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Judgment Sheet

IN THE LAHORE HIGH COURT, MULTAN BENCH,MULTAN.

JUDICIAL DEPARTMENT

Murder Reference No.33 of 2021
(The State Vs. Kashif Nouman alias Kashi)

Criminal Appeal No. 526-J of 2021
(Kashif Nouman alias Kashi Vs. The State.)

Criminal Appeal No. 527-J of 2021
(Mst. Nuzhat Rasheed Vs. The State.)

J U D G M E N T

Date of hearing:	22.11.2023.
Appellants by:	Hafiz Sohaib Altaf, Advocate (for the appellant in *Criminal Appeal No. 527-J of 2021*) Khawaja Qaiser Butt. , Advocate (for the appellant in *Criminal Appeal No. 526-J of 2021*).
State by:	Malik Riaz Ahmad Saghla Additional Prosecutor General.
Complainant by:	Rana Asif Saeed, Advocate.

SADIQ MAHMUD KHURRAM, J. Kashif Nouman alias Kashi son of Sarfraz Hussain and Mst. Nuzhat Rasheed widow of Naveed Iqbal (convicts) were tried by the learned Additional Sessions Judge, Multan in case F.I.R No. 973 of 2019 dated 07.12.2019 registered at Police Station Qutabpur, District Multan in respect of offences under sections 302 and 34 P.P.C. for committing the *Qatl-i-Amd* of Naveed Iqbal son of Muhammad Hanif (deceased). The learned trial court vide judgment dated 24.08.2021

convicted Kashif Nouman alias Kashi son of Sarfraz Hussain and Mst. Nuzhat Rasheed widow of Naveed Iqbal (convicts) and sentenced them as infra:

Kashif Nouman alias Kashi son of Sarfraz Hussain:-

Death under section 302(b) PPC as *Tazir* for committing *Qatl-i-Amd* of Naveed Iqbal son of Muhammad Hanif(deceased) and directed to pay Rs.300,000/- as compensation under section 544-A, Cr.P.C. to the legal heirs of the deceased, in case of default thereof, the convict was further directed to undergo simple imprisonment for six months.

The convict was ordered to be hanged by his neck till dead.

Mst. Nuzhat Rasheed widow of Naveed Iqbal :-

Imprisonment for Life under section 302(b) PPC as *Tazir* for committing *Qatl-i-Amd* of Naveed Iqbal son of Muhammad Hanif(deceased) and directed to pay Rs.300,000/- as compensation under section 544-A, Cr.P.C. to the legal heirs of the deceased, in case of default thereof, the convict was further directed to undergo simple imprisonment for six months. The convict was however extended the benefit available under Section 382-B of the Code of Criminal Procedure, 1898 by the learned trial court

2. Feeling aggrieved, Kashif Nouman alias Kashi son of Sarfraz Hussain (convict) lodged the Criminal appeal No.526-J of 2021 through Jail against his conviction and sentence. Feeling aggrieved, Mst. Nuzhat Rasheed widow of Naveed Iqbal (convict) lodged the Criminal appeal No.527-J of 2021 through Jail against her conviction and sentence. The learned trial court submitted Murder Reference No.33 of 2021 under section 374 Cr.P.C. seeking confirmation or otherwise of the sentence of death awarded to the appellant Kashif Nouman alias Kashi son of Sarfraz Hussain. We intend to dispose of the Criminal Appeal No.526-J of 2021, the Criminal

Appeal No.527-J of 2021 and Murder Reference No.33 of 2021 through this single judgment.

3. Precisely, the facts of the prosecution case as bought on record through the statements of various prosecution witnesses are that on 15.08.2019, Nasir Iqbal (PW-3), the complainant of the case, received information that his brother namely Naveed Iqbal (deceased) had died and after receiving the said information, Nasir Iqbal (PW-3) proceeded to the house of his brother where he found the dead body of the deceased present in the courtyard of the said house. Nasir Iqbal (PW-3) thereafter submitted an application (Exh. PP) to the police seeking the post mortem examination of the dead body of the deceased. Upon the application (Exh. PP) of Nasir Iqbal (PW-3), Dr. Tariq Azhar (PW-8) conducted the post mortem examination of the dead body of the deceased namely Naveed Iqbal on 16.08.2019. Thereafter, Nasir Iqbal (PW-3) filed an application under sections 22-A and 22-B of the Code of Criminal Procedure, 1898 (Exh. DB) on 19.09.2019 complaining of the non-registration of the F.I.R . It was further stated by Nasir Iqbal (PW-3) and Javed Iqbal (PW-4) that on 30.11.2019 at about 07.00 p.m. when both the witnesses were present in the house of Javed Iqbal (PW-4), both the appellants namely Kashif Noman alias Kashi and Mst. Nuzhat Rasheed came to the house of Javed Iqbal (PW-4) and confessed their guilt of having committed the *Qatl-i-Amd* of Naveed Iqbal (deceased). The written application (Exh.PC) was submitted for the registration of the F.I.R by Nasir Iqbal (PW-3) to Zafar Hussain, SI (PW-10) at *Bilal Chowk* on 07.12.2019 at 05.15 p.m. whereafter the formal F.I.R

(Exh.PA) was recorded on the same day i.e 07.12.2019 at 05.40 p.m. It was further stated by Ahsan Zafar (PW-5) and Muhammad Shahbaz (PW-6) that on 08.12.2019, at about 11 a.m.-12.00 noon, the appellant namely Kashif Noman alias Kashi met the said witnesses and confessed his guilt of having committed the *Qatl-i-Amd* of Naveed Iqbal (deceased). The prosecution witnesses further stated that on 09.12.2019 the appellant namely Mst. Nuzhat Rasheed pointed out the place of occurrence to the Investigating Officer of the case and on 24.01.2020 the appellant namely Kashif Noman alias Kashi got recovered the pillow (P-3) and on 28.01.2020 got recovered the Subscriber Identity Module (SIM) (P-4).

4. After the formal investigation of the case report under section 173 of the Code of Criminal Procedure, 1898 was submitted before the learned trial court and the appellants namely Kashif Nouman alias Kashi son of Sarfraz Hussain and Mst. Nuzhat Rasheed widow of Naveed Iqbal were sent to face trial. The learned trial court framed the charge against the accused on 18.06.2020, to which the appellant pleaded not guilty and claimed trial.

5. The prosecution in order to prove its case got recorded statements of as many as **ten** witnesses. The prosecution witness namely Nasir Iqbal (PW-3) submitted the application (Exh.PP) on 15.08.2019 requesting the post mortem examination of the dead body and further stated that the appellants on 30.11.2019 at about 07.00 p.m confessed their guilt in his and in the presence of the prosecution witness namely Javed Iqbal (PW-4). The prosecution witnesses Ahsan Zafar (PW-5) and Muhammad Shahbaz (PW-6) stated that on 08.12.2019, at about 11 a.m.-12.00 noon the appellant

namely Kashif Noman alias Kashi met the said witnesses and confessed his guilt of having committed the *Qatl-i-Amd* of Naveed Iqbal (deceased). Muhammad Jehanzeb Hayat 3380/HC (PW-1) stated that on 07.12.2019, he recorded the formal F.I.R (Exh.PA). Muhammad Akhtar 295/C (PW-2) stated that on 15.08.2019 he escorted the dead body of the deceased to the hospital and received the last worn clothes of the deceased from the Medical Officer after the post mortem examination of the dead body of the deceased. Irfan Hayat, draftsman (PW-7) prepared the scaled site plan (Exh.PG) of the place where the dead body was present and prepared the scaled site plan (Exh.PH) of the place where Naveed Iqbal (deceased) was murdered. Mushtaq Ahmad, SI (PW-9) stated that on 15.08.2019, he received the application (Exh. PP) of Nasir Iqbal (PW-3) and sent the dead body for its post mortem examination. Zafar Hussain, SI (PW-10) investigated the case from 07.12.2019 till 30.01.2020, arrested the appellant namely Mst. Nuzhat Rasheed on 09.12.2019, arrested the appellant namely Kashif Noman alias Kashi on 21.01.2020 and detailed the facts of his investigation in his statement before the learned trial court.

6. The prosecution also got Dr. Tariq Azhar (PW-8) examined, who on 16.08.2019 was posted as Senior Demonstrator Forensic Medicine Department Nishtar Medical University, Multan and on the same day conducted the postmortem examination of the dead body of Naveed Iqbal son of Muhammad Hanif (deceased). Dr. Tariq Azhar (PW-8) on examining the dead body of the deceased namely Naveed Iqbal son of Muhammad Hanif, observed as under:-

"**Injuries**:

1. Multiple abrasions each measuring 1 cm X¼ cm four in number in an area of 5 X 3 cm on left side of neck.

2. Two abrasion on right temple 1 cm X 1/5 cm, 0.5 X 1/5 cm.

3. Abrasions 1 cm X¼ cm on right mastoid area.

4. Abrasion 1 cm X¼ cm on left ear Pinna.

Both the eyes are red (congested).

……..

Final Opinion:

On 20.11.2019, police submitted an application Exh.PK alongwith PFSA reports duly attested and signed by me.

