JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Appeal No.187 of 2016

Tehsin Anjum

Versus

The State and another

Date of Hearing	:	07.03.2022.
Appellant by	:	Muhammad Ilyas Khan, Advocate
State by	:	Shahbaz Shah, State Counsel.

ARBAB MUHAMMAD TAHIR, J. The appellant, namely, Tehsin Anjum, through the preset appeal, has challenged the judgment dated 08.11.2016 passed by the learned Judge, Anti-Terrorism Court-II, Islamabad ("hereinafter referred to as "**the ATC Court**") in case FIR No.654/14 dated 05.11.2014 registered in respect of offences under Sections 394, 411, 324, 353, 186, 75, 177, and 419 of the Pakistan Penal Code, 1860 ("hereinafter referred to as "**PPC**") and Section 7 of the Anti-Terrorism Act, 1997 (hereinafter referred to as "**the 1997 Act**") **[Sections 177 PPC and 7 of the 1997 Act were inserted in the FIR in question on 14.11.2014 and 19.01.2015]** read with Sections 13, 20 and 65 of the Arms Ordinance, 1965 (herein after referred to as "**the 1965 Ordinance**"), at Police Station Sabzi Mandi, Islamabad, whereby he was convicted and sentenced as under:-

01. *He is convicted and sentenced U/s 7 Anti-Terrorism Act, 1997, to life imprisonment and his moveable and immoveable properties is hereby confiscated in favour of the state.*
02. *He is also convicted u/s 324 PPC and sentenced to 07 years RI and fine of Rs.50,000/- in default, thereof, further undergo 06 months SI.*
03. *He is also convicted u/s 353 PPC and sentenced to One year RI and fine of Rs.50,000/- in default, thereof, further undergo three months SI.*
04. *He is also convicted u/s 186 PPC for two months RI and Rs.1000/- fine and in default, thereof, further undergo 15 days months SI.*
05. *He also convicted u/s 337-A (i) PPC and sentenced two years RI and he is also directed to pay Rs.30,000/- Daman to the complainant who is also injured.*

All the sentences were ordered to run concurrently. Benefit of Section 382-B, Cr.P.C. was also extended in favour of the appellant.

FACTUAL BACKGROUND:-

2. Specifically, resume of prosecution case as structured in the FIR (Exh.PR) lodged on the basis of the complaint (Exh.PH) of Ijaz Ahmed (PW-6) is that on 05.11.2014, the complainant was proceeding to IMCG School situated in Sector I-10/4, Islamabad in order to pick his younger sister on motorcycle bearing registration No.FDR-5639 (Exh.P/2). When he reached the end of street No.64 near the bridge, two persons, who were armed with pistols, stopped him and gave him butt blows which hit his head, forehead and other parts of the body. The said unknown / accused persons pushed the complainant, who fell down from motorcycle. They attempted to snatch the motorcycle from the complainant, but on his hue and cry, two police officials, who were on patrol duty, came to the spot. When the accused persons saw the police officials coming towards them, they resorted to firing at the police party. The police personnel in retaliation and in self-defense also opened fire at the accused persons, which hit one of the accused namely Tehsin Anjum, (the present appellant) on his leg, who was apprehended by the police officials at the spot. The other accused decamped from the scene of occurrence towards jungle after leaving the motorcycle, whose name had subsequently come to light as Asif *alias* Multani.

3. Pursuant to the registration of the F.I.R, the matter was investigated by the police and thereafter an interim report under Section 173 Code of Criminal Procedure, 1898 (herein after referred to as "**Cr.P.C.**") was submitted on 23.04.2015 before the learned trial Court. During the course of the trial, the prosecution in order to bring home the guilt of the appellant, produced as many as twelve (12) PWs including Ejaz Ahmed (PW.6), who is the complainant of the case and deposed as embodied in the FIR.

4. After the closure of the prosecution evidence, the learned trial Court examined the appellant under Section 342 Cr.P.C., who in response to a question *"why this case against you and why the PWs deposed against you"*, replied as under:-

> *"This is a false case against me and all the PWs produced by the Prosecution are highly interested in my prosecution."*

5. The appellant was summoned by the learned Judge Anti-Terrorism Court-II, Islamabad to face the trial. On 14.05.2015, copies of the relevant documents as envisaged under Section 265-C Cr.P.C. were delivered to the accused. Charge against the appellant was framed on 02.06.2015 to which he pleaded not guilty and claimed trial. Statement of the appellant under Section 342 Cr.P.C. was recorded on 14.10.2016, wherein he refuted the allegations leveled by the prosecution against him and professed his innocence. The appellant however, did not opt to appear as his own witness as envisaged under Section 340(2) Cr.P.C. in disproof of the allegations leveled against him. After conclusion of the trial, the learned trial Court, after having found the appellant guilty of the offences, convicted and sentenced him as detailed above. Hence the present appeal.

CONTENTIONS OF THE LEARNED COUNSEL FOR THE APPELLANT.

6. Learned counsel for the appellant, after narrating the facts leading to the filing of the present appeal, contended that the learned trial Court did not appreciate the evidence in its true perspective; that the prosecution has miserably failed to bring home the guilt of the appellant through cogent and confidence inspiring evidence; that the conviction recorded by the learned trial Court is not sustainable under the law; that no independent or disinterested evidence was produced by the prosecution in order to connect the appellant with the commission of the alleged offences; that the learned trial Court erred by relying upon PWs statements which were contradictory in nature; that the conclusion arrived at by the learned Court below on crucial aspects of the case is speculative and not based on confidence inspiring evidence.

7. Furthermore, it was contended that the learned Court below while convicting the appellant did not apply its judicial mind; that the law governing the subject was also ignored by the learned Court below; that the conviction order as well as the imposition of the fine are based on utter disregard of the law laid down by the superior Courts; that the statements of the prosecution witnesses are not consistent in nature thus the appellant's conviction cannot be based on such statements; that there are major discrepancies in the statements of the prosecution witnesses; and that impugned judgment does not withstand the test of a valid verdict as enumerated under Section 367 Cr.P.C. Learned counsel for the appellant

prayed for the present appeal to be allowed and for the impugned judgment dated 08.11.2016 to be set aside.

CONTENTIONS OF THE LEARNED STATE COUNSL.

8. Conversely, the learned State counsel submitted that the prosecution has proved the case against the appellant up to the hilt by adducing cogent and confidence inspiring evidence; that the appellant does not deserve any leniency by this Court since he has been charged with heinous offences; that the impugned judgment passed by the learned Court below is based on sound principle of law and thus does not call for any interference by this Court. The learned Law Officer while supporting the impugned judgment wholeheartedly prayed for the present appeal to be dismissed.

9. We have heard the contentions of the learned counsel for the appellant as well as the learned Law Officer and have perused the record with their able assistance. The facts necessitating the filing of the present appeal are detailed in paragraph No.2 to 5 above and need not be reiterated.

10. The case in hand has very peculiar and distinctive facts coupled with chequered history in that the appellant's sufferings behind his illegal and unlawful detention and subsequent production before the Court for his custody. In order to have a glimpse of the events that caused the learned ATC Court to endorse the prosecution's version, it would be appropriate to contextualize the chequered events in a chronological order, as follows:-

Date	Particulars of the events.
05.11.2014	FIR No.654/14 dated 05.11.2014 was lodged on the application of the complainant in respect of offences under Sections 394, 411, 324, 353, 186, 75, 177, and 419 of the Pakistan Penal Code, 1860, PPC and Section 7 of the 1997 Act read with Sections 13, 20 and 65 of the 1965 Ordinance at Police Station Sabzi Mandi, Islamabad.

