-appellant i.e. three years rigorous imprisonment under Section 20 EHA and 382, APC alongwith fine of Rs.5,000/- while in offence under Sections 34, 337/F-1 APC he was awarded the sentence of "Daman" Rs. 10,000/- alongwith 6 months simple imprisonment while benefit of Section 382-B,Cr.P.C was also extended to the appellant-convict vide judgment dated 18.05.2017, whereas, the learned Additional District Court of Criminal Jurisdiction, Kotli, vide impugned judgment dated 22.01.2019, acquitted the appellant from the offence under Section 337/F-1, APC alongwith Daman and 6 months imprisonment, whereas the sentence of 3 years rigorous imprisonment alongwith fine of Rs.5,000/- awarded by the learned trial Court to the appellant under Section 20 EHA, 382, APC was maintained by the learned Additional District Court of Criminal Jurisdiction, Kotli.

Delay in lodging an FIR

11. According to complainant, the incident took place on 25.09.2013 at 9:30 pm (night time), while on the other hand the report/FIR was lodged on next day at 10:45 am and no plausible reason of such delay has been given by the prosecution, which creates a doubt upon the truthfulness of the prosecution's story. It is well settled that the factum

of causing delay in lodging of an F.I.R must be explained by the complainant plausibly, if he has failed to furnish the circumstance beyond his control of sound justification in this regard, the allegations leveled in F.I.R. would be presumed as the result of deliberation, negotiation, discussion and afterthought with sole drive and ulterior motive to get the accused convicted, therefore, such deliberate delay cannot be ignored by the court in routine manner.[3]

Requirement of Section 103, Cr.P.C is not complied with

12. As far as the matter with regard to the alleged recoveries of total Rs.25,000/- from the appellant as well as other co-accused is concerned, in this regard, it may be mentioned here that the recoveries were stated to be made from the house of the accused/appellant and co-accused Tazeem by the police in their custody. During recovery proceedings, no independent civil witness from the locality had been associated by the police. The witnesses of recoveries are close relatives of the complainant and are interested witnesses,[4] thus, police has violated the very purpose of Section 103, Cr.P.C. A glance perusal of Section 103, Cr.P.C shows that subsection (1) of 103 Cr.P.C enjoins that before making a search under this Chapter, the officer of other person who is about to make search, shall call upon **two or more respectable inhabitants** of the locality in which the place to be searched is situated to attend and witness the search and may issue an order in writing to them or any of them. The search shall be made in the presence of the above respectable inhabitants and a list of all the things seized in the course of such search and of the places in which they respectively found shall be prepared by such officer or other person and signed by such witnesses. It further provides that no

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[3]. Akhtar Ali v. State PLJ 2008 SC 269 ; Mehmood Ahmad v. The State 1995 SCMR 127 and Thulia Kali v. The State of Tamil Nadu (1972) 3 SCC 393.

[4]. Interested witness is the one who derives some benefit in seeing an accused person punished. See Aqil v. The State 2023 SCMR 831.

person witnessing a search under the above section shall be required to attend the Court as a witness of the search unless specially summoned by it. Subsections (3) and (4) give a right to the occupant of the place to be searched to attend the above search and to obtain a list prepared under subsection (2) thereof. While subsection (5) of Section 103, Cr.P.C provides that if any person refuses to become a witness to the search, he shall be deemed to have committed an offence under section 187 of the PPC, which entails punishment with simple imprisonment for a term which may extend to one month or with fine, which may extend to Rs.200 or above.[5]

13. Section 103, Cr.P.C requires that officer or the other person about to make the search should call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search and may issue an order in writing to them or any of them and if no independent witness is associated in the process of recovery by the police officials, the requirement of law would be defeated [6] as the provisions of Section 103, Cr.P.C are mandatory in nature. [7]

14. Any circumstance shrouded with a slightest doubt appearing on the Radar of law is always to be read and counted in favour of the accused.