As per Forensic Toxicology report bearing No.2019-251759-TOX-14209 bearing Sr.No.0000652382 Exh.PL that drug/poison were not detected in liver and stomach contents in item #1, and as per Forensic Histopathology report bearing No.2019-251759-PATH-07288 bearing Sr.No.0000638483 Exh.PM that Histological examination of heart section reveals patent coronaries and unremarkable myocardium. The lungs section reveal focally presence of oedematous fluid inside a veoli. The liver renal and splenic section reveal no pathological changes. Keeping in view the autopsy findings and above mentioned laboratory reports, I opined that the death is because of asphyxia due to throttling and smothering.

7. On 29.09.2020 the learned Deputy District Public Prosecutor gave up prosecution witness namely Rashid Iqbal as being unnecessary. On 30.06.2021, the learned Deputy District Public Prosecutor closed the prosecution evidence.

8. After the closure of prosecution evidence, the learned trial court examined the appellants namely Kashif Nouman alias Kashi son of Sarfraz Hussain and Mst. Nuzhat Rasheed widow of Naveed Iqbal under section 342 Cr.P.C. and in answer to the question *why this case against you and why the PWs have deposed against you*, the appellants replied that they were innocent and had been falsely involved in the case due to suspicion. The

appellants namely Kashif Nouman alias Kashi son of Sarfraz Hussain and Mst. Nuzhat Rasheed widow of Naveed Iqbal opted not to get themselves examined under section 340(2) Cr.P.C and did not adduce any evidence in their defence.

9. On the conclusion of the trial, the learned trial court convicted and sentenced the appellants as referred to above.

10. The contention of the learned counsels for the appellants precisely is that the whole case was fabricated and false. The learned counsels for the appellants further submitted that the prosecution remained unable to prove the facts in issue and did not produce any unimpeachable, admissible and relevant evidence. The learned counsels for the appellants added that the statements of prosecution witnesses were not worthy of any reliance. The learned counsels for the appellants also argued that the recoveries were full of procedural defects, of no legal worth and value and result of fake proceedings. The learned counsels for the appellants finally submitted that the prosecution had failed to prove the case against the appellants beyond the shadow of doubt.

11. On the other hand, the learned Additional Prosecutor General and the learned counsel for the complainant contended that the prosecution had proved its case beyond a shadow of a doubt by producing independent witnesses. The learned Additional Prosecutor General and the learned counsel for the complainant further argued that the deceased was murdered by the appellants who had confessed to the said crime before the witnesses.

The learned Additional Prosecutor General and the learned counsel for the complainant further argued that the recoveries from the appellants also corroborated the statements of the other witnesses. The learned Additional Prosecutor General and the learned counsel for the complainant contended that there was no occasion for the prosecution witnesses, who were related to the deceased, to substitute the real offenders with the innocent in this case. Lastly, the learned Additional Prosecutor General and the learned counsel for the complainant prayed for the rejection of appeals as lodged by both the appellants.

12. We have heard the learned counsels for the appellants, the learned Additional Prosecutor General, the learned counsel for the complainant and carefully perused the record and evidence recorded during the trial.

13. After consideration of contentions raised by learned counsel for the respective parties and scanning the evidence, it is pertinent to mention here that in the instant matter ocular evidence is not available. There can be no dispute regarding the fact that the case is built on circumstantial evidence. In dealing with circumstantial evidence, the rules specially applicable to such evidence must be borne in mind. In such cases, there is always the danger that conjecture or suspicion may take the place of legal proof and therefore, it is right to recall the warning addressed by Baron Alderson to the jury in Reg. V. Hodge, (1938) 2 Lewin 227) where he said:

> *"The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of*

the individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that is wanting , to take for granted some fact consistent with its previous theories and necessary to render them complete."

Sir Alfred Wills in his book "*An Essay on the Principles of Circumstantial Evidence"* (pages 173 to 190 of the Fifth American ,from the Fourth London Edition published in 1872) lays down the following rules specially to be observed in the case of circumstantial evidence:

"RULE 1.-The facts alleged as the basis of any legal inference must be clearly proved, and indubitably connected with the factum probandum.

RULE 2.- The burden of proof is always on the party who asserts the existence of any fact which infers legal accountability

RULE 3.- In all cases, whether of direct or circumstantial evidence, the best evidence must be adduced which the nature of the case admits .

RULE 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.

RULE 5. If there be any reasonable doubt of the guilt of the accused, he is entitled, as of right, to be acquitted."

The august Supreme Court of Pakistan in its binding judgment titled "*Naveed Asghar and two others Vs. The State*" **(P L D 2021 Supreme Court 600)** has enunciated the following principle of law for the appreciation of circumstantial evidence:

"*Approach to determine sufficiency of circumstantial evidence*

> *14. The settled approach to deal with the question as to sufficiency of circumstantial evidence for conviction of the accused person is this: If, on the facts and circumstances proved, no hypothesis consistent with the innocence of the accused person can be suggested, the case is fit for conviction of the accused person on such conclusion; however, if such facts and circumstances can be reconciled with any reasonable hypothesis compatible with the innocence of the appellant, the case is to be treated one of insufficient evidence, resulting in acquittal of the accused person. Circumstantial evidence, in a murder case, should be like a well-knit chain, one end of which touches the dead body of the deceased and the other the neck of the accused. No link in chain of the circumstances should be broken and the circumstances should be such as cannot be explained away on any reasonable hypothesis other than guilt of accused person. Chain of such facts and circumstances has to be completed to establish guilt of the accused person beyond reasonable doubt and to make the plea of his being innocent incompatible with the weight of evidence against him. Any link missing from the chain breaks the whole chain and renders the same unreliable; in that event, conviction cannot be safely recorded, especially on a capital charge. Therefore, if the circumstantial evidence is found not of the said standard and quality, it will be highly unsafe to rely upon the same for conviction; rather, not to rely upon such evidence will a better and a safer course."*

Thus, in a case of circumstantial evidence, the prosecution must establish each instance of incriminating circumstance by way of reliable and clinching evidence, and the circumstances so proved must form a complete chain of events, on the basis of which no conclusion other than one of guilt of the accused can be reached. Undoubtedly, suspicion, however grave it may be, can never be treated as a substitute for proof.

14. From the evidence of the prosecution available on record it is clear that the case of the prosecution hinges upon the extra-judicial confession of the appellants, the recovery of the pillow (P-3), the Call Data Record (Exh.PT/1 and Exh.PT/2), the motive of the occurrence and the pointing out of the place of murder of the deceased.

15. Firstly, we shall deliberate upon the evidence of the prosecution witnesses namely Nasir Iqbal (PW-3) and Javed Iqbal (PW-4) who stated

that on 30.11.2019 at about 07.00 p.m., when both the witnesses were present in the house of Javed Iqbal (PW-4), both the appellants namely Kashif Noman alias Kashi and Mst. Nuzhat Rasheed came to the house of Javed Iqbal (PW-4) and confessed their guilt of having committed the *Qatl-i-Amd* of Naveed Iqbal (deceased). The said statements of the prosecution witnesses namely Nasir Iqbal (PW-3) and Javed Iqbal (PW-4) are reflective that the appellants jointly confessed to their guilt. The prosecution witness namely Nasir Iqbal (PW-3) ,in his statement before the learned trial court, stated as under:-

> "On 30.11.2019, 1 alongwith Javed Iqbal and Rashid Iqbal was present at the house of Javed Iqbal at about 7:00 pm, meanwhile accused persons namely Mst.Nuzhat Rasheed and Kashif Nauman arrived there and **told us that they committed murder of Naveed Iqbal deceased on 15.08.2019 by strangulation. They said that they were repenting on that murder and beg pardon from us. They also asked us not to proceed against them on that murder.** " (emphasis supplied)

The prosecution witness namely Javed Iqbal (PW-4), in his statement before the learned trial court ,stated as under:-

> " On 30.11.2019, I alongwith Nasir Iqbal and Rashid Iqbal was present at my house, meanwhile accused persons namely Mst.Nuzhat Rasheed and Kashif Nauman came there and told us that they committed murder of Naveed Iqbal deceased on 15.08.2019 by strangulation. They said that they were repenting on that murder and beg pardon from us."

The alleged extra judicial confession, as already observed, was jointly made by the appellants before the prosecution witnesses namely Nasir Iqbal (PW-3) and Javed Iqbal (PW-4). It was not mentioned by the prosecution witnesses namely Nasir Iqbal (PW-3) and Javed Iqbal (PW-4) as to which of the two appellants disclosed which fact, because both the appellants could not have uttered the same words. So, no reliance whatsoever can be placed upon the alleged joint extra judicial confession of the appellants , allegedly made before the prosecution witnesses namely Nasir Iqbal (PW-3) and Javed Iqbal (PW-4), as the same was a joint extrajudicial confession which is neither a relevant nor an admissible piece of evidence. The august Supreme Court of Pakistan in the case of "*Zafar Iqbal and others Vs. The State"* (**2006 S C M R 463**) has held as under:

> "This Court in the case of the "State v. Kamal Khan alias Maloo and another" as referred (supra) has disbelieved extra-judicial confession made by the accused being a joint confession and maintained the acquittal of the accused. Similarly, B Shariat Appellate Bench of this Court in the case of Wazir Muhammad referred (supra) has also disbelieved the extra-judicial confession and has acquitted the accused on the ground that it was a weak type of evidence and requires strong corroboration. We have also gone through the case of Maqsood Ahmed referred (supra), whereby learned same Judge of the High Court has acquitted the accused giving him the benefit of doubt while disbelieving the joint extra-judicial confession and other similar circumstances.
>
> 12. Accordingly, we are of the opinion that prosecution has failed to prove the case against the appellants."