06.11.2014	The occurrence in this case took place on 05.11.2014 and the appellant was arrested at the spot and on the same day. He was shifted to PIMS hospital for treatment since he was allegedly injured during exchange of firing with police *[No M.L.C. with respect to the accused was produced and/or prepared]*. He was discharged from hospital the very next day i.e. 06.11.2014. On the request of first I.O./PW-8, Fateh Sher, the appellant was sent to judicial lockup on the same day i.e. 06.11.2014 vide order of even date passed by the learned Judicial Magistrate, Islamabad. For the sake of brevity, the said order is reproduced herein below:- *"Order* *06.11.2014* *Present:- Accused in police custody* *I.O. with record.* *Accused produced in police custody. Offence is non-bailable therefore accused be sent to judicial lockup on the request of police / I.O. and shall be produced before the court on 20.11.2014.* ***The I.O. is directed to submit the report u/s 173 Cr.P.C. within 14 days."*** It is an admitted position that the report under Section 173 Cr.P.C. as ordered was not submitted before the Court during the stipulated time.
20.11.2014	The appellant was required to be produced before the Court on 20.11.2014 as was ordered vide order dated 06.11.2014, but he was not produced before the Court for the reasons best known to the I.O./prosecution.
Interregnum period between 20.11.2014 to 27.01.2015.	It is further evident from the record that during the interregnum period (stretching over a period of **two months and seven days** (i.e. with effect from 20.11.2014 to 27.01.2015 (both days inclusive), the appellant was neither produced

	before the Court nor was a request made for his physical custody and remained in judicial custody. The record is silent as to whether or not the appellant was under lawful confinement during this period. Apparently, the appellant was not in the picture for a period spanning **more than two months. The learned trial Court lost sight of this crucial aspect of the matter.**
28.01.2015	On 28.01.2015, the second I.O./PW-5, Asjad Mehmood had requested for six days' physical remand of the appellant. The reasons put forth by the said I.O. were (i) the arrest of the co-accused Asif alias Multani on the appellant's disclosure and identification, and (ii) investigation in other cases. The relevant portion of his request is as under:- "ملزم بالاکے انکاشاف و نشاندہی پر ساتھی ملزم آصف عرف ملتانی کی گرفتاری اور**دیگر مقدمات** میں تفتیش کرنا ہے۔" The important question that arises here is that how can an I.O. interrogate / investigate an accused in respect of cases other than the one which is being investigated by him. The I.O. cannot make investigation in multiple cases registered against an accused person. All that the I.O. can do is to conduct investigation with respect to a case which is entrusted to him. The other cases as allegedly by the preoscution, wherein the accused was involved, all the FIRs stood investigated as the challan of the said FIRs was already submitted before the competent court prior to the present occurrence. Moreover, in the said request, the said I.O. had made a misstatement before the Court inasmuch as that on 06.11.2014, the appellant was produced before the Court and he was sent to judicial lockup. From the perusal of the order dated 06.11.2014 passed by the learned Judicial

	Magistrate, it is evident that no such directions regarding production of the appellant after his recovery were given in the said order. The relevant portion whereof is reproduced herein below:- *"….Accused produced in police custody. Offence is non-bailable therefore* ***accused be sent to judicial lockup on the request of police / I.O. and shall be produced before the court on 20.11.2014."*** ***(Emphasis added).*** All that the order dated 06.11.2014 says is that the appellant was to be produced on 20.11.2014, which was not done.
28.01.2015	The learned ATC Court remanded the appellant to police custody for five days and was ordered to be produced before the Court on 02.02.2015. **The record is completely silent on the fact as to whether the appellant (since injured) was medically fit to be remanded in police custody on 28.01.2015 whereon his physical remand was sought.** No medical fitness certificate has been produced before the Court to this effect.
02.02.2015	Again on the request of PW-5/I.O./Asjad Mehmood, Inspector, the appellant was remanded to police custody for further four days subject to his medical fitness and he was required to be produced before the Court on 06.02.2015.
06.02.2015	The I.O./Asjad Mehmood, Inspector had candidly conceded that the investigation in respect of the appellant is completed **however, the investigation is incomplete as such he sought further 14 days' judicial remand of the appellant**. The learned ATC Court without appreciating the facts and circumstances of the case and without applying its judicial mind, in a cursory manner allowed the said request and directed the appellant to be produced on 20.02.2015.

20.02.2015	The record of the learned court below is completely silent as to what had happened on and/or after 20.02.2015.

Now, dilating upon the other discrepancies and flaws in the prosecution case.

QUESTION OF RECOVERY OF THE ALLEGED MOTORCYCLE:-

11. Admittedly, the law was set into motion on the basis of the *fard-e-bayan* of the complainant/PW-6. The said PW had remained inconsistent in the examination in chief as well as in his cross-examination inasmuch as he contradicted the other PWs, who are all police officials, on material aspects of the case. In the examination in chief, the said PW testified that "*they* (the accused persons) *pushed me, due to which I fell down from the motorcycle.* ***They tried to snatch the motorcycle,*** *but I raised hue and cry".* He further testified that *"the co-accused whose name was subsequently came to my knowledge was Najam ul Saqib accused present in the court* ***decamped from the scene of the occurrence, towards Jungle, after throwing the motorcycle."*** Similarly, the I.O./PW-8 in his cross-examination testified that *"****the motorcycle was lying at the place of occurrence"****.*

12. Furthermore, the said PW testified that on the same day, the police took into possession motorcycle bearing registration No.FDR-5639 (Exh.P/2) vide recovery memo (Exp. P/B), and that he (i.e. the said PW) and Khushal Khan (PW-1) attested the recovery memo (Exh.P/1). He also deposed that on the same day, he identified his motorcycle vide identification memo Exh.PJ. He along with Khushal Khan (PW-1) attested the identification memo and the police recorded their statements under Section 161 Cr.P.C. Now, when the complainant himself categorically admits in terms that "*the accused persons* ***threw away motorcycle upon seeing the police party*** and one of the accused (the present appellant) was apprehended by the police at the spot and the other fled away towards Jungle, which stance was further fortified by PW-8/I.O. in terms *that* ***"the motorcycle was lying at the place of occurrence***, then how the question of identification of the said motorcycle arise? And how the question of the recovery of motorcycle arise? Had motorcycle in question been taken away and/or snatched by the accused then in such eventuality

the question of recovery of motorcycle and its subsequently identification could have arisen. The admission on the part of the I.O. regarding motorcycle being lying at the spot further brushes aside the question of recovery of the motorcycle. Be that as it may, if at all the stance of the I.O. *qua* recovery of the alleged motorcycle is taken into account then it was incumbent upon the prosecution/I.O. to have traced out the registration book of the said motorcycle so as to have confirmed its ownership, but the prosecution did not bother to do so. Such facts create serious doubt about the genuineness of the prosecution story. The benefit of the doubt must be extended to the appellant.

ALLEGED RECOVERY OF THE PISTOLS.

