SUPREME COURT OF AZAD JAMMU AND KASHMIR

[SHARIAT APPELLATE JURISDICTION]

PRESENT:

***Raza Ali Khan, J.***

***M. Younas Tahir, J.***

*1. Criminal Appeal No. 32 of 2020*

(Filed on 25.06.2020)

Taimoor alias Qazi Murtaza Khan, caste Sudhan r/o Village Chechan, Tehsil and District Sudhnooti, Azad Kashmir, presently confined at Judicial lockup, Kotli.

……CONVICT-APPELLANT

VERSUS

1. The State through Advocate-General Azad Jammu and Kashmir, Muzaffarabad.
2. Muhammad Habib s/o Muhammad Hussain, caste Sudhan r/o Village Chechan, Tehsil and District Sudhnooti.

…..RESPONDENTS

3. Mst. Amna, widow of deceased Shoaib r/o Village Chechan, Tehsil and District Sudhnooti, Azad Kashmir.
4. Mst. Saeeda Begum, mother of deceased Shoaib r/o Village Chechan, Tehsil and District Sudhooti, Azad Kashmir.
5. Rukhsana Kausar, sister of deceased Shoaib r/o Village Chechan, Tehsil and District Sudhooti, Azad Kashmir.
6. Rehana Kausar, sister of deceased Shoaib r/o Village Chechan, Tehsil and District Sudhooti, Azad Kashmir.
7. Shamshad Shaheen, sister of deceased Shoaib r/o Village Chechan, Tehsil and District Sudhooti, Azad Kashmir.
8. Imran s/o Mehrban, caste Sudhan r/o Village Chechan, Tehsil and District Sudhnooti, Azad Kashmir presently confined at Judicial Lockup, Kotli, Azad Kashmir.
9. Muhammad Ameen s/o Abdul Karim, caste Sudhan r/o Village Chechan, Tehsil and District Sudhnooti, Azad Kashmir presently confined at Judicial Lockup Kotli, Azad Kashmir.

.....PROFORMA-RESPONDENTS

[On appeal from the judgment of the Shariat Appellate Bench of the High Court dated 30.04.2020 in criminal appeals No. 72, 73, 74 & 35 of 2017]

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## APPEARANCES:

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| FOR THE APPELLANT: | Barrister Humayun Nawaz Khan, Advocate. |
| FOR THE STATE: | Kh. Maqbool War, Advocate-General. |
| FOR RESPONDENTS NO. 2 & 4 to 7: | Mr. Asghar Ali Malik, Advocate. |
| FOR PROFORMA RESPONDENT NO. 3 | Mr. Farooq Hussain Kashmiri, Advocate. |

*2. Criminal Appeal No. 35 of 2020*
(Filed on 14.07.2020)

1. Imran s/o Mehrban caste Sudhan r/o Chechun Tehsil and District Sudhnooti/Pallandri.
2. Mohammad Ameen s/o Abdul Karim caste Sudhan r/o Chechun Tehsil and District Sudhnooti/Pallandri.

……APPELLANTS

VERSUS

1. The State through Advocate-General Azad Jammu and Kashmir, Muzaffarabad Azad Kashmir.
2. Muhammad Habib s/o Muhammad Hussain, caste Sudhan r/o Village Chechan, Tehsil and District Sudhnooti, Azad Kashmir.

.....RESPONDENTS

3. Mst. Amna, widow of deceased Shoaib r/o Village Chechan, Tehsil and District Sudhnooti, Azad Kashmir.
4. Mst. Saeeda Begum, mother of deceased Shoaib r/o Village Chechan, Tehsil and District Sudhooti, Azad Kashmir.
5. Rukhsana Kausar, sister of deceased Shoaib r/o Village Chechan, Tehsil and District Sudhooti, Azad Kashmir.
6. Rehana Kausar, sister of deceased Shoaib r/o Village Chechan, Tehsil and District Sudhooti, Azad Kashmir.
7. Shamshad Shaheen, sister of deceased Shoaib r/o Village Chechan, Tehsil and District Sudhooti, Azad Kashmir.

.....PROFORMA-RESPONDENTS

[On appeal from the judgment of the Shariat Appellate Bench of the High Court dated 30.04.2020 in criminal appeals No. 72, 73, 74 & 35 of 2017]

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APPEARANCES:

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| FOR THE APPELLANTS: | Raja Shujaat Ali Khan, Advocate. |
| FOR THE STATE: | Kh. Maqbool War, Advocate-General. |
| FOR RESPONDENT NO. 2: | Mr. Asghar Ali Malik, Advocate. |

*3. Criminal Appeal No. 36 of 2020*
(Filed on 14.07.2020)

1. Muhammad Habib s/o Muhammad Hussain, caste Sudhan r/o Village Chechan, Tehsil and District Sudhnooti.
2. Mst. Saeeda Begum, mother of deceased Shoaib r/o Village Chechan, Tehsil and District Sudhooti.
3. Rukhsana Kausar, sister of deceased Shoaib r/o Village Chechan, Tehsil and District Sudhooti.
4. Rehana Kausar, sister of deceased Shoaib r/o Village Chechan, Tehsil and District Sudhooti.
5. Shamshad Shaheen, sister of deceased Shoaib r/o Vilalge Chechan, Tehsil and District Sudhooti.

……APPELLANTS

VERSUS

1. Muhammad Ameen s/o Abdul Karim, caste Sudhan r/o Village Chechan, Tehsil and District Sudhnooti, Pallandri.
2. Imran s/o Mehrban, caste Sudhan r/o Village Chechan, Tehsil and District Sudhnooti, Pallandri.

.....RESPONDENTS

3. Taimoor alias Qazi Murtaza Khan, caste Sudhan r/o Village Chechan, Tehsil and District Sudhnooti, Azad Kashmir, presently confined at Judicial lockup, Kotli, Azad Kashmir.
4. The State through Advocate-General Azad Jammu and Kashmir, Muzaffarabad Azad Kashmir.

.....PROFORMA-RESPONDENTS

[On appeal from the judgment of the Shariat Appellate Bench of the High Court dated 30.04.2020 in criminal appeals No. 72, 73, 74 & 35 of 2017]

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APPEARANCES:

FOR THE APPELLANTS: Mr. Asghar Ali Malik, Advocate.

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| FOR THE STATE: | Kh. Maqbool War, Advocate-General. |
| FOR THE RESPONDENTS: | Raja Shujat Ali Khan, Advocate. |

Date of hearing: 29.06.2022.

JUDGMENT:

***Raza Ali Khan, J.***– The titled appeals, have been directed against the common judgment of the Shariat Appellate Bench of the High Court, *(hereinafter to be referred as High Court)*, dated 30.04.2020, passed in Criminal Appeals No. 72, 73, 74 & 35 of 2017.

A. BRIEF FACTS

2. The precise facts forming the background of all the captioned appeals are that Muhammad Habib, complainant, lodged a written report at Police Station, Pallandri on 26.03.2009, wherein, it was stated that he is a resident of Solitraan; his son

namely Shoaib, aged 20/21 years, had been working as a Labourer with Taimoor Qazi, convict-appellant, herein, at his sawmill for the last 8/9 days. He used to stay at the sawmill at night on. On 26.03.2009, at about 9:15 a.m., his naked dead body was found lying in a stream *"Pani-Basuta"* near Girls High School, Chechan Bazar. The marks of violence and injuries on his head, face and other parts of the body were found. It was alleged that on the previous night, the accused Taimoor alias Qazi, Muhammad Rahim s/o Muhammad Murtaza, Ameen s/o Kareem, Imran s/o Mehrban, Nisar s/o Mohammad Ayyub and Mistri Ramzan s/o Ghulam Fareed at sawmill often used to consume alcohol and they had suspicion that the deceased Shoaib had been disclosing their secret to others, on

account of which, the accused murdered Shoaib and threw his dead body in the stream.

3. On this report, an F.I.R. No. 59/2009, in offences under sections 302 and 34, Azad Penal Code (APC), was registered at Police Station, Pallandri and investigation was started. During the course of investigation the offences under section 377, APC and section 13 of the Arms Ordinance, 1965, were also added. Accused, Muhammad Ramzan and Rahim were exonerated under section 169, Cr.PC. The motive behind the occurrence as stated, was that the appellants used to drink (alcohol) and had suspicion that deceased Shoaib Akhtar was disclosing their secret to others.

4. After formal investigation, the challan was presented in the District Criminal Court Pallandri, on 20.05.2009. The statements of the

accused-appellants under section 242, Cr.PC, were recorded on 30.06.2009, who denied the guilt and claimed the trial. Ultimately, the prosecution was ordered to produce evidence. The prosecution produced as many as 19 out of 20 witnesses listed in the calendar of witnesses.

5. After recording of the prosecution evidence, the accused were examined again under section 342 Cr.PC, who again pleaded not guilty and claimed innocence and got their statements recorded on oath as provided under section 340(2), Cr.PC. At the conclusion of the trial, the trial Court vide judgment dated 31.08.2012, acquitted the accused Nisar of the charge, whereas the other accused persons were convicted and sentenced as under: -

i. Taimoor alias Qazi was awarded death sentence as 'Tazir' in the offences under section 302(b), APC and three years' imprisonment along-with fine of Rs. 10,000/- in the offences under section 13 of the Arms Ordinance, 1965 and in default thereof, he was ordered to undergo further imprisonment of 3 months. Rs. 500,000/- (Five hundred thousand) as compensation under section 544-A, Cr.PC was ordered to be paid to the legal heirs of the deceased and in default he was ordered to undergo an imprisonment for six months.

ii. Mohammad Ameen and Imran were awarded 10 years' imprisonment each in the offences under section 302 and 34, APC.

6. Against the convictions, the convict-appellants, filed three separate appeals before the High Court while the trial Court sent a Reference

seeking confirmation of death penalty awarded to Taimoor, convict-appellant. The learned High Court after necessary proceedings decided the appeals and the reference in the following manner: -

> "Therefore, the conviction of appellants Mohammad Ameen and Imran is maintained, however, to meet the ends of justice imprisonment awarded to them by the trial Court is altered in to the sentence already undergone. They shall pay compensation as ordered by the trial Court.
>
> The appeals stand dismissed with the aforesaid modification of sentences awarded to Imran and Mohammad Ameen appellants while the sentence of death and compensation under the provisions of section 544-A, Cr.PC, Rs. 500,000/- (five lac), awarded to Taimoor appellant is maintained and the reference is answered in affirmative."