The august Supreme Court of Pakistan in the case of "*State Vs. KAMAL KHAN alias MALOO and another"* (**1993 S C M R 1378**) has held as under:

> "Even otherwise too if the version of Ghulam Rasool (P.W.6) is accepted as correct, it was the case of a joint confession which could not be used against either of them. The learned Trial Court was therefore justified in not acting upon it."

The august Supreme Court of Pakistan in the case of "*Muhammad Ismail and others Vs. The State"* (**2017 S C M R 898**) has held as under:

> "The prosecution had also maintained that some of the appellants had made an extra¬ judicial confession but the High Court had itself discarded the evidence relating to the extra-judicial confession as the same was not only unnatural but was also inadmissible in evidence as the extra judicial confession attributed to the appellants was a joint confession."

The august Supreme Court of Pakistan in the case of "*Muhammad Bashir and another Vs. The State and others"* (**2023 S C M R 190**) has held as under:

> '"The crux of the argument that there was a confessional statement on the part of all the co-accused is of no avail as the same was made jointly, which has no legal sanctity.

16. It is also a fact that on 30.11.2019, the prosecution witnesses were clueless regarding the circumstances of the death of the deceased and in that scenario there hardly existed any reason for the appellants to have confessed their guilt when they were not even facing any scrutiny or even suspicion with regard to the death of the deceased. We have also noted that the conduct of the prosecution witnesses namely Nasir Iqbal (PW-3) and Javed Iqbal (PW-4) that both the witnesses, though being the real brothers of the

deceased, did not react at all to the said alleged confessional statements of appellants and calmly allowed the appellants to leave the house of the prosecution witness namely Javed Iqbal (PW-4) after hearing the alleged confession of the appellants, without making any effort to apprehend the appellants. The prosecution witnesses namely Nasir Iqbal (PW-3) and Javed Iqbal (PW-4) have not mentioned in their statements that the accused had some weapon which could have precluded them from apprehending the appellants when they had heard the appellants confess to their guilt about the murder. The prosecution witness namely Javed Iqbal (PW-4) during cross-examination, admitted as under:-

> " At the same time we never arrested or caught hold Mst.Nuzhat or any other person and I told Mst. Nuzhat that she should go to police and make confession to the police. We did not say anything to Mst Nuzhat and allowed her to go and other person"

The conduct of the prosecution witnesses namely Nasir Iqbal (PW-3) and Javed Iqbal (PW-4) was not natural at all. There is no explanation as to why the arrest of the appellants was not made by the prosecution witnesses namely Nasir Iqbal (PW-3) and Javed Iqbal (PW-4) after hearing of the alleged extra judicial confession by the appellants reflecting that indeed no such confession was ever made..

17. Another reason to reject the statements of the prosecution witnesses namely Nasir Iqbal (PW-3) and Javed Iqbal (PW-4) that on **30.11.2019** at about 07.00 p.m., when both the witnesses were present in the house of Javed Iqbal (PW-4) , both the appellants namely Kashif Noman alias Kashi

and Mst. Nuzhat Rasheed came to the house of Javed Iqbal (PW-4) and confessed their guilt of having committed the *Qatl-i-Amd* of Naveed Iqbal (deceased), is that they never reported the matter of the confession of the appellants on **30.11.2019** to the police and it was only on **07.12.201**9 at 05.15 p.m that the prosecution witness namely Nasir Iqbal (PW-3) submitted the application (Exh.PC) to Zafar Hussain, SI (PW-10) at *Bilal Chowk* for the registration of the F.I.R and in which application the allegation of the appellants having confessed to their guilt on 30.11.2019 was mentioned. It has not been explained at all that why the matter of confession of the appellants was not reported immediately. The delay with which the application (Exh.PC) was submitted by Nasir Iqbal to Zafar Hussain, SI (PW-10) on 07.12.2019 is proof of the fact that the delay was used to fashion out and concoct a false narrative against the appellants. Reliance is placed on the case of "*Ghulam Abbas and another v. The State and another"* **(2021 SCMR 23)** wherein the august Supreme Court of Pakistan observed as under:-

> *"As per contents of FIR, the occurrence in this case took place on 19.06.2008 at 01.40 a.m. and the matter was reported to the Police on the same morning at 07.00 a.m. and as such there is a delay of more than five hours in reporting the crime to the Police whereas Police Station was situated at a distance of just six kilometers from the place of occurrence. No explanation whatsoever was furnished by the complainant for this delay in reporting the crime to the Police. Hameed Ullah Khan SI (PW.15) who investigated the case stated during his cross-examination that he reached at the place of occurrence at about 05.00 a.m. and he had completed the police proceedings by 06.30 p.m. In the circumstances, chances of deliberations and consultations before reporting the matter to the Police cannot be ruled out*."

Reliance is also placed on the case of *MUHAMMAD ASHRAF JAVEED and another vs. MUHAMMAD UMAR and others* (**2017 SCMR 199**) wherein the august Supreme Court of Pakistan was pleased to hold as under:

> *"The hospital is closely situated to the Police Station but neither the complainant nor PWs took a little pain to report the matter, nor the staff of the hospital including the treating doctor took initiative*."

Guidance is also sought from the principle enunciated by the august Supreme Court of Pakistan in the case of *Zafar vs. The State and others* (**2018 SCMR 326**) where the august Supreme Court of Pakistan was pleased to hold as under:-

> "*It has been observed by us that the occurrence in this case as per prosecution took place on 03.09.1999 at 3.00 a.m. (later half of night) and the matter was reported to the police on the same day at 8.30 a.m. i.e. after five hours and thirty minutes of the occurrence. The distance between the place of occurrence and the police station is 09 miles. The postmortem on the dead body of deceased was conducted on the same day at 2.00 p.m. i.e. after 11 hours of the occurrence. No explanation whatsoever has been given by the complainant Shahadat Ali (PW5) and Umer Daraz (PW6) in the FIR or while appearing before the learned trial Court qua the delay in lodging the FIR or for that matter the belated postmortem of the deceased."*

Guidance is sought from the principles enunciated by the august Supreme Court of Pakistan in the cases of "*G. M. NIAZ Vs. The State"* (**2018 SCMR 506**), *Abdul Jabbar and another Vs. The State* (**2019 S C M R 129**) and *Muhammad Shafi alias Kuddoo Vs. The State and others* (**2019 S C M R 1045**).

18. We have also noted with grave concern that though the prosecution witnesses namely Nasir Iqbal (PW-3) and Javed Iqbal (PW-4) stated that on **30.11.2019** at about 07.00 p.m., when both the witnesses were present in the house of Javed Iqbal (PW-4) , both the appellants namely Kashif Noman alias Kashi and Mst. Nuzhat Rasheed came to the house of Javed Iqbal (PW-4) and confessed their guilt of having committed the *Qatl-i-Amd* of Naveed Iqbal (deceased), the prosecution witness namely **Ahsan Zafar (PW-5)** admitted during cross-examination that even till **08.12.2019**, neither he nor

any of the witnesses related to the deceased, including the prosecution witness namely Nasir Iqbal (PW-3) , the complainant of the case , had any knowledge about the involvement of the appellants in the *Qatl-i-Amd* of the deceased. The prosecution witness namely Ahsan Zafar (PW-5) admitted during cross-examination , as under:-

> "Nasir Iqbal complainant is my real uncle. Naveed Iqbal deceased was also my uncle. It is correct that **till 08.12.2019, I and my family members were not in knowledge that who committed his murder** " (emphasis supplied)

The above referred portion of the cross-examination of the prosecution witness namely Ahsan Zafar (PW-5) itself is sufficient to reject the statements of the prosecution witnesses namely Nasir Iqbal (PW-3) and Javed Iqbal (PW-4) that on **30.11.2019**, the appellants had confessed to their guilt as it was admitted by the prosecution witness namely **Ahsan Zafar (PW-5)** that even till **08.12.2019**, neither he nor *any of the witnesses related to the deceased*, including the prosecution witness namely Nasir Iqbal (PW-3) , the complainant of the case , had any knowledge about the involvement of the appellants in the *Qatl-i-Amd* of the deceased.

