ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Crl. Appeal No.381 of 2024

Abdul Hameed
V.
The State, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	24.02.2025	**Mr. Tariq Aziz, Advocate for appellant.** **Mr. Laik Khan Swati, Advocate for respondent Nos.2&3.** **Mr. Adnan Ali, D.D.P.P.** **S.I Sohail.**

MUHAMMAD ASIF, J-. The instant appeal has been filed by the appellant viz. Abdul Hameed son of Muhammad Ayub (**appellant**) against the judgment dated 28.09.2024 (**"the impugned judgment"**), passed by learned Additional Sessions Judge, Islamabad-West (**"the trial Court"**), whereby the private respondents were acquitted of the charge under section 302/201/34 PPC, arising out of FIR No.628/2021, lodged with Police Station, Kohsar, Islamabad.

2. The complainant lodged the aforementioned FIR against unknown persons with the allegation that on the fateful day, he, after receiving telephonic information from his sister-in-law, namely Ayesha Bibi about the murder of his brother in the jungle of Pathar Point Daman-e-Koh, reached Poly Clinic, where he identified the dead body of his brother.

However, on 08.01.2022, he nominated the accused/respondents in his supplementary statement.

3. Learned counsel for the appellant, took us through the relevant evidence and argued that overwhelming, credible and trustworthy evidence had been adduced by the prosecution, which conclusively proved the guilt of the accused/respondents, but the learned trial Court has not correctly appreciated the evidence on record to acquit the respondents No.2&3 and erroneously disbelieved and discarded the testimonies of the witnesses and CDR by drawing inferences, which are neither probable, nor acceptable. The prosecution has proved the case beyond doubt against the accused/respondents.

4. On the other hand, learned counsel for respondents No.2&3 and Deputy District Public Prosecutor, representing the State, has resisted the appeal, supported the impugned judgment and reiterated the various reasons assigned by the learned trial Court in support of acquittal.

5. We have considered the contentions put forth by learned counsel for the parties in the light of the available record. After hearing the learned counsel, we have arrived at a confident conclusion that the prosecution, indeed, failed to prove the guilt of the respondents. The entire case of the prosecution was based on the confessional statement of the

accused persons, circumstantial evidence, and the alleged recovery of crime weapon from possession of one of the respondents Abdul Manan. The complainant (P.W.14) and Bibi Gulshan (P.W.15) mother of the deceased nominated respondents No.2&3 as accused persons mainly on the ground that the respondents have made confessions before the police, however, the FIR was registered against unknown persons and admittedly both the P.Ws are not eyewitnesses of the case. A perusal of the record reveals the statements of P.W 15 suffering from material contradictions. The CDR being evidence against the accused persons, did not show the certificate of ownership of any cell number or name of any company or voice record of the data alleged. It is a settled principle of law that conviction can be based on circumstantial evidence, but in such circumstances, it must be pointed out that all the circumstances, established by the prosecution, had made the chain so complete that there was no escape from the conclusion that within all human possibility, the deceased was murdered by the accused/respondents. The evidence of PWs-14 and 15, and CDR as observed by the learned trial Court, is of no avail to the prosecution. The infirmities in the case of the prosecution and the contradictory statement of P.W.15 created reasonable doubt in the case of the prosecution. According to settled

principle of law, the benefit of reasonable doubt has to be extended in favour of the accused. Even otherwise, the recovery of weapon of offence, by itself, without any other corroborative evidence, especially when the other cognate factors also do not support the point at issue, is not a substantive piece of evidence.

6. The learned trial Court has rightly extended the relief of acquittal to the respondent. The reasons given by the learned trial Court for the acquittal of the respondents are borne out from the record. The learned trial Court has rightly concluded the alleged occurrence as doubtful and rightly extended the benefit of doubt to the respondents and acquitted them from the charges, otherwise it is the principle of law that the prosecution remained under burdened to bring the guilt to its hilt by adducing inspiring, confidence, trustworthy and surefooted evidence. Needless to observe that the considerations of interference in an appeal against acquittal and in appeal against conviction, is altogether different. Double innocence is attached to an order of acquittal as held in the case of *Paio Khan v. Sher Biaz* **(2009 SCMR 803)**. We are not at all persuaded that there is any infirmity or illegalities so as to call for an interference with the impugned judgement. One substantial doubt is sufficient to acquit the accused. In the case in hand, we do not find any legitimate

exceptions to interfere in the well-reasoned impugned judgment, passed by the learned trial Court, granting the acquittal to the respondents/accused. Furthermore, the impugned judgment does not suffer from any non-reading or misreading of the evidence produced by the complainant/appellant on record.

7. Thus, taking an overall view of the available record, we have observed that the prosecution version is replete with many grave contradictions, which strike at the very roots of the case. It needs no reiteration that any genuine doubt arising out of the circumstances of the case should be extended to the accused as of right and not as concession.

8. Keeping in view the above principles as well as the facts on record, no case is made out by the appellant for reversal of the impugned judgment of acquittal. Resultantly, the instant criminal appeal, being devoid of any substance, is hereby **dismissed**.

(Sardar Muhammad Sarfraz Dogar)
Acting Chief Justice

(Muhammad Asif)
Judge

Shoaib