## B. APPELLANT'S ARGUMENTS

7. Barrister Hamayoun Nawaz Khan, the learned Advocate appearing for the convict-appellant, Taimoor alias Qazi, after narration of the necessary facts submitted that the judgments of the learned High Court as well as the trial Court are not sustainable on the ground that the case against the convict-appellant is of no evidence and he was entitled for an acquittal under law. He further submitted that the impugned judgments are the result of mis-reading and non-reading of prosecution evidence and the learned Division Bench of the High Court totally failed to consider the legal arguments advanced on behalf of convict/appellant and handed down the impugned judgment, therefore, the same is liable to be set-aside by acquitting the convict. He argued that the case of the prosecution is hinged upon the

circumstantial evidence with broken chains, hence, the convict deserved for an acquittal under well settled law on the subject. He added that even not a single incriminating evidence admissible under law was produced by the prosecution against the convict-appellant. He further argued that the statement of witness Ramzan, a witness recorded under section 164, Cr.PC, could not be relied upon under law therefore, the conviction recorded and sentence awarded to the convict-appellant by the learned Courts below is not warranted on this sole piece of fabricated evidence. He further argued that the Courts below also failed to appreciate the law settled on the alleged last seen evidence which is a very weak type of evidence and can never be made a basis for conviction under law. He added that even otherwise, the alleged last seen

evidence, in no way connects the convict-appellant with the alleged offence. He contended that the statements of the witnesses are full of contradictions and the witnesses made material improvements in their Court statements as compared to their statements recorded under section 161, Cr.PC, in order to support the prosecution case, therefore, awarding of death sentence to the convict-appellant by relying on the statements of these witnesses can never be termed as appropriate in the eye of law. He further contended that the learned Courts below have also failed to consider an important aspect that all the prosecution witnesses are close relatives of the deceased and are inimical and there was no independent and impartial witness in this case, therefore, the conviction of appellant on the basis

of such evidence does not meet the ends of justice. He further contended that the convict-appellant has also been gravely prejudiced due to illegal examination by the trial Court under section 342 Cr.PC, therefore, the conviction is not sustainable on this point as well. The learned Advocate emphasized on the point that the learned Courts below have failed to consider that no recoveries were made from the convict-appellant and the alleged recoveries have been proved fake in the light of the statement of the prosecution witnesses, therefore, the prosecution story has become highly doubtful. He further emphasized that the learned High Court without taking into consideration the material weaknesses in the prosecution evidence travelled in the wrong direction and upheld the conviction which is not

sustainable, hence the convict deserves acquittal. The learned Advocate stated that the learned Courts below have not taken into consideration this important aspect of the case that the prosecution has failed to prove its motive pleaded in the FIR which has proved that the incident did not occur in the way as canvassed by the prosecution, therefore, in this scenario the convict-appellant was entitled to the benefit of doubt in the light of the judgments of the Superior Courts. He further stated that the learned Court below also failed to consider the illegalities and contradictions in the recovery memos, report of Chemical Examiner, the serologist and autopsy report, hence, the impugned conviction is not sustainable. In support of his submissions, the

learned Advocate placed reliance on the following cases.

In the case reported as *Muhammad Basharat vs. Syed Saqib Shah & others,* [PLJ 2014 SC (AJ&K) 92], there were two recovery witnesses who were close relative of the deceased and the Court held that as both the recovery witnesses were closed relatives of the deceased, therefore, possibility cannot be ruled out that they were interested witnesses.

In the case reported as *Muhamad Tasleem and another vs. The State and another* [2014 SCR 893], there was no direct evidence and the case was of circumstantial evidence. It was held by this Court that the law does not de-bar to convict an accused on the basis of circumstantial evidence and even a capital punishment can also be

awarded, provided that in a case resting on circumstantial evidence, no link in the chain should be missing and all the circumstances must lead to the guilt of the accused. It was further held that the circumstantial evidence can only form basis for conviction when it is incompatible with the innocence of accused or the guilt of any other person and in no manner be incapable of explaining upon any reasonable hypotheses except that of guilt of accused and if no link in the chain found missing, the circumstantial evidence can safely be relied on and conviction can be recorded on the basis of such evidence.

In *Zaffar Hussain Malik vs. Abdul Salam & others' case* [2015 SCR 1090], the case being of circumstantial evidence, this Court held that the pieces of evidence should have the unbroken chain

of the events. All the links in the chain should be fully connected and interlinked and if any chain is missing the whole case falls on the ground. Every link in such a case should be proved by cogent evidence, otherwise, no conviction to an accused can be awarded or maintained.

In the case reported as *Javaid Akhtar vs. Muhammad Zubair & other* [2015 SCR 533], it was held that an accused may be convicted on the basis of circumstantial evidence provided that such evidence is confidence inspiring and is based upon such pieces which form a chain of unbroken events and every link in the chain is connected with each other so that no link in the chain is missing. One end of the chain should touch the dead body and the other to the neck of the accused and from

such evidence no other inference except the guilt of the accused is drawn.

In the case reported as *Wazir Muhammad vs. The State* [2005 SCMR 277], the question of circumstantial evidence and award of conviction, was examined by the Court and it was observed that the fundamental principle of universal application in cases dependent on circumstantial evidence, is that in order to justify the inference of guilt, the incriminating fact must be incompatible with the innocence of the accused or the guilt of any other person and incapable of explanation upon any other reasonable hypothesis that of his guilt.

In the case reported as *Muhammad Pervaiz & others vs. The State & others* [2007 SCMR 670], the Supreme Court of Pakistan held that the accused

after recording of confessional statement were handed back to police, such type of confession was irrelevant. It was held that the accused remained in police custody before and after recording confession for 24 hours and the Magistrate had taken only one hour to record confession of the accused, such type of confession would not fall in the category of voluntary confession.

In the case reported as *Muhammad Ali vs. The State* [2008 PCr.LJ 87], there was delay of four days in recording the confessional statement, wherein, the Court held that such confessional statement cannot be used as substantive evidence of fact, when there is clear delay of four days in recording such statement under section 164, Cr.PC and accused had in mind that his custody would again be remanded to police.

In *Mst. Noor Jehan and another vs. The State's case* [2006 YLR 2170], it was observed by the Court that the case being of circumstantial evidence, every chain should be linked with each other and if any chain link was missing, then the benefit of same should go to the accused.

*Shahzad Masih vs. The State* [2006 PCr.LJ 1716], was the case of last seen evidence of two prosecution witnesses who were real bothers of the deceased. The Court held in the case that last seen evidence by itself is not a substantive piece of evidence, it can either lend support to some substantial evidence or can be relied with the aid of some other corroborative evidence which was missing in that case.

In the case reported as *Muhammad Akram and others vs. The State* [2002 YLR 853], no direct

or ocular evidence of the incident was available, motive alleged in the FIR was not proved, judicial confession made by one accused was not only exculpatory in nature but the same had contradicted the extra-judicial confession made by him. It was ultimately held by this Court that one weak evidence cannot corroborate another weak evidence.

In the case reported as *Muhammad Yaqoob vs. The State* [2006 YLR 3147], the prosecution version was rested on circumstantial evidence and there were unbroken chains of circumstantial evidence, hence, the Court observed that weak evidence cannot corroborate another weak evidence.

In the case reported as *Muhammad Younas alias Babu vs. The State* [NLR 1996 SD 123], it was

observed that for proving a case through circumstantial evidence four essentials are required i.e. (1) circumstances from which conclusion is to be drawn should be fully established; (2) all facts should be consistent with hypothesis; (3) circumstances should be of a conclusive nature and circumstances should lead to moral certainty and should actually exclude every hypothesis, but one proposed to be proved.

In the case reported as *Khuda Bakhsh vs. The State* [NLR 2003 SD 690], it was observed by the Court that the requirement of proof in cases based on circumstantial evidence is that every link has to be proved by good and convincing evidence. In that context, the role of prosecution agency collecting evidence against accused is very important and it is to be seen that the same is

above-board and free from any doubt and suspicion. It was further observed that above all, it is to be established on record that every piece of circumstantial evidence fits in with another piece of such evidence in the chain and corroborates each other.

In a case reported as *Rashid Hussain vs. The State & another [2018 SCR 260],* this Court held that the last seen evidence is the weakest type of evidence and in the cases of circumstantial evidence conviction cannot be recorded on the strength of last seen evidence unless the same is corroborated with some other strong piece of evidence.

8. Raja Shujaat Ali Khan, the learned Advocate appearing for the appellants *(Imran and*

*Muhammad Ameen, in appeal No. 35 of 2020)*, submitted that the learned High Court while delivering the impugned judgment failed to apply its judicial mind, therefore, the same is liable to be set-aside. He submitted that the case of the prosecution rests upon the alleged broken circumstantial evidence but the learned Courts below failed to apply the law in the given circumstances of the case. He added that the appellants deserve acquittal under law on the subject, however, the learned High Court while delivering the impugned judgment miserably failed to meet this aspect of the case in letter and spirit. He further submitted that impugned judgments of both the Courts below are the result of mis-reading and non-reading of evidence as there were material contradictions in the statements of the

witnesses which have been overlooked by the Courts below.

## C. RESPONDENTS' ARGUMENTS

9. Conversely, M/s Asghar Ali Malik and Farooq Hussain Kashmiri, the learned Advocates for the respondents submitted that the convict-appellants are duly nominated in the FIR and during the course of investigation, a knife, blood stained shirt (Qameez) and Bunyan were recovered on the pointation of the convict-appellant, Taimoor, who had caused injuries to the deceased Shoaib which were also corroborated by the Post-mortem Report as well as by the statement of the Doctor Rashid Yaqoob, a prosecution witness. They further submitted that the prosecution successfully proved the offence against the convict-appellants, therefore, the

learned trial Court rightly passed the judgment and the learned High Court after detailed scrutiny of the evidence has affirmed the conviction recorded by the trial Court. They further submitted that the convict-appellants failed to point out that which portion of the record of the case or evidence has been overlooked or misread by both of the Courts below whereas, the learned trial Court rightly awarded the death sentence to the convict-appellant while evaluating the evidence and perusing the record of the case in judicial manner and the conviction has rightly been affirmed by the High Court. They argued that the convict-appellants also failed to point out that which chain of circumstantial evidence is broken and why the statement of prosecution witness Ramzan is not reliable in the eye of law whereas, in accordance

with evidence, deceased Shoaib had been in the company of the convict-appellants during the night when the incident took place/ occurred and on the very next morning, the appellant was seen searching for his lost mobile in the field where the dead body was found lying, later on, and the police also recovered the Nokia Mobile belonged to the convict-appellant as is evident from the site map. They further argued that the convict-appellants also failed to point out that which prosecution witness has made the improvements in his statement recorded under section 161, Cr.PC and what sort of contradiction between the statements of the witnesses is found. Both the Courts below recorded their findings in accordance with the peculiar circumstances of the instant case and every criminal case has its own facts and

circumstances. They argued that the testimony of prosecution witnesses cannot be discarded merely on the ground of being related to the victim or complainant, thus, both the Courts below while recording their findings did not commit any irregularity or illegality. The learned counsel in support of their version, placed reliance on the following cases: -

In the case reported as *Muhammad Khushid Khan vs. Muhammad Basharat & another* [2007 SCR 1], no independent witnesses were available and only the related witnesses were produced. The Court observed that the relationship per se is no ground for discarding evidence of the witnesses unless and until their enmity with the accused is established. It was further observed that evidence of a related witness cannot be disbelieved or

discarded merely on the basis of relationship unless and until it is not proved that the witness was inimical towards the accused.