19. The learned Additional Prosecutor General and the learned counsel for the complainant have also laid much reliance on the statements of the prosecution witnesses namely Ahsan Zafar (PW-5) and Muhammad Shahbaz (PW-6) who both stated that on 08.12.2019, at about 11 a.m.-12.00 noon, the appellant namely Kashif Noman alias Kashi met the said witnesses and confessed his guilt of having committed the *Qatl-i-Amd* of Naveed Iqbal

(deceased). According to the settled jurisprudence, there could be a few motivating factors for making a confession like: *(i) to boast off (ii) to ventilate the suffocating conscience and (iii) to seek help when actually trapped by investigation*. Boasting off is very rare in such heinous offences where fear dominates and if boasting is the motivation it is always done before an extreme confidant as well as the one who shares close secrets. To make a confession in order to give vent to one's pressure on mind and conscience is another aspect of the same psyche. One gives vent to one's feelings only before a strong and close confidant. Another motivation for making a confession can be to seek the help of a person in a position to help him escape when trapped during the investigation. A perusal of the statements of the prosecution witnesses namely Ahsan Zafar (PW-5) and Muhammad Shahbaz (PW-6) reveals that there did not exist any of the above mentioned reasons which could have made the appellant namely Kashif Noman alias Kashi confess before the said prosecution witnesses namely Ahsan Zafar (PW-5) and Muhammad Shahbaz (PW-6). It was admitted by the prosecution witnesses namely Ahsan Zafar (PW-5) and Muhammad Shahbaz (PW-6) that they had not ever met the appellant namely Kashif Noman alias Kashif before 08.12.2019, the day when allegedly the appellant namely Kashif Noman alias Kashi confessed before the prosecution witnesses namely Ahsan Zafar (PW-5) and Muhammad Shahbaz (PW-6). The prosecution witness namely Ahsan Zafar (PW-5) during cross-examination admitted as under:-

> "It is correct that when Kashif Nauman came to us on 08.12.2019 neither he was known to us nor we were known to him.
>
> ……
>
> Prior to 08.12.2019 Kashif Nauman was not known to me."

The prosecution witness namely Muhammad Shahbaz (PW-6) , during the cross-examination , admitted as under:-

> "I was not earlier familiar with the accused person Kashif Nauman. "

In the instant case, the position of the witnesses before whom extra-judicial confession was made was such that they were neither the close confidants of the accused nor in any manner said to be sharing any habit or association with the accused rather both the prosecution witnesses namely Ahsan Zafar (PW-5) and Muhammad Shahbaz (PW-6) were not even known to the appellant namely Kashif Noman alias Kashi. Both the possibilities for confessing; boasting or ventilating, in the circumstances, were not there. Moreover, as mentioned above, the prosecution witness namely Ahsan Zafar (PW-5) admitted during cross-examination that till **08.12.2019**, he did not have any clue with regard to the identity of the person involved in the murder of the deceased namely Naveed Iqbal. One finds it hard to understand as to why the appellant would make his breast clean when apparently he was under no compulsion to oblige the prosecution which was clueless about the circumstances leading to the death of the deceased. The alleged extra-judicial confession is so detailed and comprehensive that it covers almost every aspect of the prosecution case; it is in fact an

encyclopedia of the prosecution case. A man under the stress of compunction of his conscious is not supposed to give such minute details that too on the assurance of help. Therefore, when the appellant namely Kashif Noman alias Kashi was not even suspected , for him to have confessed for seeking help of the prosecution witnesses namely Ahsan Zafar (PW-5) and Muhammad Shahbaz (PW-6) , when actually trapped by the investigation, was also not a circumstance haunting the appellant namely Kashif Noman alias Kashi.

20. We have also noted that though the prosecution witnesses namely Ahsan Zafar (PW-5) and Muhammad Shahbaz (PW-6) were closely related to the deceased , however both the prosecution witnesses namely Ahsan Zafar (PW-5) and Muhammad Shahbaz (PW-6), did not respond at all to the said alleged confessional statement of appellant namely Kashif Noman alias Kashi and calmly allowed him to leave the petrol pump of the prosecution witness namely Muhammad Shahbaz (PW-6) after hearing the alleged confession of the appellant namely Kashif Noman alias Kashi. The prosecution witnesses namely Ahsan Zafar (PW-5) and Muhammad Shahbaz (PW-6) candidly admitted in their statements that the appellant namely Kashif Noman alias Kashi was allowed to leave by them after they had heard him confess to his guilt about the murder. The prosecution witness namely Ahsan Zafar (PW-5) during cross-examination , admitted as under:-

> " Shahbaz s/o Abdul Hameed PW of this case is my close relative.
>
> …….

> I did not apprehend the accused Kashif Nauman when he came to me and made extra judicial confession. Shahbaz and Naveed are not the real brothers. Shahbaz also did not make any effort to apprehend the accused Kashif Nauman. **We let him to go."** (emphasis supplied)

The prosecution witness namely Muhammad Shahbaz (PW-6) during cross-examination , admitted as under:-

> " I cannot apprehend the accused at that time. We also did not apprehend the accused"

This demeanor of the prosecution witnesses namely Ahsan Zafar (PW-5) and Muhammad Shahbaz (PW-6) was not natural at all and even otherwise contrary to normal human behaviour.

21. We have also noted that both the prosecution witnesses namely Ahsan Zafar (PW-5) and Muhammad Shahbaz (PW-6) candidly admitted that they never told the fact of the confession made by the appellant namely Kashif Noman alias Kashi before them on 08.12.2019 at 12.00 noon to the police on the said day. The prosecution witness namely Ahsan Zafar (PW-5), during cross-examination, admitted as under:-

> " **On 08.12.2019 after knowledge I had not immediately informed to the police or any other family members.** I on the spot telephonically informed to my uncle Javed Iqbal. My uncle did not come with police at the patrol pump station. I myself did not go to the police station anyhow I do not know about my uncle whether he went to the police station or not."

The prosecution witness namely Muhammad Shahbaz (PW-6) , during cross-examination , admitted as under:-

> "I do not know that on the day when the accused Kashif Nauman made extra judicial confession anybody informed to the police or not. **In my presence my friend Ahsan Zafar did not inform to his uncle or any other family member about the extra judicial confession of the accused Kashif Nauman**. I cannot remember that after extra judicial confession of the accused Kashif Nauman after how many days I went to the police station for the first time. I went to the police station on 5/6 occasion. I also got recorded my statement U/s 161 Cr.P.C. **I cannot remember that after how many days I got recorded the statement to the police when the accused came at my petrol pump.** Ahsan Zafar is my relative and friend from my childhood" (emphasis supplied)

It is trite that the delayed recording of the statement of a prosecution witness under section 161 of the Code of Criminal Procedure, 1898 reduces its value to nothing unless there is a plausible explanation for such delay. No explanation, much less plausible, has been given by the prosecution witnesses namely Ahsan Zafar (PW-5) and Muhammad Shahbaz (PW-6) for not getting their statements under section 161 of the Code of Criminal Procedure, 1898 recorded immediately and therefore no value can be attached to his statement. The august Supreme Court of Pakistan in the case of "*Abdul Khaliq Vs. The State"* (**1996 SCMR 1553**) has held as under:

> *"It is a settled position of law that late recording of 161, Cr.P.C. statement of a prosecution witness reduces its value to nill unless there is plausible explanation for such delay".*

The august Supreme Court of Pakistan in the case of "*Muhammad Khan Vs. Maula Bakhsh"* (**1998 SCMR 570**) has held as under:

> *"It is a settled law that credibility of a witness is looked with serious suspicion if his statement under section 161, Cr.P.C is recorded with delay without offering any plausible explanation".*

The august Supreme Court of Pakistan in the case of "*Syed Saeed Muhammad Shah and another Vs. The State"* (**1993 SCMR 550**) at page 571 has held as under:

> *"In the absence of satisfactory nature of explanation normally rule is that statements recorded by police after delay and without explanation are to be ruled out of consideration. In this case unsatisfactory explanation which is not substantiated can be equated with no explanation".*

22. After an overwhelming analysis of the prosecution evidence with regard to extra-judicial confession, we have come to the conclusion that the prosecution has manufactured the said evidence of extra-judicial confessions of the appellants in this case to strengthen the case against the appellants after taking legal advice in this regard. In these eventualities, the statements of the prosecution witnesses namely Ahsan Zafar (PW-5), Muhammad Shahbaz (PW-6), Nasir Iqbal (PW-3) and Javed Iqbal (PW-4) about the extra-judicial confessions of the appellants are provenly not proved. Even otherwise, extra-judicial confession is a very weak type of evidence and the same obviously needs impartial and strong corroboration from other independent sources which is missing in this case. The evidentiary value of the extra-judicial confession came up for consideration before august

Supreme Court of Pakistan in the case of "*Sajid Mumtaz and others v. Basharat and others*" (**2006 SCMR 231**), wherein, at page 238, the Apex Court of Pakistan observed as under:-