15. It is settled and trite proposition of law that prosecution is burdened with heavy responsibility to prove its case against accused without any shadow of doubt, if a single circumstance appears therein which creates doubt in the mind of prudent person its benefit is necessarily to be given to the accused not as a matter of grace but as a matter of right.[8]

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[5]. Mushtaq Ahmed v. State PLD 1996 SC 574.
[6]. Rehmat Ali vs. The State 1994 P.Cr.LJ 475.
[7]. Kamil Zaman v. The State 1999 P.Cr.L.J 1546.
[8]. Abdul Majeed vs. State 2023 P.Cr.LJ 331 and Lal Bux v. The State 2023 YLR 321.

16. It is a celebrated principle of law that the benefit of doubt always goes to the accused. It is the legal duty of the prosecution to prove the case beyond any reasonable doubt.[9]

17. I have scrutinized the whole evidence produced by the prosecution. The learned Courts below have not properly analyzed the evidence brought on record by the prosecution and failed to adhere the relevant provisions of the law.

No source of light mentioned

18. As the occurrence allegedly took place at night i.e. 9:30 pm, but no source of light has been mentioned by the prosecution through which the complainant recognized them neither the same was confiscated and taken into custody nor was produced in the evidence. Prudent mind cannot believe such like story that someone dared to commit robbery or theft particularly in area where he himself belongs to make such attempt with bare face without wearing any mask, that too, without mentioning and establishing any source of light how the complainant chased the appellant at late night.

19. Hon'ble Supreme Court of Pakistan in the case titled "Khalil vs. The State:- [10]

''یہ عدالت کا مسلمہ اصول ہے کہ رات کو اس قسم کا وقوعہ سرزد کرتے وقت ملزمان/مرتکبان جرم کو سب سے پہلی تشویش یہ لاحق ہوتی ہے کہ اسے کوئی شناخت نہ کر سکے لہذا وہ نقاب لگا کر ہی اس قسم کی واردات کرتے ہیں تا کہ شناخت کے بغیر وہ موقع واردات سے باآسانی راہ فرار اختیار کر سکیں۔ نیز تاریک شب کے وقوعہ میں محض چند لمحے کیلئے کسی پر سرسری نظر ڈال کر شناخت کرنا بہت مشکل امر ہے اسلئے رات کی تاریکی میں شناخت کرنے کی شہادت کو شک وشبہ پر مبنی شہادت کا درجہ دیا جاتا ہے اور جب تک ایسی شہادت کو قابل یقین و ناقابل تردید حد تک تائید و توثیق مضبوط تائیدی شہادت سے نہیں ہوتی اسوقت تک ایسی شہادت پر انحصار کرنا انصاف کے زریں اصولوں کے خلاف ہوگا۔''

20. Solitary statement/narrative of the complainant is not corroborated by evidence.

21. The 1st Appellate Court disbelieved the same set of evidence against the one accused and on the other hand, relied upon the same qua

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[9]. Arshad Mahmood v. Raja Muhammad Asghar 2008 SCR 345.
[10]. 2017 SCMR 960.

awarding sentence to the accused appellant. In the circumstances sole evidence of the complainant is neither reliable nor trustworthy.

Falsus in uno falsus in omnibus [11]

22. Complainant P.W. Muhammad Adeel Jarral during the course of cross-examination stated:

''بوقت وقوع دیگر کوئی نہ تھا۔ رات اندھیری تھی مظہر کی دکان کے آگے مین روڈ ہے دن کو ٹریفک چلتی ہے رات کو کم چلتی ہے۔ بروز وقوع ملزم تعظیم نے کالے رنگ کے کپڑے پہنے تھے جبکہ ملزم لیاقت نے کریم کلر کے کپڑے پہن رکھے تھے۔

23. While his statement and story narrated by him is seemingly concocted or at least not the same as narrated by him, it is appropriate and useful to reproduce the same as infra:-