In the case reported as *Yasmeen Ashraf & others vs. Abdul Rasheed Garesta & others* [2018 SCR 661], it was held by this Court that law does not debar to convict the accused on the basis of circumstantial evidence and even capital punishment can also be awarded, provided that no link in the chain should be missing and all the circumstances must lead to the guilt of the accused. Further held by this Court that minor discrepancies do no affect the case of the prosecution as a whole, however, these may make mitigation to some extent which may be taken into consideration towards the quantum of the sentence.

In the case reported as *Sardar Khan & others vs. The State* [PLJ 1998 SC 1398], this Court observed that an interested witness in a criminal case is one, who has motive to involve accused falsely in the case, therefore, mere friendly relation or relationship of witness with the deceased or complainant party is no ground to discard his evidence describing him as an interested witness.

10. Kh. Muhammad Maqbool War, the learned Advocate-General appearing for the State submitted that the impugned judgment passed by the learned High Court, dated 30.04.2020, and judgment of the learned District Criminal Court Sudhnoti/Pallandri, are well reasoned, comprehensive and passed in accordance with law and the facts of the case. He submitted that the

appellants have failed to point out any legal ground for interference by this Court in the impugned judgment. He further argued that the FIR was promptly lodged, the names of the offenders were duly mentioned therein. Although, the case of prosecution mainly rests upon circumstantial evidence but there are two eye witnesses namely Umer and Tahir who have seen the convict-appellants quarreling with the deceased at the place of occurrence on the night of the occurrence, hence, the Courts below have rightly convicted the accused according to principle of administration of criminal justice. He argued that the convict-appellants, are nominated in the FIR and the complainant had no reason to implicate the convict-appellant in a false case of murder of his only son by leaving the real culprit go

away un-condemned. During the investigation, the clothes of deceased and weapon of offence were recovered on the pointation of convict-appellants, and the recovery was duly proved. He added that the postmortem report also supports the prosecution version and it was further corroborated by the recovery of weapons of offence and other incriminating material, therefore, conviction and sentences awarded to the convict-appellants are liable to be maintained.

## D. COURT'S ARTICULATION

11. We have given our dispassionate thought to the arguments of the learned Advocates representing the parties, the Advocate-General and have gone through the record of the case, evidence produced by the parties and the

impugned judgments of the Courts below with utmost diligence.

12. Before heading towards the merits of the case, it is pertinent to mention here that admittedly there is no direct evidence available in the case in hand and the whole case hinges on the circumstantial evidence.

## E. POINTS TO BE RESOLVED:

The following points are the pillars determining the fate of the case;

i. Last seen evidence.
ii. Recoveries: Recovery of shirt (Qameez) and Bunyan (vest), recovery of weapon of offence i.e knife (کلپ نما چاقو) on the pointation of convict-appellant Taimoor, recovery of Cell phone of Convict Taimoor from the place of occurrence, recovery of blood-stained clay from the wheat crop field, recovery of naked dead body near the sawmill owned by convict-appellant

Taimoor, recovery of sticks from convicts Imran and Ameen.

iii. Medical Evidence: Medical Report, the Chemical Examiner Report and statement of Rmazan (pw No. 13) recorded under section 164 Cr.P.C.

## i. LAST SEEN EVIDENCE

16. The foundation of last seen theory lies on the principle of probability, cause and connection as no fact takes place in isolation. Basically, it means that if an event takes place, then other events also take place which are the probable consequences of a major event or related to it either retrospectively or prospectively. These inferences or presumptions are drawn logically according to how a reasonably prudent man will connect the dots in the particular scenario. This presumption of fact has taken place from law of Evidence under which the Court can presume that certain facts exists if some other facts

are proved to be existing in the case of natural events and human conduct. Though the last seen theory relieves the Court of the burden of proving guilt yet it is a weak type of evidence and it needs to be corroborated with other factors.

17. It is not necessary that the person accused is always considered guilty once it is established that he was last seen with the deceased. He is given a fair chance to revert this presumption because it is not necessary that same situation existed as the Court predicted based on logic because every coin has two sides and the Court cannot suddenly jump to a conclusion in such sensitive matters without analyzing every possible situation. A guideline is sought from the case of Indian Supreme Court titled *Sadpal Vs State of Haryana,* Criminal Appeal No. 1892 of 2017 available on www.advocatetanmoy.com,

accessed on 24.07.2022, wherein there are some defences laid down in the case that can be taken by the accused to dismiss the presumption because last seen theory is not a strong piece of evidence.

a. If the accused can produce a plea of alibi that he was with the other person at the time of the commission of the offence then his guilt could be disproved.
b. If it is proved that he was not a last person with the victim as another person interfered in between them and the accused thus shifting the guilt in the third person.
c. If the accused can prove that there was a reasonable time gap between the commission of wrong and when they were seen together the Court can presume that there are chances of intervention of any other factor because this particular offence was committed.
d. If it is proved by the accused that the person who last saw him with the victim is not a

reliable witness because of any reason that he may be a child witness or stock witness thus Court cannot rely on their statement.

18. The last seen theory no doubt is an important doctrine which once proved, shifts the burden on the accused to prove his innocence, however, it does not completely discharge the prosecution of his duty to prove the guilt of the accused beyond a reasonable doubt. The prosecution has to present a complete linkage of the accused with the murder of the deceased i.e there was an opportunity for him as they were last seen together, he had the motive to commit the crime and other circumstantial evidence. This is based on the fact that in criminal law the yardstick for proving the guilt of the accused is beyond reasonable doubt and the decision should not be based on suspicions,

surmises and conjectures. In cases where even a single situation leads to a suspicion that the accused is innocent then he cannot be convicted and vests a right to avail the benefit of doubt and the Court should be extra conscious while deciding the case based on circumstantial evidence which further has many principles and theories that need to be kept in mind.

19. Coming towards the last seen evidence in the case in hand, it may be observed that the Court has to examine the evidence available on record for ascertaining the fact, whether the deceased was last seen with the accused before his murder or not. A perusal of the evidence reveals that the complainant, Muhammad Habib who is the father of the deceased, has deposed in his statement that his son was working with convict-accused Taimoor at

his sawmill and on the day of occurrence the convict-accused and deceased were found together at the sawmill. The relevant portion of his statement is reproduced hereunder for better appreciation: -

"واقعہ 26/25 مارچ سال 2009 کا ہے۔ شب درمیانی تھی مظہر کا بیٹا شعیب اختر ملزم تیمور کی آرا مشین پر کام کرتا تھا۔ شعیب اختر نے 3/2 مرتبہ اپنی والدہ کے ساتھ اس بات کا تذکرہ کیا کہ تیمور وغیرہ شراب پیتے پلاتے ہیں مظہر ایسی جگہ کام نہ کرے گا۔ شعیب کی والدہ اور زوجہ ام نے مظہر کو یہ بات بتائی۔ مورخہ 25 مارچ شعیب آرا مشین پر گیا مظہر جنگل کا گارڈ ہے اپنی ڈیوٹی پر چلا گیا شعیب نے مظہر سے تذکرہ کیا کہ وہ آج شام کو واپس گھر نہ آ سکے گا۔ زوجہ ام والدہ شعیب نے گھر مرغا ذبح کر رکھا تھا مظہر ڈیوٹی سے گھر آیا اور روٹی لیکر شام کے وقت شعیب کو دینے آرا مشین پر چلا گیا۔ جب مظہر آرا مشین پر پہنچا تو پسر م شعیب نے کہا روٹی کا یہاں بندوبست تھا آپ روٹی کیوں لائے۔ مظہر نے دیکھا تیمور کی آرا مشین پر تیمور عرف قاضی رحیم، نثار، امین عمران اور مستری رمضان بیٹھے ہوئے تھے"۔

The complainant in his statement has categorically stated that he saw the accused persons with the victim at the night of occurrence. Similarly,

Kalu alias Sajjad (Pw. 8) who was serving as waiter at a nearby hotel also stated that he provided the meal at sawmill where the convict-appellants and deceased were present together. The portion of his statement is reproduced as under: -

"مظہر ہوٹل پر بیرا ہے مظہر خالد کے ہوٹل پر کام کرتا ہے۔ تیمور ،شعیب امین، مستری، عمران، نثار فراز اور ایام آرا مشین پر بیٹھے ہوئے تھے انہوں نے کھانے کا آرڈر ہوٹل پر دیا تھا مظہر نے کھانا پہنچایا اور برتن واپس لایا، کھانا آرا مشین a پر جا کر دیا تھا۔"

Mistri Ramzan (pw. 8) whose presence is also admitted by the defence at sawmill admitted the presence of convict-appellant and deceased at sawmill at the relevant time in his statement recorded under section 164(3), Cr.P.C. Leaving aside all the evidence more or less the convict, Taimoor also got his statement recorded under section 340(2), Cr.PC, wherein he clearly admitted his own

and other's presence with the deceased at his sawmill.

20. Furthermore, section 340(2), Cr.PC, enables an accused to explain his position especially where no direct evidence is available and the accused had the exclusive knowledge about the occurrence but the convict-appellants in their statements recorded under section 340(2), Cr.P.C simply denied their guilt and failed to rebut their company with the deceased at the relevant time and in view of article 21 of the Qanoon-e-Shahadat, 1984, also failed to furnish any explanation when and where the deceased was got separated from them. Thus, they could not discharge the onus and burden lying on them in view of the provision contained in Article 21 of the Qanoon-e-Shahadat, 1984. It may also observed here that while

appraising the circumstantial evidence, the Court should keep in mind the location where the incident took place. If the place of incident is a place where no other witness is available and the accused had the exclusive knowledge about the incident the simplicitor denial on the part of the accused will not be sufficient to nullify the circumstantial evidence which directly connects him with the commission of the offence charged with but he should raise a plea of the nature which on being tested on the touchstone of probability's warrants is reasonable hypothesis of the accused's innocence. This view finds support from the case reported as *M. Amin vs. The State* [2012 YLR 1360], wherein, it has been held that:

> *"It would also be relevant to mention here that appellant Nasrullah failed to furnish a*

*plausible explanation that on which point and where the deceased was separated from him and ,thus, he could not discharge the onus of burden lies on him in view of the provisions as contained in Article 21 of Qanun-e-Shahadat Order, 1984."*

After detailed scrutiny of evidence and the above discussion it can safely be concluded that the convict-appellants were last seen with the victim Shoaib before he was murdered.