> *"17. .....This Court and its predecessor Court (Federal Court) have elaborately laid down the law regarding extra-judicial confessions staring from Ahmed v. The Crown PLD 1951 FC 103-107 up to the latest. Extra judicial confession has always been taken with a pinch of salt. In Ahmed v. The Crown, it was observed that in this country (as a whole) extra-judicial confession must be received with utmost caution. Further, it was observed from time to time, that before acting upon a retracted extra-judicial confession, the Court must inquire into all material points and surrounding circumstances to "satisfy itself fully that confession cannot but be true". As, an extra¬judicial confession is not a direct evidence, it must be corroborated in material particulars before being made the basis of conviction.*
>
> *18. It has been further held that the status of the person before whom the extra-judicial confession is made must be kept in view, that joint confession cannot be sued against either of them and that it is always a weak type of evidence which can easily be procured whenever direct evidence is not available. Exercise of utmost care and caution has always been the rule prescribed by this Court.*
>
> *19. It is but a natural curiosity to ask as to why a person of sane mind should at all confess. No doubt the phenomenon of confession is not altogether unknown but being a human conduct, it had to be visualized, appreciated and consequented upon purely in the background of a human conduct.*
>
> *20. Why a person guilty of offence entailing capital punishment should at all confess. There could be a few motivating factors like: (i) to boast off (ii) to ventilate the suffocating conscience and (iii) to seek help when actually trapped by investigation. Boasting off is very rare in such-like heinous offences where fear dominates and always done before an extreme confident as well as the one who shares close secrets. To make confession in order to give vent to ones pressure on mind and conscience is another aspect of the same psyche. One gives vent to ones feelings and one removes catharses only before a strong and close confident. In the instant case the*

position of the witnesses before whom extra-judicial confession is made is such that they are neither the close confident of the accused nor in any manner said to be sharing any habit or association with the accused. Both the possibilities of boasting and ventilating in the circumstances are excluded from consideration.

21. Another most important and natural purpose of making extra-judicial confession is to seek help from a third person. Help is sought firstly, when a person is sufficiently trapped and secondly, from one who is authoritative, socially or officially.....

22. As observed by the Federal Court, we would reiterate especially referring to this part of the country, that extra-judicial confessions have almost become a norm when the prosecution cannot otherwise succeed. Rather, it may be observed with concern as well as with regret that when the Investigating Officer fails to properly investigate the case, he resorts to padding and concoctions like extra-judicial confessions. Such confessions by now, have become the signs of incompetent investigation. A judicial mind, before relying upon such weak type of evidence, capable of being effortlessly procured must ask a few questions like why the accused should at all confess; what is the time lag between the occurrence and the confession, whether the accused had been fully trapped during investigation before making the confession, what is the nature and gravity of the offence involved, what is the relationship or friendship of the witnesses with the maker of confession and what, above all is the position or authority held by the witness".

In the case of "Mst. *Asia Bibi v. The State and others*" (**P L D 2019 Supreme Court 64**) wherein, the august Supreme Court of Pakistan was pleased to observe as under:-

"In this regard it is to be noted that this Court has repeatedly held that evidence of extra-judicial confession is a fragile piece of evidence and utmost care and caution has to be exercised in placing reliance on such a confession. It is always looked at with doubt and suspicion due to the ease with which it may be concocted. The legal worth of the extra judicial confession is almost equal to naught, keeping in view the natural course of events, human behaviour, conduct and probabilities, in ordinary course. It could be taken as corroborative of the charge if it, in the first instance, rings true and then finds support from other evidence of unimpeachable

> *character. If the other evidence lacks such attribute, it has to be excluded from consideration. Reliance in this behalf may be made to the cases of Nasir Javaid v. State (2016 SCMR 1144), Azeem Khan and another v. Mujahid Khan and others (2016 SCMR 274), Imran alias Dully v. The State (2015 SCMR 155), Hamid Nadeem v. The State (2011 SCMR 1233), Muhammad Aslam v. Sabir Hussain (2009 SCMR 985), Sajid Mumtaz and others v. Basharat and others (2006 SCMR 231), Ziaul Rehman v. The State (2000 SCMR 528) and Sarfraz Khan v. The State and 2 others (1996 SCMR 188).”*

Keeping in view the guidelines given by august Supreme Court of Pakistan in the above mentioned judgments, we palpably discard the evidence of extra-judicial confessions of the appellants manufactured by the prosecution to strengthen its case. This part of the evidence is nothing but a tailored narrative, which was arranged with the help of the Investigating Agency thus, it is of no legal worth and being absolutely unreliable, is excluded from consideration.

23. According to the prosecution case, the *Qatl-i-Amd* of Naveed Iqbal (deceased) was committed in his house. It is also an admitted fact of the prosecution case that the place of occurrence was occupied by the children of Naveed Iqbal (deceased). All the four prosecution witnesses namely Nasir Iqbal (PW-3), Javed Iqbal (PW-4), Ahsan Zafar (PW-5) and Muhammad Shahbaz (PW-6) stated in their statements before the learned trial court that Naveed Iqbal (deceased), was blessed with the birth of **two children** and the said children were present in the same house where the occurrence took place. The prosecution witness namely Nasir Iqbal (PW-3) stated during cross-examination , as under:-

> "Deceased was married about 14/15 years back. Deceased have two children namely Muhammad Jasim aged about 8 years and Mutaiba aged about 13 years
>
> …….
>
> After the occurrence Mst. Nuzhat and her two children remained in the same house for about one month after the occurrence of the instant case.
>
> ……
>
> It is correct that Mst. Nuzhat accused, her deceased husband and two children who are aged about **13 years and 8 years respectively, were residing in the same house where occurrence took place. It is correct that when I reached at the place of occurrence both children of my deceased brother were present there.** Mst.Nuzhat was also present in the house when I reached, at the place of occurrence." (emphasis supplied)

The prosecution witness namely Javed Iqbal (PW-4) also admitted during cross-examination, as under:-

> "It is correct that my deceased brother had two children aged about 13 years and 8 years and they resided jointly in the house."

The prosecution witness namely Ahsan Zafar (PW-5) also admitted during cross-examination , as under:-

> "When I reached at the place of occurrence, Mst.Nuzhat Rasheed alongwith her children and father and many people from the vicinity were present there. "

The prosecution witness namely Muhammad Shahbaz (PW-6) also admitted during cross-examination , as under:-

"My relative Naveed Iqbal used to run Rickshaw. Naveed Iqbal had three children which were residing in that house prior to the occurrence."

Neither during the course of investigation nor before the learned trial court, the statements of the children of Naveed Iqbal (deceased), who were admittedly the residents of the place of occurrence and were also present there at the time of occurrence, were recorded. Nasir Iqbal (PW-3) the complainant of the case, could have and should have produced the said children of the deceased not only before the Investigating Officer of the case but also before the learned trial court. Moreover, there is no evidence on record that on the day of occurrence, at the time of occurrence, the said children were living somewhere else than with their parents. Zafar Hussain , SI (PW-10), the Investigating Officer of the case, also failed to include in the investigation the inhabitants of the house where the occurrence had taken place and this joint failure of the prosecution witnesses including Nasir Iqbal (PW-3) , the complainant of the case and Zafar Hussain, SI (PW-10), the Investigating Officer of the case, to produce the said inhabitants of the place of occurrence before the learned trial court, reflects poorly upon the veracity of the prosecution case. Article 129 of the Qanun-e-Shahadat, 1984 provides that if any evidence available with the parties is not produced, then it shall be presumed that had that evidence been produced the same would have been gone against the party producing the same. Illustration (g) of the said Article 129 of the Qanun-e-Shahadat Order, 1984 reads as under:-

"(g) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it."

The failure of the prosecution to produce, the children of the deceased , who were admittedly the residents of the place of occurrence and the most natural witnesses, before the learned trial court, has convinced us that had they been produced before the learned trial court they would not have supported the prosecution case. Reliance in this matter is placed on the case of *SHAMSHAD versus THE STATE* (**1998 SCMR 854 also cited as 1999 SCMR 2844**) wherein the august Supreme Court of Pakistan held as under:-

> *"10. The prosecution has also failed to offer a plausible explanation as* ***to why the children of the appellant, who were, admittedly, present in the house at the time of the incident, were not produced as witnesses in the case.*** *In fact, the children of the appellant were the most natural witnesses of the occurrence, However, the Investigating Officer thought it fit not to examine them as witnesses. When confronted with this situation at the time of his cross-examination he explained that two daughters and the son of the appellant were less than 7 years of age. However, in the same breath it was admitted by him that Ruhi Bano was about 8 or 9 years of age. The other children were a few years younger. However, at least the older children under normal circumstances could have given evidence in the Court. The explanation given by the Investigating Officer, therefore, was not tenable.*
>
> ……
>
> *13. Learned State Counsel has however, argued that in case the prosecution had failed to examine any of the appellant's children as a witness, they should have been examined as defence witnesses. It has been further argued that if there are two versions, one given by the prosecution and the other by the defence, then if the latter is not believed, the prosecution version must be believed as true. In our view, both the contentions are untenable. Burden to prove its case beyond a reasonable doubt squarely rests on the prosecution. Such burden cannot be discharged by weaknesses found in the case of the defence. The mere fact that the defence version is not believed by the Court cannot lend credence to the prosecution case if, otherwise, the prosecution has failed to discharge its burden. For the reason enumerated above, we have no hesitation in coming to the conclusion that the prosecution has failed to establish its case against the appellant."(emphasis supplied)*