13. Another important aspect of the matter is that PW-8/I.O. in his examination in chief had deposed that he searched the appellant and **two .30 caliber pistols (Exh. P/5 and P/6)** were recovered from his possession; that both the pistols were loaded with 03 live bullets. After unloading the pistols, three live bullets (Exh. P 4(1 to 6) from each magazine were recovered. PW-4 also deposed with respect to this aspect of the matter in more or less similar terms as the I.O. However, both the PWs i.e. PW-8 and PW-4 were contradicted by PW-3 with regard to the recovery of the alleged **two pistols** by deposing that *"**.30 bore pistol Exh.P-6 was recovered from Muhammad** Yasin alias Tehsin Lucky accused present in the court and after unloading two chargers each having 03 bullets total 06 live bullets Exh.P4 from each charger were recovered"*. It is also important to mention that the alleged recovered pistols were never sealed at the spot, the recovery of the crime weapons and empty cartridges appeared to be planted, casting serious doubt on the mode and manner in which the crime in question was investigated by the police, which had relatable effect upon the entire prosecution's case put up during the trial. The learned ATC Court erred by not appreciating this important aspect of the matter.

NON-TRANSMISSION OF THE ALLEGEDLY RECOVERED PISTOLS.

14. What has further irked this Court is that the I.O. in his cross-examination admits the fact that he did not send the recovered pistols and bullets/empty cartridges (Exh.P7 (1-6) to the office of Forensic Science Laboratory ("hereinafter referred to as **"F.S.L."**) so as to verify the fact that the said cartridges had in fact been fired from the allegedly recovered pistols (Exh.P5 and Exh.P6) and that the so-called recovered pistols were

either in working condition or otherwise. Had the allegedly recovered pistols, bullets and empty cartridges been sent to the office of the F.S.L. it could have easily been ascertained as to whether the empties were fired from one pistol or more than one pistols. The prosecution was duty bound to have sent the empties cartridges and allegedly recovered pistols to F.S.L. Said infirmities in the prosecution case cast reasonable doubts on the authenticity of the prosecution's version. Learned ATC Court did not address this pivotal aspect of the matter. In such a scenario, the recoveries of the alleged pistols from the appellant preceded by procuring empty cartridges from the place of occurrence are therefore inconsequential and are providing no help to the prosecution case. Reliance can be placed upon the case of **"Muhammad Idrees and others Vs. State through Advocate General and others (2021 YLR Note 48,** it was held as follows:-

> *"Record also showed that from the recovered empties none else matched with the pistol allegedly recovered on the pointation of the accused and the* ***pistol allegedly recovered on the pointation of the co-accused had not been sent to the Forensic Science Laboratory. Reliance could not be placed on such recovery, in circumstances****"*

15. Similarly, in the case of **Muhammad Shafiq Vs. The State (2021 YLR 1410)**, it was held as follows:

> *"The crime weapon i.e. pistol was also recovered from the accused/appellant at the time of his arrest from the house of his daughter. The investigation officer secured bullet empties from the place of occurrence,* ***however, admittedly the recovered empties from the place of occurrence have not been sent to Firearm Expert to ascertain whether the same was fired from the pistol which has been effected from the possession of the accused/appellant, therefore, the recovery of pistol is no help to the prosecution case****."*

16. Law to the said effect has also been laid down in the case of **Zahoor Ahmad Vs. The State (2017 SCMR 1662)**, wherein, it was held as follows:

> *"****Besides that the recovery of rifle in the absence of any positive report of Forensic Science Laboratory is inconsequential*** *and both the Courts below had rightly disbelieved the said recovery. The above mentioned two factors arc sufficient mitigating circumstances in this case"*

17. Additionally, PW-3 Waqas Shakeel., who is one of the signatories to the recovery memos allegedly prepared on the day of the incident appeared as PW-3 and exhibited the recovery memo of pistol as Exh.P/G but the pistol was never exhibited by him or his co-signatory i.e. Rahim

Khan (PW-4) and he also exhibited the **recovery memo** of 6 empties as Ex.P/G, but the **allegedly recovered empties** were not exhibited. This material aspect of the matter is another enough reason to disbelieve the prosecution's version.

SUSTAINING OF ALLEGED INJURIES BY THE COMPLAINANT.

18. The complaina nt in the examination in chief has deposed that *"the accused gave him butt blows which hit him on his head, forehead and other parts of the body"*, but when he was confronted with *fard-e-bayan* (i.e. initial statement) (Exh.PH), wherein no such assertions have been made, he frankly stated that *"he lost his senses after five minutes after receiving injuries as his blood was oozing in excessive quantity"*. The said PW has been falsified by the I.O./PW-8 in the following terms:-

> *"….the complainant produced before me written application Exh.PH regarding the occurrence.* ***The complainant received minor injuries"****.*

19. He has further been falsified by PW-1, Khusal Khan 1872/HC, who in his examination in chief stated that he took the complainant, namely Ijaz Ahmed, ***"who received minor injuries to PIMS hospital"***. As mentioned above, the complainant deposed that he received injuries on his head, forehead and other parts of the body due to which he lost senses and became unconscious, but on the other hand, PW-1and PW-8 have categorically controverted the complainant's said stance by stating that the complainant had received **minor injuries**.

20. Additionally, the complainant's assertion that he lost his senses, gives a rise to a question that once he received injuries causing him becoming unconscious then how he could have witnessed a series of episodes that had erupted in the police proceedings *viz* apprehending of the present accused, recovering of the motorcycle and its subsequent identification, recording the PWs statement under Section 161 Cr.P.C. by the I.O. at the spot and writing an application by himself (the complainant) *qua* the alleged so-called occurrence. All these factors heavily cast serious doubt on the prosecution story.

CONTRADICTIONS IN PWS' STATEMENTS REGARDING CO-ACCUSED'S NAME AND HIS DECAMPING FROM THE SCENE OF THE INCIDENT.

21. The complainant deposed that the police in retaliation and in self-defence, also fired at the accused, which hit the appellant on his leg, who was apprehended by the police at the spot, whereas his accomplice (co-accused) made his escape good by fleeing away towards **jungle,** after throwing motorcycle**.** He further stated that "the co-accused whose **name was subsequently came to my knowledge was Najam ul Saqib"**. These stances of the complainant stood refuted by PW-3, Waqas Shakeel, 2119/C [who was on patrol duty in the area attracted to the scene] in terms that:-

> *"….the other boy fled away from the scene of the occurrence while taking the benefit of the* ***crowed.*** *Later on,* ***his name was disclosed as Asif Multani [R] s/o Multan, resident of Rawalpindi.****"*

ATTRACTION OF THE POLICE TOWARDS THE PLACE OF OCCURRENCE.

22. The complainant deposed *"that the accused attempted to snatch his motorbike"*, **but upon raising hue and cry**, two police constables, who were patrolling on motorcycle came at the spot. He has been stood contradicted by PW-3, who is one of the police constables who came at the spot and deposed in his examination in chief that *"he was present in street No.71, I-10/1, Islamabad, when we were moving towards barsati Naullah, we heard noise* ***from the people"*** that motorcycle was being stolen by someone". The said PW in his cross-examination has taken a somersault by stating that:-

> *"….At the time of occurrence,* ***the people were not present****".*

23. Now, a question arises that when people were not present at the place of occurrence then how he (PW-3) heard people making noise regarding the theft of the motorcycle.