ii. RECOVERIES

21. The second important evidence, which has been relied upon by the prosecution is the recoveries. As discussed earlier that in case of circumstantial evidence, there should be unbroken chain of evidence. From the perusal of the statement of the witnesses, it has been proved that the accused were last seen with the victim. This fact is further corroborated by the recoveries

made on the pointation of the accused, such as the naked body of the deceased was recovered from a stream near to the sawmill owned by the convict-Taimoor and only *Shalwar* of the victim was found near to the dead body of the accused; later on the blood stained Qameez and Bunyan were also recovered on the pointation of convict-Taimoor from his sawmill. Similarly, the weapon of injury, i.e. knife was also recovered on the pointation Taimoor, from his sawmill, with which he caused sharp injuries to the deceased which is also evident from the autopsy report. Another main recovery from the place of occurrence is the mobile phone of the convict-Taimoor which was recovered as Ex.PF. Mistri Ramzan while recording his statement under section 164, Cr.PC, also stated that when he woke up early in the morning, the convict, Taimoor

was coming from outside and on his query, he replied that he was searching for his mobile which he lost last night. Moreover, the prosecution also collected the blood stained clay which was seized as Ex.PD, from the field of wheat crop. Moreover, the damaged wheat stalks were also witnessed which indicates that some quarrel between the convicts and the victim took place. The recovered blood-stained items e.g. clothes of the deceased, knife and clay were also sent to Chemical Examiner who reported that all the above mentioned articles were stained with human blood. In this way, the statements of the witnesses are corroborated by the recoveries.

iii. MEDICAL EVIDENCE

22. The third important piece of evidence relied upon by the prosecution is the medical

evidence. The post-mortem of the deceased was conducted by, Dr. Rashid Yaqoob Civil Medical Officer, Pallandri, (pw.15) who also found injuries on the body of the deceased. The post-mortem report is reproduced hereunder for better appreciation: -

I. “An incised wound right ear 03,c.m long cutting skin and Cartilage (posterior -Aspect)
II. An incised wound Triangular shaped diameter 1.8,c.m Occipital region of scalp mid area at level of upper border of right ear.
III. An incised wound 2.5,c.m linear shaped above Rt eye- brow, horizontally placed
IV. A red contused area covering both side of nose and bridge of nose with a crescent shaped
V. A wedge shaped lacerated wound diameter 0.1 cm over left cheek.
VI. Two abrasions 3x4,c.m & 4x5 cm ever Rt cheek, red colored.
VII. An Abrasion Rt shoulder red 18x5,cm
VIII. A contusion 6x4cm blmis black over Rt scapular region

IX. Multiple abrasions front of chest, abdomen Rt groin (4cm x 0.5cm, 20cm x 4cm,10cm x 2cm red,

X. Multiple Abrasions over back 0.5cm x 15cm, 20cm x 3.5cm, 01cm x 14cm red

XI. Abrasions over both knee & shin red 3 x 2cm, 1 x 2cm, 2 × 4cm, 6 x2cm

XII. Abrasions 1.5cm x 2cm, 1 x 1cm, 2 x 2cm over dorsum of Rt foot, 2 x 3cm, 1 x 2cm over dorsum of left fool red coloured.

XIII. Multiple Abrasions over dorsal aspect of Rt elbow & forearm

XIV. A contusion 6 x 3cm, red, over back of left side of chest.

The doctor opined as under:-

(1) Injuries No.1, 2, 3 are with sharp weapon, all other are blunt weapon injuries,

(2) All injuries are Ante mortem.

(3) No fatal injury is found on the body of Mr.Shoiab Akhtar s/o Mohammad Habib. Therefore, viscera of dead body are sent in sealed boxes for chemical examiner & Histopathologist.

(4) Cause of death; In my opinion suffocation by forceful Closure of nostrils and mouth by hand or any other material caused Asphyxia and vogal inhibition leading to syncope and death. Final opinion will be given after receiving chemical examiner & Histopathologist report.

(5) Anal laceration is suggestive of act of sodomy with above named person."

The perusal of the above report clearly reveals that the injuries at right ear 03 cm, long cutting skin, wound triangular shaped mid area at level of upper border of right ear and an incised wound linear shaped above Rt eye-brow, have been caused by the knife (کلپ نماچاقو) which was recovered on the pointation of the accused from his sawmill. The other injuries found on the body of the deceased were blunt weapon injuries.

Although, there is no bar on recording conviction on the basis of the circumstantial evidence and even death penalty can also be awarded on its basis but for that purpose the principles settled by the superior Courts must be kept in mind while analyzing the evidence and the

prosecution case must be proved beyond the shadow of reasonable doubt which is the golden principle of criminal jurisprudence. All the facts established should be consistent only with the hypothesis of guilt of the accused and the chain of facts connecting the offence with the accused must be unbroken interweaved and indispensable. The circumstantial evidence in a murder case should be such a well-knit chain that one end of which touches the body of the deceased and the other the neck of the accused. The same proposition came under the consideration of this Court in the latest case titled *Mst. Nida Begum vs. State & other,* Criminal Appeals No. 09 & 10 of 2020, decided on 17.06.2022, wherein, it has been held that: -

13. We might reiterate the established principles in criminal law which propagates that if two views are possible on appraisal of evidence adduced in a case, one pointing to the guilt of the accused and the other to his/her innocence, the favourable to the accused should be adopted. The two concept, “proof beyond reasonable doubt” and “presumption of innocence” are so closely interlinked that they must be presented as one unit. If the presumption of innocence is golden thread to Criminal Jurisprudence, then proof beyond reasonable doubt is silver, and these two threads are forever entertained in the fabric of criminal justice system. As such the expression “beyond reasonable doubt” is of fundamental importance to the Criminal Justice, it is one of the principles which seek to ensure that no innocent person is convicted and if there is any doubt in the prosecution story, benefit should be given to the accused, which is quite consistent with the safe administration of justice, further suspicion however grave or strong, can never be a proper substitute for the standard of proof

> required in a criminal case. The lacunas occasioned in evidence of prosecution creates serious doubts not only qua mode and in manner of the occurrence but it is also a big question mark on the prosecution case. Needless to mention, that while giving the benefit of doubt to an accused, it is not necessary that there should be many circumstances which create reasonable doubt in a prudent mind about the guilt of the accused rather a single major circumstance may be considered for acquittal of accused. The accused would be entitled to the benefit of doubt, not as a matter of grace and concession, but as a matter of right, it is based on the maxim; "it is better that ten guilty persons be acquitted rather then one innocent person be convicted".

The same view has been taken by this Court in the case reported as *Basharat Hussain vs. State & another* [2016 SCR 1176], wherein, in para 14, it has been held as under: -

> "14. Admittedly, this is a case of unseen occurrence and the whole

case hangs on the circumstantial evidence. It is celebrated principle of law that the circumstantial evidence is a weak type of evidence. The circumstantial evidence should be of such a nature and be in an unbroken chain of events which touches the accused on its one end and the deceased on its other end. The principal facts must be so proved that nothing else other than the guilt of the accused is proved. Evidence should be of high standard. Prudence may draw inference except the innocence of the accused. It should exclude all hypothesis of innocence of the accused. The circumstantial evidence must be incompatible with that of innocence of the accused. It should be incapable of any other hypothesis than that of guilt of the accused. It is to be noted that in the case of circumstantial evidence the failure of one link breaks the chain, thus every link in circumstantial evidence must be proved. If any link is not proved then the conviction cannot be recorded because it is the basic duty of the prosecution to prove all the links of chain of circumstantial evidence. If any link of the chain is missing then the

> whole case of the prosecution falls on the ground like a sand castle."

Similarly, in a case titled *Rehmat Ali vs. Samundar Khan & another* [2009 SCR 252], wherein, it has been held by this Court as under: -

> "11. …….Since there is no direct evidence and in a case of circumstantial evidence where no enmity is alleged between the parties, no motive is alleged by the prosecution for commission of the offence then the Court has to examine the evidence with due care and caution and while scrutinizing the evidence if the Court reaches on the conclusion that from the circumstantial evidence the facts are proved then no hypothesis consistent with the innocence of the accused can be suggested and if the facts alleged can be reconciled with the reasonable hypotheses with the innocence of the accused then the case has to be considered one of no evidence. Keeping in view the principle governing the 27 circumstantial evidence, the analysis of entire evidence and finding of the Court is necessary."

23. The Court while perusing the medical evidence was surprised to observe that the most important aspect of the whole case, had been badly overlooked by the Courts below while handing down the impugned judgments. This aspect which forms the basis of the conviction is the cause of death appearing on the face of medical record. After diligently going through the same, it is quite evident that the cause of death as opined by the doctor was strangulation/suffocation by forceful closure of nostrils and mouth by hand. For better appraisal the relevant portion of post-mortem report is reproduced as under: -

> "(4) Cause of death; In my opinion suffocation by forceful Closure of nostrils and mouth by hand or any other material caused Asphyxia and vogal inhibition leading to syncope

> and death. Final opinion will be given after receiving chemical examiner & Histopathologist report."

In our considered view, the prosecution, while proving the injuries caused to the deceased must also prove that such injuries had become the cause of death of the deceased in order to connect the accused with the offence with an unbroken chain of facts in circumstantial evidence. Unfortunately, when any part of this chain is broken, the whole prosecution story becomes weak and benefit of doubt goes in favour of the accused.

24. It is also a well embedded principle of law and justice that no one should be construed into a crime on the basis of presumption in the absence of strong evidence of unimpeachable character and legally admissible one. Similarly, mere heinous or gruesome nature of crime shall not detract the

Court of law in any manner from the due course to judge and make the appraisal of evidence in a laid down manner and to extend the benefit of reasonable doubt to an accused person, being indefeasible and inalienable right of an accused. Being influenced from the nature of the crime and other extraneous consideration might lead the Judges to a patently wrong conclusion and in that event, the decision would be casualty of justice and same will loose its flavour. Sir Alfred Wills in his admirable book Wills' Circumstantial Evidence (Chapter VI) laid down the following rules specially to be observed in the case of circumstantial evidence:

(1) the facts alleged as the basis of any legal inference must be clearly proved and

beyond reasonable doubt connected with the factum probandum;

(2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability;

(3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits;

(4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt, and

(5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted.

25. In cases of circumstantial evidence, the Courts have to take extraordinary care and caution before relying on the same. Circumstantial evidence, if supported by defective or inadequate evidence, cannot be made basis for conviction on a capital charge. More particularly, when there are indications of design in the preparation of a case or introducing any piece of fabricated evidence, the Court should always be mindful to take extraordinary precautions, so that the possibility of it being deliberately misled into false inference and patently wrong conclusion is ruled out, therefore, rules of criminal justice should be applied to carefully and narrowly examining the circumstantial

evidence in such cases because chances of fabrication always exist. To justify the inference of guilt of an accused person, the circumstantial evidence must be of a quality incompatible with the innocence of the accused. If such circumstantial evidence is not of that standard and quality, it would be highly unsafe to rely upon the same and awarding capital punishment. Our view is fortified from the case reported as *The State vs. Mst. Falawat Jan and another* [1992 SCR 366], in which, it has been held as under: -

> "It may be stated here that in case of circumstantial evidence, the evidence should be of such a degree and character that it should exclude the possibility of innocence of an accused. Besides, it should link together all the chains of the prosecution story so as to convince the Court to reach an irresistible conclusion that the accused person was the culprit beyond any

> reasonable doubt. The evidence in the instant case is not only insufficient but the same is of such a nature that conviction is not sustainable upon the same: for instance, the garments which allegedly belong to the accused-respondent were not found blood-stained. Thus, mere production of the clothes of the respondent, Muhammad Khaliq, by his wife, is no evidence against him. Similarly, the recovery of knife is not only suspicious, as indicated above, but it was also not proved to have been stained with human blood."