Reliance is also placed on the case of *Lal Khan versus THE STATE* (**1996 SCMR1846**) wherein the august Supreme Court of Pakistan held as under:-

> *"The prosecution is certainly not required to produce a number of witnesses as the quality and not the quantity of the evidence is the rule but non-production of most natural and material witnesses of occurrence, would strongly lead to an inference of prosecutorial misconduct which would not only be considered a source of undue advantage for possession but also an act of suppression of material facts causing prejudice to the accused. The act of withholding of most natural and a material witness of the occurrence would create an impression that the witness if would have been brought into witness-box, he might not have supported the prosecution and in such eventuality the prosecution must not be in a position to avoid the consequence."*

Reliance is also placed on the case of *USMAN alias KALOO versus THE STATE* (**2017 SCMR 622**) wherein the august Supreme Court of Pakistan held as under:-

> *"A peculiar feature of this case is that the inmates of the house of occurrence, i.e. the mother, wife and children of Noor Muhammad deceased had never been associated with the investigation of this case and no statement of the said natural witnesses had been recorded by the investigating officer nor were they produced before the trial court".*

Reliance is also placed on the cases of *Muhammad Irshad Vs. Allah Ditta and others* (**2017 SCMR 142**) and *G. M. NIAZ Vs. The State*" (**2018 SCMR 506**). In this manner, the prosecution case suffers from inherent defects which are irreconcilable as it is.

24. The learned Additional Prosecutor General and the learned counsel for the complainant have vehemently argued that the disclosure of the appellant namely Mst. Nuzhat Rasheed made at the time when she pointed out the place of murder of the deceased on 09.12.2019 and as contained in the memo (Exh. PD) was admissible and relevant and amounted to a confession of guilt under the provisions of article 40 of the Qanun-e-Shahadat Order, 1984. The discovery of any fact on the information of the accused in custody

of Police is admissible under article 40 of the Qanun-e-Shahadat Order, 1984, which reads as under:-

> "*40. How much of information received from accused may be proved. When any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."*

A perusal of above article 40 of the Qanun-e-Shahadat Order, 1984 reveals firstly that it serves as a proviso to Articles 38 and 39 of the Qanun-e-Shahadat Order, 1984. It comes into operation only if and when certain facts are deposed to as discovered in consequences of information received from an accused person in police custody. Thus, in order to apply Article 40 of the Qanun-e-Shahadat Order, 1984, the prosecution must establish that information given by the accused led to the discovery of some fact deposed by him and the discovery must be of some fact which the police had not previously learnt from any other source. According to the prosecution case itself, the place of occurrence was known to the witnesses already since 15.08.2019 and no new fact was discovered in consequence of pointing out of the place of occurrence by the appellant namely Mst. Nuzhat Rasheed on 09.12.2019. Hence, the alleged statement of the appellant namely Mst. Nuzhat Rasheed made in police custody at the time when she pointed out the place of murder of the deceased cannot be read in evidence and would remain inadmissible. The august Supreme Court of Pakistan in the case of *Fazal Subhan and another Vs. The State and others* (**2019 S C M R 1027**) has enunciated the following principle:-

> *"Memo of pointing out of place of occurrence cannot be equated with disclosure within the contemplation Article 40 of the Qanun-e-Shahadat Order, 1984."*

25. The learned Additional Prosecutor General and the learned counsel for the complainant, have submitted that the recovery of the Pillow (P-3) from the appellant namely Kashif Noman alias Kashi offered sufficient corroboration of the statements of the prosecution witnesses namely Nasir Iqbal (PW-3), Javed Iqbal (PW-4) , Ahsan Zafar (PW-5) and Muhammad Shahbaz (PW-6). Regarding the recovery of the Pillow (P-3) from the appellant namely Kashif Noman alias Kashi, the same cannot be relied upon as the Investigating Officer of the case, did not join any witness of the locality during the recovery of the Pillow (P-3) from the appellant namely Kashif Noman alias Kashi which was in clear violation of section 103 Code of Criminal Procedure, 1898. The provisions of section 103 Code of Criminal Procedure, 1898, unfortunately, are honoured more in disuse than compliance. To appreciate it better, this section is being reproduced:-

> "103.--(1) Before making a search under this chapter, the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search and may issue an order in writing to them or any of them so to do."

Therefore, the evidence of the recovery of the Pillow (P-3) from the appellant namely Kashif Noman alias Kashi cannot be used as incriminating evidence against the appellant, being evidence that was obtained through illegal means and hence hit by the exclusionary rule of evidence. The august

Supreme Court of Pakistan in the case of *Muhammad Ismail and others Vs. The State* (**2017 SCMR 898**) at page 901 has held as under:-

> "For the above mentioned recovery of weapons the prosecution had failed to associate any independent witness of the locality and, thus, the mandatory provisions of section 103, Cr.P.C. had flagrantly been violated in that regard."

Furthermore, it is admitted part of the prosecution case that Zafar Hussain SI (PW-10), Investigating Officer of the case, on **07.12.2019** had visited the house from where the pillow (P-3) was recovered and remained there for a substantial period of time and in that scenario, had the pillow (P-3) been present in the same house, then its presence must have been noted by Zafar Hussain SI (PW-10), Investigating Officer of the case, however it was not. The prosecution witness namely Nasir Iqbal (PW-3) during cross-examination , admitted as under:-

> "When Kashif was arrested and on his pointation a pillow P-3 was recovered after **four months of the day of occurrence from the place of occurrence**. The pillow was of common nature. Pillow was never recovered in my presence. " (emphasis supplied)

The prosecution witness namely Javed Iqbal (PW-4), during cross-examination , admitted as under:-

> "During the investigation from the place of occurrence one pillow was recovered on the pointation of accused person. The cover of pillow was in two colour Badami and Kalaji colour. At this time pillow is not present in the court.
>
> …….

> It is correct that pillow was of common category and is easily available in the market ”

The most important fact relating to the recovery of pillow (P-3) is that Zafar Hussain, SI (PW-10) , the Investigating Officer of the case , admitted during cross-examination that the said pillow (P-3) was recovered from the house which was in the possession of the complainant namely Nasir Iqbal and his family. Zafar Hussain, SI (PW-10), the Investigating Officer of the case, during the cross-examination, stated as under:-

> “It is correct that during investigation accused Kashif Nauman disclosed and got recovered a Pillow on 24.01.2020 from the place of occurrence. This Pillow was recovered after about five months of the occurrence. **When Pillow was recovered from the place of occurrence that place was in possession of complainant and their family members** from the date of occurrence ” (emphasis supplied).

All these facts denude the effort made by Zafar Hussain SI (PW-10), Investigating Officer of the case to prop up the failing prosecution case by showing sham recovery of the pillow (P-3).

26. The prosecution has also relied upon the Call Data Record (Exh.PT/1 and Exh.PT/2) collected during the investigation of the case related to the Subscriber Identity Module (P-4) recovered from the appellant namely Kashif Noman alias Kashi on 28.01.2020, so as to prove the guilt of the appellants. Admittedly no voice record or its transcript has been brought on record. It is stressed that in the absence of any voice call data or record, simply the production of the Call Data Record without the disclosure of the details of the conversations is not relevant to prove any fact supporting the

prosecution case against the appellants. Reliance is placed on the case of *"Azeem Khan and another Vs. Mujahid Khan and others"* (**2016 SCMR 274)**, wherein, it has been held as under:-

> "*The cell phone call data collected is of no help to the prosecution for the reasons that numerous calls have been made indicating continuous interaction between the two cell phones, contrary to the evidence given by Muhammad Wali (PW-3), who has stated at the trial that the unknown caller made calls on his cell phone four times. No competent witness was produced at the trial, who provided the call data, Ex.P-1 to Ex.P-5.* ***No voice record transcript has been brought on record.*** *Similarly from which area the caller made the calls, is also not shown in it. Above all, the most crucial and conclusive proof that the cell phone was owned by the accused and SIM allotted was in his name is also missing. In this view of the matter, this piece of evidence is absolutely inconclusive and of no benefit to the prosecution nor it connects the accused with the crime in any manner."*

27. The learned Additional Prosecutor General and the learned counsel for the complainant have also relied upon the evidence of motive and submitted that it corroborated the ocular account. The motive of the occurrence as stated by Nasir Iqbal (PW-3) in his written application (Exh. P.C.) was that the appellants namely Kashif Noman alias Kashi and Mst. Nuzhat Rasheed had developed an illicit liaison and as the deceased discovered the said relationship, therefore, both the appellants committed his murder. We have perused the statements of the prosecution witnesses namely Nasir Iqbal (PW-3), Javed Iqbal (PW-4), Ahsan Zafar (PW-5) and Muhammad Shahbaz (PW-6) and find that they failed to prove the motive of the occurrence as stated by them. The prosecution witness namely Nasir Iqbal (PW-3), admitted during cross-examination that he himself had never seen the appellants in the company of each other and further admitted that even the deceased had not ever reported the matter of illicit relationship of

the appellants with each other to the police. The prosecution witness namely Nasir Iqbal (PW-3) admitted during cross-examination , as under:-

> "I never saw the accused Mst.Nuzhat Rasheed and Kashif Nauman in their illicit relation. They were caught red handed by my deceased brother. He never initiated any legal proceedings against the accused Mst.Nuzhat Rasheed or accused Kashif Nauman regarding their illicit relationship.
>
> ……..
>
> I never saw Mst.Nuzhat in any objectionable condition with Kashif Nauman or any other person from the day of Nikah till today. "

Similarly, the prosecution witness namely Javed Iqbal (PW-4) also admitted that he himself had never witnessed the appellants in the company of each other. Javed Iqbal (PW-4), during cross-examination, stated as under:-

> "I never saw Mst.Nuzhat with anybody in objectionable condition from the day of marriage till today "

The prosecution witness namely Ahsan Zafar (PW-5) also admitted that he had no knowledge about the relationship of the appellants with each and stated during cross-examination, as under:-

> "It is correct that I personally do not know about the illicit relations between Mst. Nuzhat Rasheed and Kashif Nauman accused present in the court "

The prosecution witness namely Ahsan Zafar (PW-5) also admitted the lack of any knowledge regarding the relationship of the appellants with each other and stated during cross-examination, as under:-

> " I myself have not witnessed any illicit relation of the accused Kashif Nauman with Nuzhat Rasheed."