24. Furthermore, PW-8, Fateh Sher, ASI/I.O. in his examination in chief has deposed that he had reached at the spot within **5 to 7 minutes** but in the cross-examination, he admits that when he reached at the spot, the complainant presented to him a written application. Now a major flaw which subsists in the statements of PW-6 (the complainant) and PW-8 (the

I.O) is that when the complainant asserts that he lost senses after five minutes, then how he could have reduced his version into writing and submitted written application to the I.O. who reached at the place of occurrence after 5 to 7 minutes. The relevant part of his deposition is as under:-

> *"I received a message for reaching at street No.65, I-10/1, near Barsati Naula.* ***I reached there within 05/07 minutes*** *alongwith Khusal Khan 1869/C, Khalid 40/C and Qaiser Basir 388/C."*

25. This I.O. further deposed in his cross-examination that he had seen the occurrence **with his own eyes**. The said PW has deposed that the application was written before his reaching at the place of occurrence. Now another question that arises is that when I.O. was not present at the time of occurrence since as per his own version that it took him 5 to 7 minutes to reach at the place of occurrence, then how he witnessed the entire occurrence. Therefore, we hold that the said PW was a chance witness and admittedly, the testimony of a chance witness ordinarily is not accepted unless justifiable reasons are shown to establish his presence at the crime scene at the relevant time

26. Another discrepancy which leads to the creation of doubt onto the prosecution story is that PW-1 in his examination in chief took a contradictory stance inasmuch as on one hand, he testifies that "I took the complainant namely Ijaz Ahmad who received minor injuries to PIMS hospital", but on the other hand, he during the cross-examination stated that "**it is incorrect to suggest that I took the complainant to PIMS hospital**". Similarly, PW-9, who is the Medico Legal Officer in this case, deposed that *"Fateh Sher ASI brought the injured in PIMS hospital",* whereas Fateh Sher, PW-8 had deposed that *"Khushal Khan constable and Qaiser Bashir constable took both the injured persons to PIMS hospital"*. On the basis of such discrepancies and flaws in the PWs' statement, the conviction of the appellant cannot be sustained.

NON-PREPARATION OF THE SEALED PARCEL:

27. It is an admitted position that neither the case property i.e. allegedly recovered pistols and empty cartridges were sealed nor any parcel thereof was prepared and it was found to be lying open with the police. The I.O. admitted that he did not prepare the sealed parcel of the allegedly

recovered empties and/or of the allegedly recovered pistols. The said PW is silent about handing over the empties cartridges to anyone for keeping them in *malakhana* for safe custody. He further admitted that he did not send the recovered pistols and the empties to the F.S.L. It was not known as to whether the case property was kept in Malkhana or otherwise, and whether entries to this effect were incorporated in the relevant property register. The case property which was the foundation upon which the entire case of the prosecution was built, had no leg to stand on and the evidence thus produced was not free from doubt and benefit of the doubt must go in favour of the accused/appellant.

FLAWS IN THE MEDICAL EVIDENCE:-

28. The I.O. PW-8 deposed that after preparing injury sheets (Exh.PL and Exh.PM), both the injured (i.e. the complainant and the appellant were dispatched to PIMS hospital for treatment. The appellants emergency slip prepared by the Medico Legal Officer (although available on record), was never produced by the prosecution during the trial, which casts shadow on the conduct of the prosecution in trial. The record evinces that in the case in hand, no Medico Legal Certificates ("M.L.Cs.") in respect of both the injured were ever prepared. The said PW himself admitted that indeed it's an emergency slip, and such an emergency slip by no stretch of imagination could be termed as "M.L.C.". The so-called Exh.PP is just an OPD emergency slip in respect of the complainant, upon which, PW-9, Dr. M. Farrukh Kamal, MLO observed as under:-

> *"He had **superficial wound** on left side of skull. Swelling positive. He was also examined by Neuro Surgery Department, and **C.T. scan was done which was normal and patient was discharge to home after advising medicine"**. He further deposed that "nature of injury in my opinion was 337-A (i) (Shajjah-e-Khafifah)".*
> ***(emphasis added).***

29. As per the medical report, the complainant sustained superficial wounds. It is a matter of fact that in the ordinary course of nature, superficial wounds are not enough to cause a person's unconsciousness. Furthermore, the M.L.O. has Ex. PP and mentioned that *"nature of injury in my opinion was 337-A (i) (Shajjah-e-Khafifah)"*. Writing the provisions of law on the medical description is not the domain of the M.L.O. All that a M.L.O. is required to do is to examine the injured and to opine about the

nature of the injuries. The practice of specifying offenses and/or quoting the Sections of law by the M.L.O. on medical prescriptions is deprecated by the superior Courts. Reliance can be placed upon the law laid down by the Hon'ble Supreme Court in the case of **Khalil Ahmed Soomro and others Vs. The State (PLD 2017 SC 730),** wherein, the Hon'ble Supreme Court while deprecating such a practice has held as follows:-

> *"Before parting with this judgment we have* ***noticed in numerous cases that Medico-legal Officers have assumed the status of the prosecution/prosecutors by describing the sections of penal law under which the injuries fall. This is neither their domain nor they have lawful authority to direct or convey to the Investigating Agency the nature of offence, but they should describe the nature of injuries under the new dispensation of law and not the provision of law, under which it falls"****.*
> **Emphasis Added.**

ALLEGED EXCHANGE OF FIRING WITH THE POLICE.

30. As discussed above, the complainant in his *fard-e-bayan* admitted in terms that *"when the accused present in the Court saw the police, they started firing at them"*. The police in their defence also fired at the accused. One of the accused received fire shot on his leg. As per the prosecution own version, six empties Exh.P/4 (1-6) were allegedly recovered from the scene of the occurrence. Now the question arises that when an exchange of firing takes place, sustaining of injuries by either party cannot be ruled out. The police is said to have fired one shot that landed on the appellant's left leg, whereas the six empties recovered from the place of occurrence have allegedly been fired by the appellant, but it is very strange to observe that none of the six bullets that were fired by the appellant hit the police party. This does not appeal to a prudent mind that while making fire upon an opposite party, the said party does not sustain an injury or suffer an abrasion, to say the least. This material aspect of the matter casts enough doubt on the prosecution's version, the benefit of such a doubt must be extended to the accused/appellant.

INSERTION OF SECTION 7 OF THE 1997 ACT.