Same view was reiterated by this Court in the case reported as *Wazarat Hussain vs. Nazir Akhtar & another* [2009 SCR 273], wherein, it was held as under: -

> "6. Before dealing with the testimony of the witnesses it may be observed that circumstantial evidence means evidence afforded by testimony other than the eye witnesses which bear upon a fact or other subsidiary facts which are relied upon as consistent that no result other than truth of principal

> fact and facts shall be so proved that they shall not leave any possibility of innocence of accused. And this possibility shall be of such a high degree and standard that a prudent man after considering all the facts and circumstances is able to reach at the conclusion that he is justified in holding the accused guilty and from the evidence no other inference can be drawn except the guilt of accused. The circumstances from which the inference adverse to accused is sought to be drawn must be proved beyond all doubts.

Similar view prevailed in a case titled *Muhammad Latif Butt vs. Shehtab & others* [2009 SCR 432], wherein, it was observed by this Court that: -

> "7. …….No doubt the conviction can be recorded on the basis of circumstantial evidence in the absence of direct evidence because a man can tell lie but circumstance never tell lie. The conviction can only he based on circumstantial evidence, if it excludes, all hypothesis of innocence of the

> accused. The circumstantial evidence must be incompatible with that of innocence of the accused. It should be incapable of any other hypothesis than that of guilt of the accused. Rule as to quality of circumstantial evidence is that the facts proved must be incompatible with innocence of the accused and incapable of any other explanation upon any other reasonable hypothesis than that of guilt. ……"

## F QUANTUM OF SENTENCE AWARDED:

26. Coming to the most important question that whether the death penalty awarded by the trial Court was justified and the evidence was of such a standard that the death penalty could have been awarded. There is no ambiguity that the prosecution has successfully established the guilt of the accused but at the same time, neither the trial Court nor the High Court has made cumulative

appreciation of all pieces of evidence in letter and spirit. We have no doubt in our mind that the principal accused was cvonvcit-Taimoor who inflicted brutal injuries to the deceased with knife but the opinion of the doctor regarding cause of death was also an important factor which was to be taken into consideration by the trial Court as well as the High Court while awarding the capital punishment. In the Post-mortem Report, the Doctor has opined that injuries No. 1 ,2 and 3 were caused with sharp edged weapon and other are of blunt weapon and no fatal injury was found on the body of the victim. Regarding the cause of death, the Doctor opined that the death of the deceased was caused by forceful closure of nostrils and mouth by hand or any other material caused Asphyxia and vogal inhibition leading to syncope

and death. Subsequently, the viscera of the body were sent to the chemical examiner and Histopathologist for final opinion. The autopsy histopathological report dated 29.06.2010, was received on 15.07.2009, which is reproduced hereunder: -

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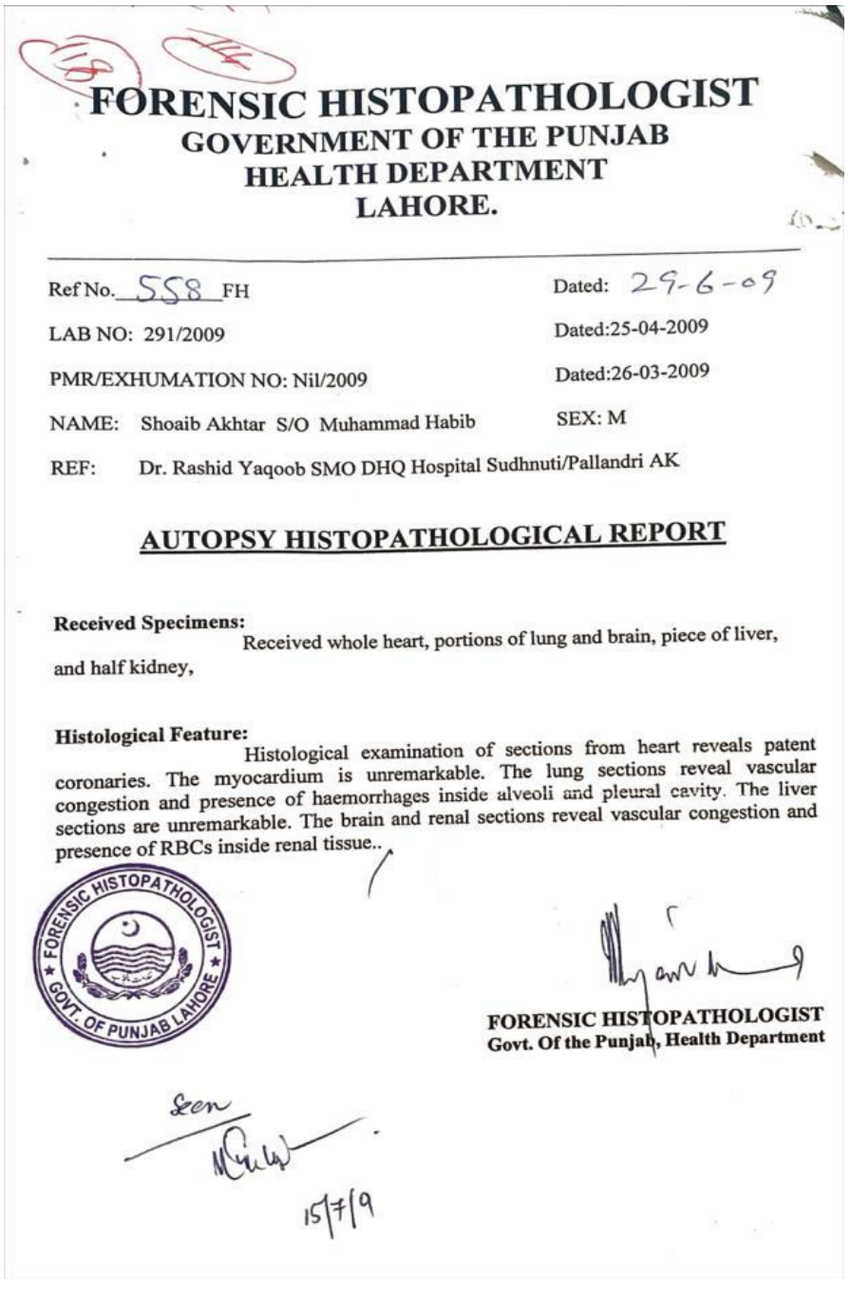

**FORENSIC HISTOPATHOLOGIST**
**GOVERNMENT OF THE PUNJAB**
**HEALTH DEPARTMENT**
**LAHORE.**

Ref No. 558 FH — Dated: 29-6-09

LAB NO: 291/2009 — Dated:25-04-2009

PMR/EXHUMATION NO: Nil/2009 — Dated:26-03-2009

NAME: Shoaib Akhtar S/O Muhammad Habib — SEX: M

REF: Dr. Rashid Yaqoob SMO DHQ Hospital Sudhnuti/Pallandri AK

**AUTOPSY HISTOPATHOLOGICAL REPORT**

**Received Specimens:**
Received whole heart, portions of lung and brain, piece of liver, and half kidney,

**Histological Feature:**
Histological examination of sections from heart reveals patent coronaries. The myocardium is unremarkable. The lung sections reveal vascular congestion and presence of haemorrhages inside alveoli and pleural cavity. The liver sections are unremarkable. The brain and renal sections reveal vascular congestion and presence of RBCs inside renal tissue..

FORENSIC HISTOPATHOLOGIST LAHORE GOVT. OF PUNJAB

**FORENSIC HISTOPATHOLOGIST**
**Govt. Of the Punjab, Health Department**

15/7/9

The final report regarding the cause of death was received on 29.05.2010, wherein, it was reported that the cause of death is the same as already given in Postmortem report. According to post-mortem report, the act of sodomy is also proved to have been committed with the deceased before death but all these matters could have been explained by the deceased if he was alive or if there had been a clear evidence. There is nothing on record except the doctor's report which could help in determining that who actually caused the death of the deceased by serving him strangulation as the aforesaid report states. If there were only one accused, he would have been accused of the act, but in the case in hand, all the convict-appellants have been made accused, therefore, it

is not possible to declare any of them or all of them as the murderer in the absence of any evidence which could prove that who actually caused the death, but this aspect has been harshly neglected by the trial Court as well as the learned High Court while deciding such a sensitive matter. We understand that an unfortunate incident occurred and the true culprit should be punished but the Court can never decide a case with emotions and sentiments. Every aspect of the case has to be minutely observed so that there should be no space for wrong and illegal convictions. Benefit of doubt is the right of an accused which must be provided to him whenever it is needed and it should be dealt with more caution when a question of a capital punishment is involved, especially when no direction evidence is available.

27. It is also pertinent to mention here that if the Court is inclined to award the death penalty, then there must be some exceptional circumstances warranting the imposition of such extreme penalty. Even in such cases, the Court must follow the dictum laid down by the Superior Courts that it is not only the crime, but also the criminal that must be kept in mind before alternative option of punishment is unquestionably foreclosed. The reason for the second precaution is that the death sentence upon execution, is irrevocable and irretrievable. Reliance in this regard can be placed on the case reported as *Abdul Rehman and another vs. Muhammad Mushtaq and another* [2007 SCR 100], wherein, it has been observed that: -

“23. Now the next question emerges that which sentence shall be sufficient to meet the ends of justice. While awarding the sentence, the Court has to be satisfied that (i) murder has been committed, (ii) murder has been committed by the accused and (iii) question of sentence should be determined according to gravity of offence. The question of sentence demands utmost care. The sentence must be weighed in golden scale and it should be properly 116 Supreme Court Recorder Vol. XVI balanced to punish the offender. All the circumstances surrounding the guilt must be carefully borne in mind. The elements to be considered for assessing the quantum of sentence are (a) nature of offence, (b) circumstances in which it was committed, (c) degree of deliberation shown by the offender (d) the provocation which he received (e) the antecedents of prisoner up to the time of sentence and (f) his age and character. The aforesaid matter should be established by evidence and not by the impression created on the spur of moment. In the instant case as far the nature of offence is concerned,

it is a brutal gruesome murder. The respondent has murdered Hamida Bibi for the sake of ornaments. He deprived a woman from the life only for ornaments. There were no such circumstances which compelled the respondent to commit such like occurrence but he came with preparation for commission of dacoity. As far the degree of deliberation of offender is concerned, he was such a bestial kind ofperson that he committed the slay of a woman only for the sake of ornaments of petty amount. There is nothing on the record on the basis of which it could be said that he committed the offence on some provocation. In the matter of sentence a very wide discretion has been given to the Courts but the discretion must be exercised judicially. The basic object of punishment is to create a deterrence so that no one should dare to commit further crime. The basic object of punishment is to make the evil doer an example and a warning to all other like minded persons."