''بیان کیا مورخہ 25.9.13 کا واقعہ ہے کہ بوقت 9-1/2 بجے رات مظہر اپنے بھائی محمد ندیم کی دکان/ جنرل سٹور پر تھا کہ اس دوران ملزمان تعظیم ولد عصمت اللہ 2 لیاقت ولد محمد صادق حاضر عدالت مظہر کی دکان پر آئے اور مظہر سے چاول کا ریٹ پوچھا اور فائن چاول طلب کیے۔ جب مظہر چاول تولنے کے لئے اکونٹر سے باہر آیا تو ملزم تعظیم ولد عصمت اللہ نے مظہر کو دبوچ لیا اور پاس پڑی سپرائیٹ کانچ کی بوتل مظہر کو ماری جو مظہر نے نہ لگنے دی۔ اسی کشمکش میں دکان کا شوکیس مظہر پر ملزم تعظیم نے گرایا اور اسی دوران ملزم لیاقت دکان کے اکونٹر میں داخل ہوا اور اکونٹر سے نقدی مبلغ 25 ہزار روپے چوری کر کے ہمراہ دیگر ملزم تعظیم دکان سے باہر بھاگ گئے۔ مظہر نے فوری دکان کا شیشہ لاک کیا اور ملزمان کا تعاقب کیا۔ ملزمان مظہر کی دکان سے فوجی فاونڈیشن سکول کی جانب بھاگے۔ مظہر چور چور کی آوازیں لگاتا ہوا ملزمان کا تعاقب کر رہا تھا۔ مظہر مضروب تھا۔ فوجی فاونڈیشن سکول کی پلی پر پہنچا جب مظہر کا بھائی ندیم وغیرہ ریت کا کام کر رہے تھے جنہیں دیکھ کر ایک ملزم تعظیم نے پلی سے نیچے چھلانگ لگا دی اور دوسرا فوجی فاونڈیشن سکول کی سیڑھیوں اوپر مجہان روڈ پر بھاگ گیا۔ ملزم لیاقت جو مجہان روڈ کی جانب بھاگا اس کے تعاقب میں مظہر کا بھائی ندیم اور دیگر افراد فاروق، نبیل، ندیم وغیرہ بھاگے جو PM ہاوس تک گئے لیکن ملزم فرار ہونے میں کامیاب ہو گیا۔۔۔۔۔۔''

24. The question is again how he witnessed the above scene at midnight without light? Source of light is missing in the prosecution's case. While rest of the evidence is hearsay evidence which cannot corroborate the sole statement of the complainant (as the same itself cannot be believed without establishing the source of light). Witnesses besides closely related to the complainant were also chance witnesses (as no iota of evidence is on record to establish their presence at night) thus, their presence at the scene of occurrence was highly doubtful.

[11]. Notice to Police Constable Khizar Hayat: In the matter of [PLD 2019 SC 527].

Identification of the accused at night without establishing source of light is not worthy of consideration.

25. Let's have a bird's eye view of the doctrine of appreciation of evidence i.e. falsus in uno doctrine. Falsus in uno doctrine is defined in **Black's Law Dictionary, 11th Edition** as infra;

> Latin; falsus in uno, falsus in omnibus. False in one thing false in all. The principle that if the fact trier believes that a witness's testimony on a material issue is intentionally deceitful the fact-trier is permitted to disregard all of that witness's testimony.

26. Two parallel doctrines have developed in Criminal law of Jurisprudence, i.e. Falsus in uno doctrine and to sift the grain from the chaff. The anatomy of the parallel principles requires to be x-rayed at the outset.

27. So far as the applicability and following of the falsus in uno doctrine in the Courts of law in Pakistan as well as in AJK is concerned, since long above doctrine is not being followed, even in sub-continent or for that matter over all in the world the said doctrine receives lesser acceptability in the dispensation of Criminal Justice System.