31. Another important aspect of the matter is that initially when the F.I.R. in question was chalked out, Section 7 of the 1997 Act and Section 177 P.P.C. were not inserted in the F.I.R. The said Sections were subsequently added in the F.I.R. on 14.11.2014 & 19.01.2015 by Asjad

Mahmood/Sub-Inspector/PW-5, P.S. Sabzi Mandi, Islamabad. Relevant portion of his statement is reproduced as follows:-

> *"…. During the investigation, it reveals that the accused present in the court fired at police officials. According to the facts and circumstances of the case section u/s 7 ATA was attracted, therefore the same was added by me and I made request for constitution of JIT".*

32. He further submitted that *"Tehsin accused present in the court disclosed his name wrongly during the investigation, therefore, section 177 PPC was also added".*

33. The facts and circumstances of the case postulate that no act of terrorism was committed by the appellant particularly given the fact that the alleged recovered empty cartridges and pistols from the possession of the appellant were not sent to the F.S.L. to determine the fact that the empty cartridges had in fact been fired from the allegedly recovered pistols. The alleged act of firing of the appellant was not gruesome and/or horrific so as to bring it in line with the term of **"terrorism"** and as such Section 7 of the 1997 Act was not attracted. The said second I.O. Asjad Mehmood, had just inserted section 7 of the 1997 Act but he did not specifically specify as to which of the *proviso* to the said Section was attractable in the case in hand. The said I.O. just inserted Section 7 of the 1997 Act without mentioning any specific *proviso* thereto. The learned ATC Court while relying blindly and without proper scrutiny of the Section *ibid* convicted the appellant in terms as mentioned in paragraph-1 herein above. In order to understand the terms of "terrorism" it would be apt to reproduce Sections 6 and 7 of the 1997 Act which read thus:-

> *"6. Terrorism.- 1) In this Act. "terrorism" means the use or threat of action where: (a) The action falls with the meaning of sub-section (2). And (b) The use or threat is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect or create a sense of fear or insecurity in society; or (c) The use or threat is made for the purpose of advancing a religious, sectarian or ethnic cause. 2) An "action" shall fall within the meaning of sub-section(1), if it: (a) Involves the doing or anything that causes death; (b) Involves grievous violence against a person or grievous body injury or harm to person; (c) Involves grievous damage to property: (d) Involves the doing of anything that is likely to cause death or endangers a person's life; (e) Involves kidnapping for ransom, hostage-taking or hijacking; (f) Incites hatred and contempt on religious, sectarian or ethnic basis to stir up violence or cause internal disturbance; (g) Involve stoning, brick-batting or any*

other form of mischief to spread panic: (h) Involves firing on religious congregations, mosques, imambargahs, churches, temples and all other places of worship, or random firing to spread panic, or involves any forcible takeover o mosques or other places of worship; (i) Creates a serious risk to safety of public Or a section of the public, or is designed to frighten the general public and thereby prevent them from coming out and carrying on their lawful trade and daily business, and disrupts civil (civic) life; (j) Involves the burning of vehicles or another serious form of arson; (k) Involves extortion of money (bhatta) or property; (l) Is designed to seriously interfere with or seriously disrupt a communications system or public utility service; (m) Involves serious coercion or intimidation of a public servant in order to force him to discharge or to refrain from discharging his lawful duties; or (n) Involves serious violence against a member of the police force, armed forces, civil armed forces, or a public servant. 3) The use or threat or use of any action falling within sub-section (2) which involves the use of fire-arms, explosives or any other weapon, is terrorism, whether or not subsection 1 (c) is satisfied. 4) In this section "action" includes and act or a series of acts. 5) In this Act, terrorism includes any act done for the benefit of a prescribed organization. 6) A person who commits an offence under this section or any other provision of this Act, shall be guilty of an act of terrorism"

7) In this Act, a "terrorist" means: (a) A person who has committed an offence or terrorism under this Act, and is or has been concerned in the commission, preparation or instigation of acts of terrorism; (b) A person who is or has been, whether before or after the coming into force of this Act, concerned in the commission, preparation or instigation of acts of terrorism, shall also be included in the meaning given in Clause (a) above. 7. [[5]Punishment for acts of terrorism.- whoever commits an act of terrorism under Section 6, whereby (a) death of any person is caused, shall be punishable, on conviction, with death or with imprisonment for life, and with fine; or (b) he does anything like to cause death or endangers life, but death or hurt is not caused, shall be punishable, on conviction, with imprisonment for description for a term which shall be not less than five years but may extend to fourteen years and with fine: (c) grievous bodily harm or injury is caused to any person, shall be punishable, on conviction, with imprisonment of either but may extend to imprisonment for life and shall also be liable to a fine; or (d) grievous damage to property is caused, shall be punishable on conviction, with imprisonment, of either description for a term not less than ten years and not exceeding fourteen years, and shall also be liable to a fine: or (e) the offence of kidnapping for ransom or hostage-taking has been committed, shall be punishable, on conviction, with death or imprisonment for life and shall be liable to forfeiture of property; or (f) the offence of hijacking, has been committed, shall be punishable, on conviction, with death or imprisonment for life, and shall also be liable to forfeiture of property and fine; (g) the act of terrorism committed falls under Section 6(2) (f) and (g), shall be punishable, on conviction, with imprisonment of not less than six months and not more than three years and with fine; or (h) the

act of terrorism committed falls under clauses (h) to (n) of sub-section (2) of Section 6, shall be punishable, on conviction, to imprisonment of not less than one year and not more than ten years and with fine; and (i) any other act of terrorism not falling under Clauses (a) to (h) above or under any other provision of this Act, shall be punishable, and not less than six months and not more than five years or with fine or with both"

34. Given the facts and circumstances of the case, Section 7 of the 1997 Act was not attracted in the present case since every brutal, gruesome or heinous offence are not to be treated as the determining factors for deciding whether an action is to be labeled and accepted as "terrorism" or "not" as contemplated in Sections 6 and 7 of the 1997 Act. From the entire resume of the case in hand, it is manifest on record that the intention of the appellant was not such at all to create any sense of insecurity or destabilize the public-at-large or to advance any sectarian cause. A Larger Bench of the Hon'ble Supreme Court of Pakistan in the case of **Ghulam Hussain and others Vs. The State and others (PLD 2020 SC 61),** while extensively dealing with the term "terrorism" elaborately held as follows:-

16. For what has been discussed above it is concluded and declared that for an action or threat of action to be accepted as terrorism within the meanings of section 6 of the Anti-Terrorism Act, 1997 the action must fall in subsection (2) of section 6 of the said Act and the use or threat of such action must be designed to achieve any of the objectives specified in clause (b) of subsection (1) of section 6 of that Act or the use or threat of such action must be to achieve any of the purposes mentioned in clause (c) of subsection (1) of section 6 of that Act. ***It is clarified that any action constituting an offence, howsoever grave, shocking, brutal, gruesome or horrifying, does not qualify to be termed as terrorism if it is not committed with the design or purpose specified or mentioned in clauses (b) or (c) of subsection (1) of section 6 of the said Act. It is further clarified that the actions specified in subsection (2) of section 6 of that Act do not qualify to be labeled or characterized as terrorism if such actions are taken in furtherance of personal enmity or private vendetta****.*

(emphasis added.)

THE CASE OF THE PROSECUTION AT BEST FOOTING

35. From the facts and circumstances of the case, it is manifest that the case of the prosecution at best could have been a case of "theft" under Section 356/511 P.P.C. and not of "terrorism" as contained in Section 6 of the 1997 Act. It is astonishing to note here that the learned ATC Court did not advert to this pivotal aspect of the matter and it did not deal with the

matter as per law thus committed gross illegality by convicting the appellant in terms as mentioned above.