The same proposition came under consideration of the Supreme Court of Pakistan in

the case reported as *Bakhshish Elahi vs. The State* [1977 SCMR 309], wherein, it has been held that: -

> "The Legislature has conferred very wide discretion on the Courts in the matter of sentence under the Penal Code, but as the discretion has to be exercised judicially, the Courts would be entitled to take into account the law and order situation, if the object of punishment or one of the objects of punishment be to deter the commission of further crimes. Now, I do not see how there can be any doubt about this question. Salmond observes in his book on Jurisprudence (Tenth Edition) at page 111 "punishment is before all things deterrent and the chief end of the law of crime is to make the evil doer on example and a warning to all that are like-minded with him". I would agree with this passage and the learned single Judge was justified in holding that a severer sentence was necessary on account of the increase of crime, provided of course culpable homicides of the type under consideration have increased, as held by the learned single Judge."

The crux of all the above discussion is that without any direct evidence or in presence of unreliable/ doubtful circumstantial evidence, none of the accused can be held responsible for causing the strangulation which was the actual cause of the death and nothing on record proves any of the accused persons to have caused the death of the deceased. The prosecution case itself contains the medical report which clearly states that the cause of death is strangulation/suffocation. The fact as to who caused the death is still a question mark in the absence of any evidence regarding this fact to be proved. To sum up, we set-aside the death sentence awarded by the trial Court and affirmed by the High Court to the extent of convict-Taimoor for the reasons stated before. Although, the convict-Taimoor was not proved to be the actual

culprit causing the death of the deceased but inflicted injuries had been proved to be caused by him to the deceased with reliable evidence. Resultantly, the death sentence awarded to him is hereby converted into sentence of imprisonment already undergone, whereas, the order for payment of Rs. 500,000/- as compensation is maintained.

28. So far as the other convict-appellants, Ameen and Imran are concerned, the High Court has already converted their sentences into the sentence already undergone, therefore, we accordingly maintain the findings of the High Court to that extent.

## G. POINTS RAISED BY APPELANTS' COUNSEL.

29. During the course of arguments, the learned Advocates for the convict-appellants,

Barrister Hamayoun Nawaz khan and Raja Shujaat Ali Khan, raised several points which are required to be answered one by one.

30. The first objection of the learned Advocate for the convict-appellant was that all the prosecution witnesses are close relatives of the deceased and no independent and impartial witness has been produced in this case, hence, the conviction on the basis of such evidence does not meet the ends of justice. This argument of the learned Advocate has no substance, as it would be material to make it clear that it is not the relationship which makes one a witness of truth or otherwise. It is now a well settled principle of law that evidence of a witness cannot be discarded merely on his relationship with the parties. The evidence of a witness could not be

disbelieved or discarded merely on the basis of relationship, unless and until it is proved that the witness was inimical towards the accused. This Court in its authoritative judgment reported as *Ghazanfar Ali vs. The State & another* [2015 SCR 1042], has observed that: -

> "13. The argument of the learned counsel for the convict-appellant that the statement of thew witness, namely, Tallat Zahoor is also not reliable as his father has enmity with the convict-appellant, is also not convincing in nature. If for the sake of argument, it is assumed that his father had any ill-will or animosity against the convict-appellant, even then that cannot be made basis to discard the statement of the said witness. The defense also failed to bring anything on record that the said witness was inimical towards the convict-appellant, whereas, he categorically

> stated in his statement that he has no enmity against the accused party. After scrutinizing the evidence of the eye-witnesses, we are of the view that all the eyewitness are independent and trustworthy and the trial Court as well as the learned Shariat Court has appreciated their evidence according to the settled norms of justice. The argument of the learned counsel for the convict-appellant that all the witnesses are closely related to each other, therefore, their statements cannot be believed, has also no substance. It is settled principle of law that mere relationship is no ground for discarding the evidence of a witness."

This view is also fortified from the judgment of this Court in the case reported as *Qadir Baksh and others vs. The State* [2013 SCR 439], wherein, it was held that: -

> "it is a celebrated principle of the appreciation of evidence that mere relationship of witnesses inter se or to the deceased is not sufficient to discredit outrightly their testimony if otherwise such witnesses are found to be witnesses of truth".

Similarly, in the case reported as *Muhammad Khurshid Khan vs. Muhammad Basharat & another* [2007 SCR 1], it has been held by this Court that: -

> "In the instant case both Muhammad Najeeb and Tauseef Ahmed appeared as witnesses and no enmity with the appellant was suggested to them during the cross-examination. Even the accused in his statement under section 342 Cr.PC did not attribute any enmity with them. From the entire evidence it did not transpire that they had any enmity with the accused persons. It is well settled principle of law that evidence

> of a witness could not be disbelieved or discarded merely on the basis of relationship, unless and until it is proved that the witness was inimical towards the accused."

In a case reported as *Ishaq vs. The State* [PLD 1985 Karachi 595], at page 600, it was held by the learned Sindh High Court that: -

> "…However, it is a settled law that mere relationship of witness with the victim of the crime is no ground to discredit his testimony".

This Court in its latest judgment rendered in *Syed Kamran Hussain Shah vs. State's*, (Criminal Appeal No. 26 of 2018, decided on 11.01.2022), has also laid down a principle in this regard that: -

> "23. Here another aspect is worth-understanding that the term 'related' should not be confused with the term

> ‘interested’ because both are entirely distinct concepts. There is considerable distinction between the terms ‘related and ‘interested’, because the interested witness need not necessarily, be a related but it is the person who has such a motive on account of enmity or any other consideration that due to such enmity or consideration, he has prepared himself to depose falsely. The term ‘related’ is positive in its meaning while the term ‘interested’ is negative in its meaning because the term ‘interested’ has a concept to gain favour for whom or what he/she is interested with. Although the burden is always upon the prosecution to prove truthfulness of a related witness but where the defense claims the witness as ‘interested’, burden shifts upon defense to establish that such witness had a motive on account of enmity or any other consideration which compelled him to depose falsely against the accused.”

31. The second argument of the learned Advocates was based on material contradictions in

the statement of the witnesses. The contention of the learned counsel for the convict-appellants was that there are material contradictions in the statements of the witnesses and the witnesses in their Court's statements have also made improvements, is without any substance. As there is overwhelming evidence on record to show that the incident had taken place and when once the genesis of the occurrence is proved, the contradictions which are minor in nature and do not in any way prejudice the case, would not be sufficient to dispel the entire prosecution case. It is true that there are minor contradictions in the statement of the witnesses but it cannot be held fatal for the prosecution; and all the witnesses are natural witnesses. Moreover, parrot like statements are not natural hence, disfavored by

the Courts. It is worth adding that the incident is reported to have occurred in the year 2009 and witnesses recorded statements in the Court after more than two and half years, therefore, minor contradictions are pretty much natural to be expected in the statements. The discrepancies in the evidence of the eyewitnesses, if found not to be minor in nature, may be a ground for disbelieving and discrediting their evidence. The learned counsel for the convict-appellants have endeavored hard to highlight certain discrepancies among testimony of the witnesses, in our considered opinion, are absolutely, minor in nature which do not discredit the cumulative evidence. The minor discrepancies on trivial matters not touching the core of the matter cannot bring discredit to the story of the

prosecution; giving undue importance to them would amount to adopting a hyper-technical approach. The Court while appreciating the evidence, should not attach much significance to minor discrepancies, as such discrepancies do not shake the basic version of the prosecution case and same are to be ignored. We are fortified in our view from the case reported as *Yasmin Ashraf & 7 others vs. Abdul Rasheed Garesta & 5 others* [2018 SCR 661], wherein, it has been held that: -

> "In the instant case, all the witnesses remained consistent on the material points, however, some minor discrepancies are found in their statements which can lightly be ignored and it is settled principle of law that the minor discrepancies do not affect the case of the prosecution as a whole, however, these may make some mitigation to some

> extent which may be taken into the consideration towards the quantum of the sentence."

In a case reported as *Muhammad Naseem vs. State & another* [2018 SCR 417], this Court has taken a view that: -

> "so far as the contention of the learned counsel for the convict-appellant that there are discrepancies in the statements of prosecution witnesses, thus, the conviction cannot be recorded on such evidence is concerned, it may be observed that the minor discrepancies in the prosecution evidence does not thresh out the whole case of the prosecution as the minor discrepancies can be ignored lightly. However, as stated hereinabove that all the prosecution witnesses remained consistent on the material part of the prosecution version, thus, the convict-appellant failed to point out any major

> contradiction in the prosecution evidence."

This view is further fortified from the case reported as *Abdul Rashid & 3 others vs. Abdul Ghaffar and 5 others* [2001 SCR 240], wherein, it has been held that: -

> "9. The finding of the Shariat Court that there are contradictions between the medical evidence and the eye-witnesses is also not correct. According to the finding of the trial Court, the fire which caused death of Fazal-ur-Rehman was fired from a close range. The site plan shows that at the time of fire, the distance between the assailant and the deceased was eleven feet. According to medical jurisprudence, the burning of the clothes and blackening may be present if the gun is fired from a distance of about three feet or less. After subtracting the length of barrel of the gun and its butt, which may be about 5/6 feet, the remaining distance between the muzzle of the gun is more or less

remains only about 5/6 feet; the difference of 2/3 feet is negligible as the same may be due to wrong perception of the witnesses. Thus, there is no material contradiction in the statements of eye-witnesses and medical evidence. It may be observed that it is not possible for the witnesses in such a case to give the precise distance; there is always a possibility of error of few feet or yards. The observation of the Shariat Court that according to the statement of eye-witnesses, the distance between the assailant and deceased was about five to six yards is concerned, it may be observed that the witnesses gave statements in the Court after more than three years of the incident. Therefore, the aforesaid statements at the trial would not nullify the distance between the assailant and victim of offence at the time of firing which is mentioned in the site plan. Even otherwise, if ocular evidence is found trustworthy, the same cannot be rejected merely because there was some variation between the prosecution witnesses and the medical evidence on the point of distance

between the assailant and the victim at the time of inflicting the injury."

32. The other argument of the learned counsel for the convict-appellants was that the report of Chemical Examiner cannot be relied on as recovered items were sent to the Chemical Examiner after a considerable delay and report of the Serologist was also not placed on record. This argument of the learned Advocates is misconceived as the perusal of the record shows that the parcel of recovered items remained in safe custody in "*Malkhana*" and after required proceedings and precaution were dispatched to Forensic Science Laboratory, therefore, sending the recovered items to examiner with delay or non-sending these articles to serologist does not make the prosecution case doubtful as defense

never raised any objection that recovered articles were substituted or these were not stained with the human blood. This view is supported from the case reported as *Nawaz and another vs. State & another* [2003 YLR 2926], wherein, it has been observed that: -

> "It has been held by the superior Courts that sending of recovered articles to the Expert with delay can only be termed fatal to the prosecution case where the defence has been able to establish malice or ill will on the part of the police to show that the empties had been substituted to match the crime weapon. If the dispatch is found to have been delayed, said acts of the Investigating Officer can be termed as an irregularity committed during the course of investigation but it is a settled principle of law, that the procedural defects and the irregularities and some times even the illegalities committed during the course of investigation shall not demolish the prosecution case nor vitiate the trial. In the instant case

> no malice has been attributed to the Investigating Officer for sending the articles with delay nor the defence had alleged substitution of crime weapon and empties. Mere delay, in the absence of malice on the part of the Investigating Officer, cannot be made a good ground for rejecting their value and worth".