28. Reasoning to take refuge from the above doctrine was almost expounded "social conditions of the country".

29. At present the previous view has been changed by the Hon'ble Supreme Court of Pakistan and doctrine of falsus in uno falsus in omnibus has been adopted in the case titled Notice to Police Constable Khizar **Hayat PLD 2019 SC 527**. In operative part of the above judgment, it was held as infra:-

> "We may observe in the end that a judicial system which tolerates 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 material aspect shall, without any latitude, invariably be proceeded against for committing perjury."

30. It is useful to reproduce rational of some of the judgments of the Superior Courts in this regard as under:

i. The State vs. Mushtaq Ahmed [12].

31. It has been ruled by this Court in a number of recent judgments, that having regard to the social conditions obtaining in this country the principle of falsus in uno, falsus in omnibus cannot be made applicable to the administration of Criminal Justice and therefore, Court are under a duty to sift "chaff from the grain".

32. The above rule was for the very first time held by the Supreme Court of Pakistan in the case titled "Ghulam Muhammad vs. Crown PLD 1951 Lahore 66" and the judgment was authored by M. Monir, the then CJ of Lahore High Court.

33. The Criminal law of the Country according to which deposing falsely in a Court and commission of perjury entail serious criminal consequences.[13]

34. Trite that false evidence cannot be corroborated thus, evidentiary value of a statement (piece of evidence) which is partly discarded and partially taken into consideration is zero as zero added to a quantity adds nothing to that quantity and that whatever quantity be multiplied by zero as the result must remain zero.

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[12]. PLD 1973 SC 418.

[13]. Notice to Police Constable Khizar Hayat: In the matter of [PLD 2019 SC 527].

(emphasis supplied)

35. Credibility of the witnesses cannot be treated as defensible and acceptable against one and rejected against the other.

36. Speaking with due respect that doctrine falsus in uno doctrine is purely justice based doctrine while sifting the grain from chaff is necessity based doctrine providing oxygen tent to the prosecution's case.

37. While attending to this matter, I have felt that the deeper issue involved in the matter relates to the fact the rule falsus in uno falsus in omnibus had in the past been held by the Superior Courts of the Country to be inapplicable to criminal cases in Pakistan which had gradually encouraged and emboldened witnesses appearing in the trials of criminal cases to indulge in falsehood and lies making it more and more difficult for the courts to discover truth and dispense justice.

38. Seemingly after survey of the relevant law, Islamic law of criminal dispensation of justice, previously the doctrine Falsus in uno falsus in omnibus was not followed and applied to criminal cases in Pakistan on account of extraneous and practical consideration rather than legal and jurisprudential consideration.

39. Just for academic purpose, how a statement of a liar can be believed in piece-meal by putting reliance to some part of his statement and simultaneously discarding a certain portion? By applying said formula, presumption of innocence initially acquired by the accused as a fiction of law seems to be destroyed on the basis of which he was called a favourite child of law who deserves to get the benefits of dents found in prosecution's case.

(underlining is mine)

40. As previous view was changed by the Apex Court of Pakistan in the case titled Notice to the Police Constable Khizar Hayat PLD 2019 SC 527, thus, resultantly the doctrine of falsus in uno falsus is in field.

41. Judges with vast and intimate experience of the administration of criminal justice in the country have often felt that where falsehood has been intentionaly mixed with truth, they are under no obligation to winnow the grain of truth from the chaff of falsehood.[14]

42. In order to reach truth grain has to be shifted from the chaff in each case in the light of its own particular facts.[15]

43. Chapter IV of the Qanoon-e-Shahadat Order, 1984 deals with the oral evidence. Article 70 of the above order corresponds to Section 59 of Evidence Act, 1872.

Evidentary value of oral evidence

44. In all civilized systems of jurisprudence there is presumption against perjury. The correct rule is to judge the oral evidence with reference to the conduct of the parties and the presumptions and probabilities legitimately arising in the case.

45. Another test is to see whether the evidence is consistent with the common experience of mankind, with the useful course of nature and human conduct and the will know principles of human action?