CONSTITUTION OF THE JOINT INVESTIGATION TEAM

36. From perusal of the police file, it transpires that on 14.12.2014, Muhammad Aslam Sahi, S.I. P.S. Sabzi Mandi, Islamabad moved an application for the constitution of the Joint Investigation Team ("**JIT**"). PW-5 Asjid Mehmood, in his cross-examination testified that *"when section 7 ATA is added in any case, then the constitution of JIT is necessary as per Anti-Terrorism Act."*

37. If at all, the act of the appellant was gruesome and horrific to create a sense of insecurity in the public at large, even then, the constitution of the J.I.T. was not mandatory. Since all the PWs had recorded their statements and allegedly pistols used in the crime were also recovered from the possession of the appellant at the spot and the allegedly snatched motorcycle was also lying at the spot, then what else prevailed over the prosecution to constitute a J.I.T. and what else was left to be investigated by the J.I.T. An un-dated J.I.T report (Exh.P/K) which is only two pagers, simply sets out the prosecution version in its totality. No progressive steps were taken by the J.I.T. All that the J.I.T. did was to reiterate the prosecution's entire edifice.

DEFENSE PLEA

38. So far as the defence plea taken by the present appellant in his statement under Section 342 Cr.P.C. is concerned, the said plea of the appellant has not been taken into account by the learned ATC Court inasmuch as the appellant in his statement recorded under Section 342 Cr.P.C. pleaded *inter alia* as infra:-

> *"In answer to question No. 3 appellant stated that;- it is incorrect . As mentioned above neither of us caused any injuries to the complainant, therefore the question of falling down of the motorcycle does not arise. Furthermore, the allegation of snatching the motorcycle is a fabricated story. The bullet shot received by me on my leg was basically caused by the complainant himself and no exchange of firing between me and the police ever took place. However, the complainant is the son of a policemen, the police party fabricated the whole story. The truth of the matter was that one of my friends Asif Multani was having love affair*

with the sister of the so called complainant and on this matter the exchange of hot words took place between him and us on which the complainant fired on us and accused me the injury on my leg. The police party instead of taking action against the real culprit (i.e. the complainant) concocted the story and made the false case against us."

39. Since the prosecution evidence is doubtful in nature, therefore, there is no need to discuss the same which are exculpatory in nature. In the instant case, the prosecution failed to discharge its responsibility of proving the case against the appellant without any reasonable doubt. It is also well established that if there is a single circumstance which creates doubt regarding the prosecution case, the same is sufficient to give benefit of the doubt to the accused, whereas, the instant case is replete with a number of circumstances which have created serious doubts about the prosecution story. Reliance in this regard may be placed on the case law titled as "**Muhammad Akram v. The State" (2009 SCMR 230)**, wherein it was held as follows:-

> ***"The nutshell of the whole discussion is that the prosecution case is not free from doubt. 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****."*

40. Law to this effect was also laid down in the case of **Tariq Pervez v. The State 1995 SCMR 1345**, wherein it was held has follows:-

> *"The concept of benefit of doubt to an accused person is deep-rooted in our country. For giving him benefit of doubt,* ***it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right****"*
>
> **Emphasis added.**

41. It has been held time and again by the superior Courts that a slightest doubt occurs in the prosecution case is sufficient to grant acquittal to an accused person. For giving the benefit of doubt, it is not necessary that there should be many circumstances creating doubts. Single circumstance creating reasonable doubt in the prudent mind about the guilt of the accused makes him/her entitled to its benefit, not a matter of grace or concession, but as a matter of right. Law to this effect has also be laid down in the judgments reported as **2009 SCMR 230, 2011 SCMR 664, 2011 SCMR 646, 1984 PLD SC 433, 2012 MLD 1358, 2007 SCMR 1825, 2008 PCr.LJ 376, 1994 PLD Peshawar 114, 2012 PLD Peshawar 01, 1999 PCr.LJ 1087, 1997 SCMR 449, 2011 SCMR 820 and 2006 PCr.LJ SC 1002.**

42. Moreover, it is well settled by the Hon'ble Supreme Court that in case of doubt, its benefit must go to the accused not as a matter of grace, but of right. Reliance is placed upon case laws titled as **"Tariq Pervez v. The State" (1995 SCMR 1345), "Ayub Masih v. The State" (PLD 2002 SC 1048), "Muhammad Akram v. The State" (2009 SCMR 230), "Khalid Mehmood and others v. The State" (2011 SCMR 664), "Arshad Khan v. The State" (2017 SCMR 564), "Muhammad Mansha v. The State" (2018 SCMR 772), "Asia Bibi v. The State and others" (PLD 2019 SC 64), "Muhammad Ashraf alias Acchu v. The State" (2019 SCMR 652), "Najaf Ali Shah v. The State" (2021 SCMR 736).** It is hardly necessary to reiterate that the prosecution is obliged to prove its case against the accused beyond any reasonable doubt and if it fails to do so, the accused is entitled to the benefit of doubt. The rule of benefit of doubt, which is described as the golden rule, is essentially a rule of prudence which cannot be ignored while dispensing justice in accordance with law.

SEPARATE FIR WITH REGARD TO RECOVERY OF PISTOLS

43. Now another moot question that begs an answer is that when the I.O. took into possession the allegedly recovered two .30 bore pistols from the possession of the appellant, then at best he could have lodged a separate F.I.R. under Sections 13, 20 and 65 of the 1965 Ordinance. PW-4 also deposed with respect to this aspect of the matter in more or less similar terms as the I.O. But no separate F.I.R. in that regard was registered. There ought to have been a separate F.I.R. for these very offences.

UNDERTAKING OF THE I.O. BEFORE THE ATC COURT.

44. If at all, the present case is considered to be a case of terrorism (which is not in fact so), then the undertaking of the I.O. to the effect that he along with the prosecution witnesses will appear before the Court on each and every date of hearing was a must, but in the case at hand, no such undertaking is on the record.

NON-SUBMISSION OF THE CHALLAN IN TERMS OF SECTION 173(B) PPC.

45. As discussed above, the appellant was arrested in this case on 05.11.2014. On 06.11.2014 his remand was obtained and he was required to be produced on 20.11.2014. In the said order dated 06.11.2014, the learned Judicial Magistrate had specifically directed the I.O, to submit the Challan within a period of 14 days. No compliance with the said order was shown by the I.O. It is pertinent to mention that in the case at hand, there are three Challans that too are **INCOMPLETE.** It is only on 12.02.2015, that the first incomplete challan was prepared by the S.H.O. Police Station Sabzi Mandi, Islamabad and the same was forwarded to the Deputy Superintendent of Police. The S.D.P.O. on 17.03.2015 forwarded the said interim challan to the Public Prosecutor. Similarly, the Public Prosecutor on 23.04.2015 directed the incomplete challan to be sent to the Court for trial. The remarks of the Public Prosecutor reads infra:-

"Sent upto Court incomplete Challan, for trial"

46. The Prosecution was under a statutory obligation to submit the Challan whether interim or final within a period of 14 days after the arrest of an accused person as contemplated under the *proviso* to Section 173 (b) Cr.P.C. For the sake of ready reference, Section 173 (a) and (b) is reproduced herein below:-

> *"173. Report of police officer: (1) Every investigation under this Chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer incharge of the police-station shall [through the Public Prosecutor]*
> *"(a) forward to a Magistrate empowered to take cognizance of the offence a police report, a report in the form prescribed by the Provincial Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused (if arrested) has been forwarded in*

custody or has been released on his bond, and, if so, whether with or without sureties, and
(b) communicate, in such manner as may be prescribed by the Provincial Government, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given ***: [provided that, where investigation is not completed within a period of fourteen days from the date of recording of the first information report under Section 154, the officer incharge of the police station shall, within three days of the expiration of such period, forward to the Magistrate through the Public Prosecutor, an interim report in the form prescribed by the Provincial Government stating therein the result of the investigation made until then and the Court shall commence the trial on the basis of such interim report****, unless, for reasons to be recorded, the Court decides that the trial should not so commence"*