The same proposition came into consideration of this Court in the case reported as *Muhammad Tasleem and another vs. The State & another* [2014 SCR 893], wherein, it has been observed that: -

> "Although the report of Serologist is not on record, however, neither defense raised any such objection in this regard nor they made any suggestion. Even otherwise, it was not the case of defence that the accused were not wearing black clothes at the time of occurrence, therefore, absence of the Serologist report makes no difference."

Similar view has been taken in the case reported as *Sarwar and others vs. The State* [1987 SCMR 960], wherein, it has been held that: -

> “As regards the view taken by"' the two Courts about the delay in the recoveries, we find that the facts do not justify it. The empties from the spot were recovered on 4-10-1975 and were despatched to the Fire-arm Expert on 13-10-1975 before the recovery of the guns. The fire-arms were recovered from 14-10-1975 to 25-10-1975 and were despatched to the Fire-arm Expert on 30-10-1975. The delay of nine days in despatch of the empties recovered when the Investigating Officer was busy in investigating the case at the spot in arresting the accused and in effecting appropriate recoveries from them is not inordinate or inexplicable. Similarly, five days delay taken in despatching the fire-arms recovered, the last of them having been recovered on 25-10-1975 would not by itself be a reason for rejection of such recoveries. It is to be noted that none of the Courts has doubted either the recovery itself or its safe

> custody during the period. In the absence of it, mere delay, when in fact there was no such noticeable delay in despatching these items considering the duties of the Investigating Officer, could not be made a ground for rejecting their value and worth."

In the case reported as *Rab Rakhio and others vs. The State* [1992 SCMR 793], it has been held that: -

> "it may be pointed out that the defence has not brought out anything on record through the cross-examination to indicate that the sealed parcel of the empty was tampered with before the recovery of the pistol or after the recovery of the pistol, nor anything has been brought out through the cross-examination to cast doubt as to the recovery of the pistol from respondent No,1. There is no doubt that there was delay in despatching of the above parcel to the Ballistic Expert,' but simpliciter delay cannot nullify the evidentiary value in the absence of attending circumstances

> casting doubt as to the genuineness of the recovery."

33. The learned counsel for the convict-appellants also vociferously argued that the convict-Taimoor was arrested on 27.03.2009, whereas, site plan prepared by Investigation Officer on 26.03.2009, reveals that the recoveries were made on the pointation of convict-, Taimoor on 26.03.2009, which creates serious doubt. In this context, it may be observed that according to recoveries memo, the recoveries were made on the pointation of convict-Taimoor on 28.03.2009, but it was inadvertently mentioned in the site plan dated 26.03.2009, which was a negligent mistake on behalf of investigating Officer. Mere mistakes or technical lapses of Investigating Officer or prosecution should not be considered a ground for

creating doubt. Reliance in this regard may be placed on a case reported as *Khurshid vs. State* [NLR 1996 Criminal 386], wherein, the Supreme Court of Pakistan held as under: -

> "I may further observe that in criminal cases though the Court supposed to follow the well-settled principles of Criminal Jurisprudence, namely that an accused person is presumed to be innocent, that the prosecution is to prove a criminal case against an accused person beyond reasonable doubt and in case two views are possible; the view which favour the accused person, should be preferred; and that all benefit of doubts should be extended to the accused, but, at the same time, the Courts should also take notice of the changing circumstances of the present days. Even in case where eye witnesses are available they refuse to appear as witnesses in support of the prosecution case; either because of fear or on account of being won over by the accused party. The Court's approach, while appraising the

> evidence, should be dynamic and not static. It should keep in view all the facts and circumstances of the case and if it. is satisfied that factually the person charged with the offence has committed the same, it should record the conviction though there might have been some technical lapses on the part of the investigating agency/prosecution, provided that same have not prejudiced the accused in the fair trial. I may also state that the people are losing faith in the criminal judicial system for the reason that in most of the criminal cases the criminals get away without being punished on technicalities."

## H. USE OF MODERN TECHNIQUES FOR INVESTIGATION AND ROLE OF POLICE:

34. Before parting with the judgment, we would like to express our serious concern relating to the negligence and inefficiency of the investigating authorities in the instant case; such as, the act of sodomy committed with the accused

could not be proved by the prosecution as no DNA test was conducted. Moreover; the fingerprints from the mouth and neck of the victim were also not collected by the investigating agency. Had the investigating agency conducted such collection of evidence properly using the modern scientific techniques, the fate of the case would have been different but such evidence wasn't even bothered to be collected in any way let alone using modern techniques. Investigation is the backbone of every Criminal Justice System. The high standard of proof as required, can only be achieved if evidence is properly collected, secured and documented at the stage of investigation, so that it can later on, be produced in the Court to prove charges against the accused. Its importance can be estimated from the fact that any evidence either not collected by

investigating officer or not collected or not secured in accordance with the prescribed law and rules can directly affect the result of investigation. We with a heavy-heart, observe that in spite of the fact that in a number of cases the inefficient investigation by the police officials is brought into the notice of high-ups but no steps have been taken against the issue which creates hurdles in determination of the fate of the case. Further, the Courts are blamed for acquittal of accused or failed prosecution for the lapses and inefficiencies of the investigating agencies and the prosecution, whereas, the Courts are to decide the cases in the light of the record and evidence available on the file of case and applicable law to the relevant facts and evidence.

35. The most significant advancement in criminal investigation since the advent of fingerprint

identification is the use of DNA technology to help convict criminals or eliminate persons as suspects. Samples from semen, hair, blood, flesh etc, can establish a DNA matching with the DNA of another human being. DNA analysis on saliva, skin tissue, blood, hair, and semen can now be reliably used to link criminals to crimes. Increasingly accepted during the past 10 years, DNA technology is now widely used in many jurisdictions by police, prosecutors, defense counsel and courts. This scientific evidence is much speedier, specific, accurate and conclusive than any other human evidence and can stand the scrutiny of the court to determine the guilt or innocence of an accused. In criminal cases, like rape, murder, etc., timely medical examination and proper sampling of body fluids followed by quality forensic analysis can offer irrefutable evidence.

Criminal justice system is always in search for the truth and such development of DNA technology furthers this search by helping police and prosecutors to identify the culprit. Through the use of DNA evidence, prosecutors can establish the guilt of accused and at the same time, DNA aids the search for truth by exonerating the innocent. An authoritative study on the forensic uses of DNA, conducted by the National Research Council of the National Academy of Sciences, USA has noted that:

> "...the reliability of DNA evidence will permit it to exonerate some people who would have been wrongfully accused or convicted without it. Therefore, DNA identification is not only a way of securing convictions; it is also a way of excluding suspects who might otherwise be falsely charged with and convicted of serious crimes."

36. The Supreme Court of Pakistan in in the case reported as *Ali Haider alias Pappu vs. Jameel Hussain etc,* [2021 SCP 40], has also considered the DNA test as strongest corroborative piece of evidence today and observed as under: -

> "DNA evidence is considered as a gold standard to establish the identity of an accused. As a sequel of above discussion, it can safely be concluded that DNA Test due to its accuracy and conclusiveness is one of the strongest corroborative pieces of evidence. In *Salman Akram Raja* case[11] this Court has held that DNA test help provides the courts the identity of the perpetrator with high degree of confidence, and by using of the DNA technology the courts are in a better position to reach at a just conclusion whereby convicting the real culprits and excluding the potential suspects, as well as, exonerating wrongfully involved accused. DNA test with scientific certainty and clarity points towards the perpetrator and is, therefore, considered one of the strongest corroborative evidence

> today, especially in cases of rape. The usefulness of DNA analysis, however, depends mostly on the skill, ability and integrity shown by the investigating officers, who are the first to arrive at the scene of the crime. Unless the evidence is properly documented, collected, packaged and preserved, it will not meet the legal and scientific requirements for admissibility into a court of law."

*37.* It is indeed a fact that even today any officer investigating a case of murder has no concept of securing the scene of the crime properly so that the place of occurrence as well as the surrounding area is not trampled or invaded by the general public before proper collection of evidence which include securing of incriminating articles, pieces of cloth, blood, fiber or hair etc from the place of occurrence and its surrounding area; lifting of fingerprints from various articles found at the

scene of the crime and examination of the same for the purposes of investigation. Delivering of such incriminating articles should be intact so that accurate results would be obtained through forensic examination in order to reach a smooth and just criminal trial. The role, an investigation agency plays in the service of justice is undeniable but it is unfortunate that it is given the least attention. The Supreme Court of Pakistan in the case reported as *Haider Ali and another vs. DPO Chakwal and others,* [2015 SCMR 1724], referred to and highlighted multiple key issues which relate to investigation, process, prosecution, trial, accountability and transparency of the investigating agency. While pointing out the issues and categorizing the same in a comprehensive manner, the Court issued several

directions. The key issues pointed out by the learned bench of the Supreme Court were as follows: -

> "A. **Pre-investigation stage (registration of FIR)**
>
> 'Any person familiar with the workings of a police station in Pakistan knows that the provisions of section 154, Cr.P.C. Are flouted and misused. Section 154, Cr.P.C. Provides, inter alia, that every information given to an officer in charge of a police station relating to the commission of a cognizable offence, whether given in writing to him or reduced in writing by an officer in charge of a police station, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Provincial Government may prescribe in this behalf. While this provision is mandatory in nature, often the concerned police station refuses to register the FIR even if the information provided to it relates to the commission of a cognizable offence. Khawaja Haris, learned Senior Advocate Supreme Court, noted in his report that in the

year 2011 alone, out of 419,365 FIRs lodged in the Province of the Punjab, 28,787 (approximately 7%) were registered pursuant to orders of the Justices of Peace under section 22-A(6) of the Cr.P.C. What is astonishing is that despite orders of the Justices of Peace, FIRs were not registered in 554 (approximately 2%) cases. It is thus clear that a number of persons suffer and are pushed into litigation because of failure of the police to register the FIR. Litigation too, it seems, does not guarantee relief. The Justice of Peace cannot issue coercive process for compliance of his orders. At best, learned Senior Advocate Supreme Court submits, the Justice of Peace can refer the matter to the higher officials of police for taking actions against the defaulting SHO under Article 155 of the Police Order, 2002, but such a direction to proceed against the official for misconduct is rarely implemented. Another issue at this stage is the registration of false or vexatious complaints to pressurize and harass people. While, the Pakistan Penal Code provides for measures through Sections 182 and 211 to discourage and punish false complaints, it is

common knowledge that very few cases involving such offences are filed and prosecuted. This must be unacceptable, especially given that section 154 of the Cr.P.C. Requires mandatory registration of FIR. If the Police therefore has no discretion in registering an FIR, action must be taken against those who abuse this provision of law and use the police as an instrument for their designs.