46. Oral testimony can be classified into three categories namely (i) wholly reliable (ii) wholly unreliable and (iii) neither wholly reliable nor wholly unreliable. In case of wholly reliable testimony of a single witness, conviction can be founded without corroboration. This principle applies with greater vigour in case the nature of offence is such that it is committed in seclusion.

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[14]. Ghulam Muhammad vs. Crown PLD 1951 Lah. 66.
[15]. Tawaib Khan vs. The State PLD 1970 SC 13 and Bakka vs. The State 1977 SCMR 150.

47. In case prosecution is based on wholly unreliable testimony of a single witness, the Court has no option than to acquit the accused.[16]

48. The maxim falsus in uno falsus omnibus which means false in one particular, false in all, this principle is somewhat dangerous maxim. There is also fringe of embroidery to a story however true in the main and so when the falsehood is merely an embroidery, that would not be enough to discredit the whole of the witnesses evidence, where on the other hand the falsehood relates to a major or material point that is enough to discredit the witness.[17]

49. The real test for accepting or rejecting the evidence is; how consistent is the story in itself, how does it stand the test of cross examination and how for does it fit in with the rest of the evidence and the circumstances of the case?

50. As per law of evidence, oral evidence must be direct. In English law, direct evidence signifies evidence relating to the fact in issue (factum probandum) whereas the term circumstantial evidence, presumptive evidence and indirect evidence signifies evidence relating only to relevant facts (facta probantia), thus, direct evidence means original evidence as distinguished from hearsay evidence.

51. Standard of proof generally required in criminal cases is that it should be beyond all reasonable doubt while in civil cases proof would be on balance of probabilities.[18]

52. Under the Qanoon-e-Shahdat Order, 1984, the facts alleged by the prosecution are to be proved by evidence on oath in Court and the evidence provides a base for the proof of such facts which consequently results in the conviction of the accused.

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[16]. State of Rajastan vs. Babu Meena AIR 2013 SC 2207.
[17]. The Law of Evidence tenth edition. M. Monir.
[18]. Nooruddin v. Abdul Waheed PLD 1997 Kar. 6.

53. The graver the offence the stronger and the inspiring evidence is the essential ingredient for the administration of criminal justice.[19] Conjectures, surmises and impressions of a witness kept in his mind with regard to the action of an accused which consequently falls in the mischief of a crime is to be proved through cogent, tangible and strong evidence in Court. It is a cardinal principle of criminal justice that a person is innocent in the eyes of law and it is the burdened duty of the prosecution to prove accused's guilt to hilt[20]. The evidence brought on the record should be unambiguous and inspiring confidence in such a manner that a prudent man comes to an irresistible conclusion about the guilt of the accused.[21]

54. Although hearsay evidence is not admissible, however, the provisions of article 46 and article 64 are exception to the said general rule.

55. <u>If doctrine of falsus in uno falsus in omnibus is excluded from consideration then it impliedly excludes the concept of extending the benefits of doubt in favour of the accused arising out from the prosecution's case and ultimately aftermath of the same would be in a manner to evaporate the concept of presumption of innocence initially acquired by the accused till proved guilty by converting the same with the presumption of guilt.</u>

(Underlining is mine)

56. The upshot of the above discussion is that instant appeal is **accepted** and impugned judgments passed by both the courts below are

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[19]. Woodroffe and Amir Ali's Law of Evidence, Volume I, Edition 1963, pp. 172-174
[20]. Islamic Criminal Jurisprudence by Cherif Bassiouni.
[21]. Salamat Masih v. State 1995 P.Cr.LJ 811.

hereby **set-aside**, consequently, the convict-appellant is hereby **acquitted** form the charges. File shall be kept in archive.

Muzaffarabad,
02.04.2024. ***JUDGE***

***Note**:- Judgment is written and duly signed. Deputy Registrar Circuit Kotli is directed to announce the judgment in presence of the parties or their counsel, after due notices.*

JUDGE

Approved for reporting

JUDGE