47. It is further quite strange rather shocking to observe here that on 12.02.2015 a belated challan that too an incomplete/interim in nature was prepared by the S.H.O. concerned and the same was placed before the S.D.P.O. Now the question arises that from 12.02.2015 (i.e. the date of the preparation of the challan) till 17.03.2015 (i.e. **for a period of one month and 19 days**) where the challan was lying/pending. Similarly, it took a period of **one month and almost 6 days** (i.e. with effect from 17.03.2015 to 23.04.2015) to forward the challan to the Public Prosecutor, who on 24.03.2015 directed for the challan to be sent to the Court. In such view of the matter, it can safely be held that the prosecution took almost more than two months (i.e. with effect from 12.02.2015 till 24.03.2015) to forward an interim challan to the Court. Thus the provisions of Section 173 Cr.P.C. were not complied with in letter and spirit. In the instant case the incident was reported on 04.11.2014, while the challan was submitted on 24.03.2015 with the delay of almost **four months**. The prosecution has miserably failed to furnish reasons for not submitting the challan before the Court through Public Prosecutor as per the provisions of Section 173, Cr.P.C. It is the duty of every Investigating Officer to complete the interrogation of the accused within a stipulated period of time and an unnecessary delay is not tolerable in this regard since after completion of investigation, challan is to be submitted before the Court of competent jurisdiction. Section 344 Cr.P.C. provides that it is the duty of the Police Officer to furnish justification for detention of an accused in custody if challan under section 173, Cr.P.C. has not been submitted before the Court and

trial has not been commenced, otherwise in absence of report of a police officer regarding the non-submission of the challan within the stipulated period, the detention of the accused can be termed as unjustified and against the provisions of the law. Such adherence to the mandatory provision of the law *viz* the detention of the accused and non-submission of the challan is lacking in the present case. Law to this effect has been laid down by the Hon'ble Supreme Court in the case of **"Hakim Mumtaz Ahmed Vs. The State (PLD 2002 SC 590)**, whereby the august Supreme Court while taking a serious view of the delay generally caused in the submission of the challan before the Court in terms of Section 173, Cr.P.C. observed as under:-

> *"On completion of maximum period of police remand the accused becomes entitled for trial and every Investigating Officer is duty bound to complete interrogation of the accused within stipulated period and no unnecessary delay is tolerable in this behalf because after completion of investigation, challan is to be submitted before the Court of competent jurisdiction through the Public Prosecutor. As per section 344, Cr.P.C. it is the duty of the Police Officer to furnish justification for detention of accused in custody if challan under section 173, Cr.P.C. has not been filed and trial has not commenced, otherwise in absence of report of a police officer of challan, detention of the accused would be unjustified and against the provision of law.".*

48. A view similar to the case of (Hakim Mumtaz Ahmad supra) was taken in the case of **"Tariq Aziz Vs. the State and another ()2018 YLR 747)**, wherein it has been held as under:-

> *Delay in submission of challan/ police report under section 173, Cr.P.C. has been noticed invariably in the criminal cases, despite the fact that section 173 of the Code of Criminal Procedure has been amended by Act XXV of 1992 whereby a facility has been extended to the Investigating Agency for submitting interim report the period of 3 days from the completion of period of 14 days of the police remand* ***but instead of deriving benefit from this provision of law, the Police Authorities including S.H.Os. and high-ups up to the rank of Senior Superintendent of Police never bothered to comply with this mandatory provision of law****.*
> *10. Undoubtedly section 173, Cr.P.C. was amended vide Act XXV of 1992 with a view to improve performance of the Police Department and simultaneously to stop the police from adopting protracted investigation process for one or the other pretext but the police authorities had in fact rendered the provisions of section 173, Cr.P.C. ineffective by not following its spirit.* ***In this behalf it is to be noted that unconvincing delaying tactics are adopted by the concerned investigating officers*** *as it has exactly happened in the instant case because the then Superintendent of Police Mandi Bahauddin who is supposed to be incharge of criminal cases as per*

rule 5.1, Chapter 5 of the Punjab Law Department Manual, 1938 failed ***to furnish reasons for not submitting the challan before the Court through Public Prosecutor as per the provisions of section 173, Cr.P.C.***

49. In the case of **Mazhar Hussain v. lshtiaq Hussain and another (PLD 1990 Lahore 249)** it has been held that primarily it will be the function of the District Prosecution Agency to finally scrutinize the charge-sheet or report under section 173, Cr.P.C. of a case and on receipt of report from the police submit the same before the Court concerned. On having seen the conduct of the Investigating Agency and District Prosecution Agency we are of the opinion that in absence of good working relations between both the agencies it is not possible to strictly adhere to the provisions of section 173, Cr.P.C. **but on account of non-cooperation between both the agencies no one has suffered except the accused/petitioner who remained in detention without trial for a considerable period** as it has been noted hereinabove. **In this regard, the Court which had been granting judicial remand of the petitioner in terms of section 344, Cr.P.C. would also equally responsible for the delay in commencement of trial case because it had not insisted hard upon police to comply with the provisions of section 173, Cr.P.C. or to face consequence for keeping the accused in custody there was no reason that concerned S.H.O/Investigating Officer had not put up challan against the accused**. It is a general practice that we do point out weaknesses in the system but don't bother to discharge the duty cast upon the functionaries seized with the matter."

WITHHOLDING OF BEST EVIDENCE.

50. Similarly, the independent witnesses namely, Naik Azam s/o Azram Khan, Tahir Aziz s/o Aziz ur Rehman and Sajid Rahim s/o Bahadar Shah, who being residents of the locality and allegedly witnessing the incident, were cited in the calendar of witnesses were not examined at the trial so as to strengthen the prosecution case. The said independent witnesses were the best independent evidence, but the prosecution deliberately chose not to examine said PWs for the reasons best known to the prosecution. It is settled law that when a best evidence is intentionally withheld, an adverse presumption ensues that if it was produced it would be against the person withholding it in terms

of Article 129(g) of the Qanoon-e-Shahadat Order 1984 (hereinafter referred to as the **"1984 Order**"). The sake of brevity, Article

> "*129. Court may presume existence of certain facts: The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.*
> *(g)* ***that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it"***

51. In the given scenario, abandoning of the aforementioned witnesses obviously leads to an adverse inference in terms of Article 129(g) of the 1984 Order that had they been produced in the witness box, they might have not supported the prosecution case. We may observe here that if any party withholds the best evidence, then it can safely be inferred that such a party has some sinister motive behind such withholding. Reliance may be placed on the law laid down in the case of **"Lal Khan v. The State" (2006 SCMR 1846), wherein it has been held as follows:-**

> *"The act of withholding of most natural and a material witness of the occurrence would create an impression that the witness if would have been brought into witness-box, he might not have supported the prosecution and in such eventuality the prosecution must not be in a position to avoid the consequence"*

52. Similarly, in the case of **"Muhammad Rafiq and others v. The State" (2010 SCMR 385), it was held as follows:-**

> *"It is well-settled that if any party withholds the best piece of evidence then it can fairly be presumed that the party had some sinister motive behind it"*

POINTS FOR DETERMINATION HAVE NOT BEEN FORMULATED IN TERMS OF SECTION 367, CR.P.C.