## B. Investigation stage

'While the registration of a FIR is mandatory, initiating investigation is not. Reading section 156 Cr.P.C. With section 157, Cr.P.C. It appears that the officer in charge of a police station shall proceed to initiate investigation of a case only where, inter alia, from information received, he has reason to suspect the commission of an offence. This interpretation is further fortified when we read clause (b) of the proviso to subsection (1) of section 157, Cr.P.C., which provides that "if it appears to the officer in charge of a police station that there is not sufficient ground for entering on an investigation he shall not investigate the case." Yet, what we often find is that on registration of a FIR, the

relevant police officer without application of mind directly proceeds to arrest the accused. We have held time and again (see for instance Muhammad Bashir's case (P L D 2007 Supreme Court 539), that the police should not move for the arrest of the accused nominated in the FIR unless sufficient evidence is available for the arrest. Yet to our dismay we have to deal with such matters on a daily basis. Perhaps, as some of the reports referred to above point out, the issue lies in the fact that there are no real guidelines available to the police which would channel their discretion and judgment. This coupled with their lack of training, makes defective investigation almost a near possibility. In this regard, it is instructive to note the following observations of Khawaja Haris, learned Senior Advocate Supreme Court in his report:

*"It is indeed a fact that even today an officer investigating a case of murder has no concept of (1) securing the scene of the crime so that the place where the occurrence has taken place as well as the surrounding area is not trampled or invaded by the general public before*

*the investigation officer has had an opportunity to collect evidence from the place of occurrence, (2) how to secure incriminating articles, likes pieces of cloth, blood, fiber or hair etc from the place of occurrence and its surrounding area, (3) how to lift and secure fingerprints from various articles found inter alia at the scene of the crime and to get them examined and matched for purposes of investigation, (4) how to ensure that all incriminating articles are properly secured from the spot and delivered promptly and intact to a forensic laboratory and/or fingerprints expert in safe custody and without being tampered with, and to expeditiously obtain the results from the forensic laboratory so as to be credibly admitted in evidence during the trial."*

' The lack of training and emphasis on the development of specialized investigation officers and facilities, is perhaps indicative of the wider issue in policing: the police it appears is still largely used to secure the interests of the dominant political regime and affluent members of society, rather than furthering the rule of law. As a result, where, even in this debilitating environment, an

honest and competent investigation officer is found, his work is thwarted at one juncture or another.

## C. Prosecution and trial

' In our order dated 15-1-2015, we noted how at least in the Punjab more than 65% of criminal cases do not result in conviction. The learned Prosecutor General Punjab also stated that in even those cases where a person has been convicted by the trial court, a substantial number are acquitted by the appellate forums. These figures are indicative of weak investigation and gathering of evidence which we noted above, but are also a result of serious deficiencies in our prosecution system. The following issues among others were highlighted by the various parties in this respect:

(i) Lack of cooperation between the police and prosecution at the investigation stage: there appears to be no standardized SOPs which guide the relationship between prosecutors and police officers and allow them to aid each other in the fair and timely investigation of the case.

(ii) Lack of training and competent prosecutors: prosecutors are not provided proper training and facilities. In addition, competent prosecutors because of lack of incentives resign from their service for better opportunities. There also appears to be no effective quality review system in place to check under performing prosecutors. As a result, the best prosecutors are not being retained in service.

(iii) Protection of witnesses: we have been informed that in many cases the prosecution's case is damaged as key witnesses resile from their stated position because of pressure from the accused.

(iv) Adjournment requests by lawyers and delay in fixation of cases by judiciary: the defendant's lawyer deliberately at times delays

resolution of cases. Delays and injustice is also caused as a result of backlog in the judicial system and frequent transfers of presiding judicial officers.

## D. Accountability and transparency

' During the course of the proceedings, we directed the Inspector General of Police Punjab

to submit figures relating to actions taken against delinquent police officials. As a result, various reports were submitted regarding actions taken against delinquent police officials on the recommendation of the prosecution department. An overview of these reports would make two things clear. First, we noted that the figures submitted in these reports kept changing. We assume that such changes were made in good-faith to present the correct position before this court. But this exercise at the very least lays bare the attention which senior police officials place towards delinquents within their ranks: they did not even have for ready reference an accurate collation of complaints against police officials! Second, even if we accept the most conservative figures of complaints submitted before us, we note that in only 20 cases was some form of major punishment (reduction in rank and pay) awarded to delinquent officers (in another report this figure was stated to be 10). We must therefore ask whether sufficient measures are being taken by senior police officials to deter delinquent behavior and misconduct by police

> officials. It was also noted by us that the systemic accountability forums which were created pursuant to the Police Order, 2002, in the form of National and Provincial Public Safety Commissions and Police Complaints Authority are either inactive or not operational. Transparency in policing activities is another major issue. Public money is used to finance the police, which in turn is supposed to deliver services to the public. At present however information regarding funds allocated to the police, police plans and annuals performance reports are not publicly available. How then are the public and state functionaries supposed to properly examine (and if required make changes to) the delivery of this important public service, if the relevant facts and figures are not available to them?

38. After pointing out the key issues in the investigation process, following directions were given to the Government by the Supreme Court of Pakistan: -

“i) A universal access number (UAN) and website should be provided to the general public for filing of complaints. The said website should be developed and be operational within three months from the date of this order. Till such time that the website has been launched, the provisions of section 154, Cr.P.C. Should be strictly adhered to and action should be taken against any police official who fails to abide by the said provision.

(ii) Serious notice should be taken of frivolous, false or vexatious complaints and where applicable cases should be registered under sections 182 and 211 of the Pakistan Penal Code.

(iii) The principles laid out in Muhammad Bashir's case (PLD 200Z SC 539) should be strictly followed and no person should be arrested unless there is sufficient evidence available with the police to support such arrest. Where a person is unjustly deprived of his liberty, compensation will be required to be paid to him or her by the delinquent police officer. The affected person may approach the civil courts for appropriate remedy in this regard.

(iv) Adequate provision should be made for the training of police officers and the development of specialized investigation officers and facilities. In addition adequate funds should be made available to police stations and for investigation activities. The respective Provincial and Federal heads of police shall submit a report in court within three months from the date of this order which details the steps taken in this regard and the relevant police funds and personnel dedicated towards investigation activities, training of police personal, and development of forensic facilities.

(v) No police officer is to be transferred in breach of the principles laid out by this Court in the Anita Turab case (PLD 2013 SC 195). The respective Provincial and Federal heads of police shall submit a report in Court within one month from the date of this order which specifies the names and details of all police officers above BPS-17 who have been transferred or made OSD over the past three years and also provide reasons for the same.

(vi) Guidelines/SOPs should be developed to foster coordination

between the prosecution and the police. The Attorney General and the respective Advocates General of each province shall submit the said guidelines/SOPs in court within three months from the date of this order.

(vii) Adequate funds should be dedicated towards the training and development of public prosecutors. The Attorney General and the respective Prosecutors General of each province shall submit in Court within three months from the date of this order details of (i) hiring requirements and compensation packages of public prosecutors; and (ii) accountability mechanisms and review systems of public prosecutors.

(viii)The Attorney General and the respective Advocates General shall submit a report in court within one month from the date of this order on the steps being taken to provide witness protection in their relevant jurisdiction and the funds dedicated for this purpose.

(ix) The respective bar councils may take appropriate action against lawyers who deliberately seek adjournments with a view to delay

trial. Respective district judges are also directed to impose costs on such lawyers and hear criminal cases involving the liberty of persons on a day to day basis to the extent possible.

(x) Respective heads of police of the Federation and the Provinces shall submit a report within one month of the date of this order which details the relevant police complaints and accountability mechanisms in place and the actions taken under such mechanism against delinquent police officials. This information shall also be made publicly accessible in English as well as Urdu on their respective websites. The Attorney General and respective Advocates General shall submit a report detailing compliance in this respect within one month from the date of this order.

(xi) Police budgets (disaggregated by district and local police stations, functions, human resource allocation and a statement of their utilization), police plans and annual performance reports shall be made publicly accessible on the respective Federal and Provincial police websites and submitted in Court

within one month of the date of this order. The Attorney General and respective Advocates General shall submit a report detailing compliance in this respect within one month from the date of this order.

(xii) The Attorney General and the respective Advocates General of the Provinces of Sindh and Balochistan should submit in Court within one month from the date of this order reports which examine the constitutionality of the policing regime established by the Police Act, 1861, currently in force, in Sindh and the Balochistan Police Act, 2011 currently in force in Balochistan. This report should inter alia state whether these policing statutes allow the constitution and organization of a politically independent police force which is consistent with the protection of the fundamental rights of citizens.

(xiii) The Federal and Provincial Ombudsmen should submit in Court within three months from the date of this order, good-administration standards for police stations and should also submit a report which outlines the measures being taken

> to curb maladministration in police stations.
>
> (xiv) Provincial Information Commissioners should notify transparency standards relating to police services and functions and submit these standards in Court within three months from the date of this order."

39. We have also observed that, in Azad Jammu and Kashmir majority of criminal cases do not result into conviction only because of the improper investigation and collection of evidence which we have also observed hereinbefore, and also because of serious deficiencies in our prosecution system. This happens due to the lack of cooperation between the investigating agencies and prosecution branch at the investigation stage and lack of training of investigators and prosecutors as they are not properly trained and equipped with the modern

devices and techniques in the modern world today. Therefore, in the light of above discussion and guiding principles from the judgment of the Supreme Court of Pakistan, we hereby, suggest the following guidelines to the Government: -

I. Adequate provision should be made for the training of police officers and the development of specialized investigating agencies. Furthermore, adequate funds should be made available to police stations for investigation purposes and the use of such funds should be properly regulated/ monitored.

II. Guidelines/SOP's should be developed to foster coordination between the prosecution department and the police.

III. Adequate funds should be dedicated towards the training and development of public prosecutors. Prosecution branch

should publish its performance report annually and publicly.

IV. The investigating agencies should be encouraged to use modern scientific techniques for investigation purposes and the concerned authorities should take necessary steps to shift the method of investigation from the outdated form to the modern one which includes different forensic and scientific techniques.

## I. CONCLUSION

To conclude, the appeal filed by convict-Taimoor alias Qazi, is partly accepted and death sentence awarded to him, is hereby converted to the sentence of imprisonment already undergone. The convict shall pay Rs. 500,000/- as compensation to be paid to the legal heirs of the deceased, however, rest of the impugned judgment of the High

Court is hereby maintained. Consequently, the appeals filed by the complainant, Muhammad Habib & others and Imran & another, having no force, are hereby dismissed. Copy of this judgment shall be sent to the Chief Secretary and Inspector General Police to do the needful.

JUDGE
J-II

JUDGE
J-III

Muzaffarabad,
05.09.2022.