53. Section 367 Cr.P.C of Chapter XXVI, states about the language of the judgment and its contents. It is as under: -

> *"Every such judgment shall, except as otherwise expressly provided by this Code, be written by the presiding officer of the Court or from the dictation of such presiding officer in the language of the Court or in English;* **and shall contain the point or points, for determination, the decision, thereon and the reasons for the decision***; and shall be dated and signed by the presiding officer in open Court at the time of pronouncing it and where it is not written by the presiding officer with his own hand, every page of such judgment shall be signed by him."*
> **Emphasis added.**

54. Section 367, Cr.P.C. enunciates that a judgment must contain therein point or points for determination, the decision thereon and reasons for the decisions. The said Section of the Code of Criminal Procedure, 1898 casts a duty upon the Courts of law to formulate the point (s) for determination and the Court while writing the judgment has to take into account all the possible situations and probabilities for arriving at and drawing a just decision. Section 367, Cr.P.C. is not permissive rather the same is imperative. It is the duty of every Judge/Presiding Officer to ensure not only that he dispenses justice, but the justice also seems to have been done. Provision of this Section is mandatory and intended to constitute a substance as distinguished from mere form of a judgment. Judgment not showing the points for determination or decisions thereon is not a judgment in the eye of law as has been held by the Hon'ble Supreme Court in the cases of **Sahab Khan Vs. The State (1997 SCMR 871) and Muddassar v. The State (1996 SCMR 3).**

55. It would not out be of context to mention here that misappreciation of the evidence adduced by the parties leads towards illegality, gross irregularity, perversity. The infirmities in the judgment of the learned Court below or findings of the learned trial Court if based on surmises, conjectures or artificial, warrant interference by the appellate Court as contemplated by Section 410, Cr.P.C. and section 25 of ATA Act, 1997 Undoubtedly, any legal defect or infirmity in the proceedings on account of an act of the Court shall not prejudice the case of either party.

From perusal of the judgment impugned, this Court finds that the same does not withstand the test of a judgment as contemplated under Section 367, Cr.P.C. *ibid.* The impugned judgment rendered by the learned ATC Court by no stretch of imagination meets the procedural requirements since the points involved in the *lis* in hand were not properly attended to by the learned ATC Court. The learned ATC Court in a very cursory and hasty manner delivered the impugned judgment without dilating upon the points for determination. In the case of **Ali Zar Vs. the State and another (2022 P.Cr.L.J. 240)**, the Hon'ble Lahore High Court, while discussing the important features of a good judgment has inter alia held that:-

i. A good judgment enhances the image and perception associated with the justice delivery process and increases public confidence in the judiciary.
ii. A well written to the point judgment based on comprehensive analysis of facts and law is not only an indication of the intellectual strength of a judge but also is a sign of a worthy judicial system.
iii. The central purpose of a speaking judgment is to make clear the judges' own view. It explains the decision to the parties concerned.
iv. Basic structure of a judgment should be such that a reader while reading it without difficulty understands the facts delineated in the judgment. Further, a reader must be able to know effortlessly, the reasons given in it in reaching a just, and indeed one might say, often inevitable conclusion.
v. Judgment must contain everything that needs to be said as to why a decision was reached and nothing more.
vi. Failure to give a fair judgment will destroy the idea of justice for an innocent person.
vii. It must base on deep critical analysis of all the facts relevant to the case and not on external consideration.
viii. In all circumstance, it has to be transparent, unambiguous, and intelligible.
11. It is also said that a judgment should be transparent like clean water so that people can understand it without any doubt and probabilities.

56. Additionally, it is not the idiosyncrasy or sweet will of the Judge/Presiding Officer while proposing sentence, in case of multiple choices provided for an offence qua the quantum of sentence, to award sentence whatever is pleased to him, rather on finding the accused guilty of the offence the Court is required to weigh, assess, evaluate and determine what should be quantum of the sentence that is viable, justified and warranted by the circumstances of the case.

57. As discussed above, the alleged acts of the appellant were not so gruesome or horrific so as to rope in a case of terrorism and award him a harsher penalty. So in such scenario, the judgment rendered by the learned ATC Court is defective and not sustainable at all since it evidently runs contrary to the mandatory requirements of Section 367 Cr.P.C. Non-compliance with the mandatory provisions of the law is an illegality and not curable under the provisions of Cr.P.C. As such the impugned judgment cannot be upheld on this score alone.

PROVISION OF COPIES OF THE JUDGMENT PASSED BY THE ATC COURT TO THE ACCUSED FREE OF COST:-

58. Under Section 25(2) of the 1997 Act, it is mandatory that copies of the judgment passed by the Anti-Terrorism Court shall be supplied to the accused and to the Public Prosecutor free of cost at the time of pronouncement of judgment. For the sake of ready reference, it would be advantageous to reproduce Section 25(2) of the 1997 Act, which reads thus:-

> "25(1)....
>
> *"25(2), Copies of the judgment of (Anti-Terrorism Court) shall be supplied to the accused and the Public Prosecutor free of cost on the day the judgment is pronounced and the record of the trial shall be transmitted to the High Court within three days of the decision."*

59. Perusal of the impugned judgment shows that the same does not make mention of the provision of the copies of the impugned judgment to the accused. Aberration from the statutory provision of the law cannot be continued to remain. The impugned judgment does not address this pivotal aspect of the matter. Since the mandatory requirement of Section 25(2) *ibid* was not complied with by the learned ATC Court while delivering the impugned judgment, hence the impugned judgment also suffers from irregularity and impropriety.

60. After considering all the pros and cons of this case, this Court comes to an irresistible conclusion that the alleged act does not constitute 'terrorism' within the meaning of Section 6 of the Anti-Terrorism Act , 1997 being out of the ambit of sub-section (2) of Section 6 of the said Act, there was no motorcycle snatching as the prosecution alleged, there was an alleged incident of firing upon the persons of police but none of the police official sustained any injury, no sealed parcels of the two alleged recovered pistols were prepared, the empty cartridges and the pistols recovered were also not sent to the F.S.L. for expert opinion in order to establish that the recovered empties were fired from the pistols allegedly recovered from the accused, the independent witnesses cited in the calendar were given up by the prosecution and that the statements of the prosecution witnesses are highly discrepant and entail major flaws, hence it is established that the prosecution has failed to prove its case against the appellant beyond any shadow of doubt. It is by now well

established principle of the law that it is the prosecution, which has to prove its case against the accused by standing on its own legs and it cannot take any benefit from the weaknesses of the case of the defence.

61. For what has been discussed above, we allow the present appeal and set aside the impugned judgment dated 08.11.2016 passed by the learned ATC Court. Consequently, the appellant namely, Tehsim Anjum is acquitted of the charges leveled against him in FIR No.654/14 *(supra)*. He is in jail. He be released forthwith if not required to be detained in connection with any other case.

(MIANGUL HASSAN AURANGZEB)
JUDGE

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in an open Court on _____04.2022.

JUDGE **JUDGE**

ISLAMABAD │28.04.2022
APPROVED FOR REPORTING.

//Kamran//*