The Investigating Officer of the case also did not collect any evidence in support of the alleged motive of the occurrence. Zafar Hussain, SI (PW-10), the Investigating Officer of the case , during cross-examination, stated as under:-

> "It is correct that during my investigation not a single witness of complainant party or neighbourars gave statement that they saw both the accused in an objectionable condition or in a compromising position prior to occurrence of this case "

It was also admitted that the deceased had contracted marriage with the appellant about fourteen years prior to the occurrence and was also living with the appellant at the time of occurrence. There is no evidence on record that Naveed Iqbal (deceased) was facing any threat to his life at the hands of the appellants prior to the occurrence rather to the contrary he was living with the appellant namely Mst. Nuzhat Rasheed till his tragic death. We have also noted that the appellant namely Mst. Nuzhat Rasheed and Naveed Iqbal (deceased) were blessed with the birth of as many as two children. This also proves that the appellant namely Mst. Nuzhat Rasheed and the deceased were having a happy and a healthy marital life and hence there did not exist any reason for the appellant namely Mst. Nuzhat Rasheed to have murdered her loving husband. The prosecution witnesses failed to provide evidence enabling us to determine the truthfulness of the motive alleged, and the fact that the said motive was so compelling that it could have led the appellant to

have committed the *Qatl-i-Amd* of the deceased. There is a poignant hush with regard to the particulars of the motive alleged. No independent witness was produced by the prosecution to prove the motive as alleged. Even otherwise a tainted piece of evidence cannot corroborate another tainted piece of evidence. The august Supreme Court of Pakistan has held in the case of *Muhammad Javed v. The State* **(2016 SCMR 2021)** as under:

> "*The said related and chance witnesses had failed to receive any independent corroboration inasmuch as no independent proof of the motive set up by the prosecution had been brought on the record of the case.*"

28. It has been argued by the learned Additional Prosecutor General and the learned counsel for the complainant that where any person dies an unnatural death in the house of such accused, then some part of the onus lies on that person to establish the circumstances in which such unnatural death had occurred. The prosecution is bound to prove its case against an accused person beyond a reasonable doubt at all stages of a criminal case and in a case where the prosecution asserts the presence of some eye-witnesses and such claim of the prosecution is not established by it, there the accused person could not be convicted merely on the basis of a presumption that since the murder of a person had taken place in his house, therefore, it must be he and none else who would have committed that murder. The learned Additional Prosecutor General submits that it was in the knowledge of the appellant namely Mst. Nuzhat Rasheed how the deceased died so it was the appellant namely Mst. Nuzhat Rasheed who was responsible, in the absence of any explanation. The law on the burden of proof, as provided in Article

117 of the Qanun-e-Shahadat, 1984, mandates the prosecution to prove, and that too, beyond any doubt, the guilt of the accused for the commission of the crime for which he is charged. The said provision provides:

> ***"117. Burden of proof**:- (1) Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.*
>
> *(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."*

On a conceptual plain, Article 117 of the Qanun-e-Shahadat, 1984 enshrines the foundational principle of our criminal justice system, whereby the accused is presumed to be innocent unless proved otherwise. Accordingly, the burden is placed on the prosecution to prove beyond doubt the guilt of the accused, which burden can never be shifted to the accused, unless the legislature by express terms commands otherwise. It is only when the prosecution is able to discharge the burden of proof by establishing the elements of the offence, which are sufficient to bring home the guilt of the accused then, the burden is shifted upon the accused, inter alia, under Article 122 of the Qanun-e-Shahadat, 1984, to produce evidence of facts, which are especially in his exclusive knowledge, and practically impossible for the prosecution to prove, to avoid conviction. Article 122 of Qanun-e-Shahadat,1984 reads as under:

> *"122. Burden of proving fact especially within knowledge:- When any fact is especially within the knowledge of any person, the burden to proving that fact is upon him."*

It has to be kept in mind that Article 122 of the Qanun-e-Shahadat, 1984 comes into play only when the prosecution has proved the guilt of the

accused by producing sufficient evidence, except the facts referred in Article 122 Qanun-e-Shahadat, 1984, leading to the inescapable conclusion that the offence was committed by the accused. Then, the burden is on the accused not to prove his innocence, but only to produce evidence enough to create doubts in the prosecution's case. It may be noted that this issue was also dilated upon by the august Supreme Court of Pakistan, in the case of "*Rehmat alias Rahman alias Waryam alias Badshah v. The State"* (**PLD 1977 SC 515**), where, while deliberating upon Section 106 of the Evidence Act, which is *para materia* with Article 122 of the Qanun-e-Shahadat, 1984, held as under:

> *"Needless to emphasis that in spite of section 106 of the Evidence Act in criminal case the onus rests on the prosecution to prove the guilt of the accused beyond reasonable doubt and this section cannot be construed to mean that the onus at any stage shifts on to the accused to prove his innocence or make up for the inability and failure of the prosecution to produce evidence to establish the guilt of the accused. Nor does it relieve! the prosecution of the burden to bring the guilt home to the accused. It is only after the prosecution has on the evidence adduced by it, succeeded in raising reasonable inference of the guilt of the accused, unless the same is rebutted, that this section wherever applicable, comes into play and the accused may negative the inference by proof of some facts within his special knowledge. If, however, the prosecution fails to prove the essential ingredients of the offence, no duty is cast on the accused to prove his innocence."*

The *ratio decidendi* of the above decision was further developed in the case of "*Nasrullah Alias Nasro Versus The STATE* (**2017 S C M R 724**), wherein, it has been held as under:

> *"It has been argued by the learned counsel for the complainant that in the cases of Arshad Mehmood v. The State (2005 SCMR 1524) and Saeed Ahmed v. The State (2015 SCMR 710) this Court had held that where a wife of a person or any vulnerable dependent dies an unnatural death in the house of such person then some part of the onus lies on him to establish the circumstances in which such unnatural death had occurred. The learned counsel for the complainant has maintained that the stand taken by the appellant regarding suicide having been committed by the deceased was neither established by him nor did it fit into the circumstances of the case, particularly when the medical evidence contradicted the same. Be that as it may holding by this Court that some part of the onus lies on the accused*

> *person in such a case does not mean that the entire burden of proof shifts to the accused person in a case of this nature. It has already been clarified by this Court in the case of Abdul Majeed v. The State (2011 SCMR 941) that the prosecution is bound to prove its case against an accused person beyond reasonable doubt at all stages of a criminal case and in a case where the prosecution asserts presence of some eye-witnesses and such claim of the prosecution is not established by it there the accused person could not be convicted merely on the basis of a presumption that since the murder of his wife had taken place in his house, therefore, it must be he and none else who would have committed that murder.*
>
> ……
>
> *In a case of this nature the appellant could not have been convicted for the alleged murder merely because he happened to be the husband of the deceased."*

In a criminal case, the burden of proof is on the prosecution and Article 122 of the Qanun-e-Shahadat, 1984 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience. If the Article 122 of the Qanun-¬e-Shahadat, 1984 was to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case, the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not. Article 122 of the Qanun-e-Shahadat, 1984 cannot be used to undermine the well-established rule of law that, save in a very exceptional class of cases, the burden is on the prosecution and never shifts. Throughout the web of the Law, one golden thread is always to be seen, that it is the duty of the prosecution to prove the accused's guilt subject to any statutory exception. No matter what the charge, the principle that the prosecution must prove the guilt of the accused is the law and no attempt to whittle it down can be entertained. As discussed above, the prosecution failed miserably to prove

the charge against the appellants. In a case of this nature, the appellant namely Mst. Nuzhat Rasheed could not have been convicted for the alleged murder merely because she happened to be one of the residents of the place of occurrence. An accused person cannot be convicted merely because she did not explain the circumstances in which the deceased had lost his life. The august Supreme Court of Pakistan has held in the case of "*MUHAMMAD JAMSHAID and another vs. The State and others"* (**2016 SCMR 1019**) as under:

> *"only circumstance relied upon by the prosecution was that the deadbody of the deceased had been found inside the house of the appellant and, hence, it was concluded by the courts below that it must be none other than the present appellant who had done the deceased to death. We have found such an approach adopted by the courts below to be nothing but speculative".*

The august Supreme Court of Pakistan has held in the case of "*Arshad Khan vs. The State"* (**2017 SCMR 564**) as under:

> *"It may be true that it has been held by this Court in the cases of Arshad Mehmood v. The State (2005 SCMR 1524) and Saeed Ahmed v. The State (2015 SCMR 710) that in such cases some part of the onus lies on the accused person to explain as to how and in which circumstances the accused person's wife had died an unnatural death inside the confines of the matrimonial home but at the same time it has also been clarified by this Court in the case of Abdul Majeed v. The State (2011 SCMR 941) that where the prosecution completely fails to discharge its initial onus there no part of the onus shifts to the accused person at all."*

The august Supreme Court of Pakistan has held in the case of *Nazeer Ahmed vs. The State* (**2016 SCMR 1628**) as under:

> *"It may be true that when a vulnerable dependant is done to death inside the confines of a house, particularly during a night, there some part of the onus lies on the close relatives of the deceased to explain as to how their near one had met an unnatural death but where the prosecution utterly fails to prove its own case against an accused person there the accused person cannot be convicted on the sole basis of his failure to explain the death. These aspects of the legal issue have been commented upon by this Court in the cases of Arshad Mehmood v. The State (2005 SCMR 1524), Abdul Majeed v. The State (2011 SCMR 941) and Saeed Ahmed v. The State (2015 SCMR 710)."*

The august Supreme Court of Pakistan has held in the case of *Asad Khan vs. The State* (**PLD 2017 Supreme Court 681**) as under:

> *"It had been held by this Court in the case of Arshad Mehmood v. The State (2005 SCMR 1524) that where a wife of a person dies an unnatural death in the house of such person there some part of the onus lies on him to establish the circumstances in which such unnatural death had occurred. In the later case of Saeed Ahmed v. The State (2015 SCMR 710) the said legal position had been elaborated and it had been held that an accused person is under some kind of an obligation to explain the circumstances in which his vulnerable dependent had met an unnatural death within the confines of his house; It had, however, been held in the case of Abdul Majeed v. The State (2011 SCMR 941) that where the entire case of the prosecution stands demolished or is found to be utterly unbelievable there an accused person cannot be convicted merely because he did not explain the circumstances in which his wife or some vulnerable dependent had lost his life. In such a case the entire burden of proof cannot be shifted to him in that regard if the case of the prosecution itself collapses. The present case is a case of the latter category wherein the entire case of the prosecution has been found by us to be utterly unbelievable and the same stands demolished and, thus, we cannot sustain the appellant's conviction and sentence merely on the basis of an inference or a supposition qua his involvement."*

The august Supreme Court of Pakistan has held in the case of *Abdul Majeed vs. The State* (**2011 SCMR 941**) as under:

> *"The basic principle of criminal law is that it is the burden of the prosecution to prove its case against the accused beyond reasonable doubt. This burden remains throughout and does not shift to the accused, who is only burdened to prove a defence plea, if he takes one. The strangulation to death of the appellant's wife in his house may be a circumstance to be taken into account along with the other prosecution evidence. However; this by itself would not be sufficient to establish the appellant's guilt in the absence of any other evidence of the prosecution connecting him to the crime. The prosecution has also not been able to establish that the appellant was present in the house at the time his wife was murdered. This, perhaps, distinguishes this case from that of "Afzal Hussain Shah v. The State" (ibid) where the accused admittedly was present in the house when his wife was killed."*

29. The only other piece of evidence left to be considered by us is the medical evidence with regard to the injuries observed on the dead body of the deceased by Dr. Tariq Azhar (PW-8) but the same is of no assistance in this case as medical evidence by its nature and character, cannot recognize a culprit in case of an unobserved occurrence. As all the other pieces of

evidence relied upon by the prosecution, in this case, have been disbelieved and discarded by us, therefore, the appellants' conviction cannot be upheld on the basis of medical evidence alone. The august Supreme Court of Pakistan in its binding judgment titled "*Hashim Qasim and another Vs. The State*" **(2017 SCMR 986)** has enunciated the following principle of law:

> *"The medical evidence is only confirmatory or of supporting nature and is never held to be corroboratory evidence, to identify the culprit."*

The august Supreme Court of Pakistan in its binding judgment titled "*Naveed Asghar and two others Vs. The State*" **(P L D 2021 Supreme Court 600)** has enunciated the following principle of law:

> *"31. The prosecution has attempted to complete the chain of circumstantial evidence by medical evidence relating to the post mortem examinations of the deceased persons. This evidence proves only the factum that death of the deceased persons was caused by cutting their throats through some sharp edge weapon; it does in no way indicate who had cut their throats and with what particular weapon. Medical evidence is in the nature of supporting, confirmatory or explanatory of the direct or circumstantial evidence, and is not "corroborative evidence" in the sense the term is used in legal parlance for a piece of evidence that itself also has some probative force to connect the accused person with the commission of offence. Medical evidence by itself does not throw any light on the identity of the offender. Such evidence may confirm the available substantive evidence with regard to certain facts including seat of the injury, nature of the injury, cause of the death, kind of the weapon used in the occurrence, duration between the injuries and the death, and presence of an injured witness or the injured accused at the place of occurrence, but it does not connect the accused with the commission of the offence. It cannot constitute corroboration for proving involvement of the accused person in the commission of offence, as it does not establish the identity of the accused person.[32] Therefore, the medical evidence is of little help to the prosecution for bringing home the guilt to the petitioners."*

30. In view of the above we are of the considered opinion that the self-negating and contradictory statements of the prosecution witnesses reflect that the prosecution witnesses are not truthful and they are supporting the

afterthought, fabricated and concocted story meant to create incriminating evidence to strengthen the case of unwitnessed occurrence against the appellants. The august Supreme Court of Pakistan in the case of *Imran alias Dully and another Vs. the State and others* **(2015 SCMR 155)** at page 164 has held as under:-

> *"By now, it is a consistent view that when any case rests entirely on circumstantial evidence then, each piece of evidence collected must provide all links making out one straight chain where on one end its noose fit in the neck of the accused and the other end touches the dead body. Any link missing from the chain would disconnect and break the whole chain to connect the one with the other and in that event conviction cannot be safely recorded and that too on a capital charge."*

To carry a conviction on a capital charge it is essential that the courts should deeply scrutinize the circumstantial evidence because fabricating of such evidence is not uncommon and a very minute and narrow examination of the same is necessary to secure the ends of justice. It is imperative for the prosecution to provide all links in the chain, where one end of the same touches the dead body and the other the neck of the accused. The present case is of such a nature that many links are missing in the chain. It would not be wrong to observe that in this particular case, it can be said that there is no link, what to talk about a chain. The august Supreme Court of Pakistan in the case of *Fiaz Ahmad Vs. The State* (**2017 SCMR 2026**) has observed at page 2030 as under:-

> *"It may also be kept in mind that sometimes the investigating agency collects circumstantial evidence seems apparently believable however, if the strict standards of scrutiny are applied there would appear many cracks and doubts in the same which are always*

inherent therein and in that case Courts have to discard and disbelieve the same."

31. Considering all the above circumstances, we entertain serious doubt in our minds regarding the involvement of the appellants namely Kashif Nouman alias Kashi son of Sarfraz Hussain and Mst. Nuzhat Rasheed widow of Naveed Iqbal in the present case. It is a settled principle of law that for giving the benefit of the doubt it is not necessary that there should be so many circumstances rather, if only a single circumstance creating reasonable doubt in the mind of a prudent person is available, then such benefit is to be extended to an accused not as a matter of concession but as of right. The august Supreme Court of Pakistan in the case of "*Muhammad Mansha Vs. The State"* (**2018 SCMR 772**) has enunciated the following principle:

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

Reliance is also placed on the judgment of the august Supreme Court of Pakistan "*Najaf Ali Shah Vs. the State"* (**2021 S C M R 736**) in which it has been held as:-

"9. Mere heinousness of the offence if not proved to the hilt is not a ground to avail the majesty of the court to do complete justice. This is an established principle of law and equity that it is better that 100 guilty persons should let off but one innocent person should not suffer. As the preeminent English jurist William Blackstone wrote, "Better that

ten guilty persons escape, than that one innocent suffer." Benjamin Franklin, who was one of the leading figures of early American history, went further arguing "it is better a hundred guilty persons should escape than one innocent person should suffer." All the contradictions noted by the learned High Court are sufficient to cast a shadow of doubt on the prosecution's case, which entitles the petitioner to the right of benefit of the doubt. It is a well settled principle of law that for the accused to be afforded this right of the benefit of the doubt it is not necessary that there should be many circumstances creating uncertainty and if there is only one doubt, the benefit of the same must got to the petitioner. This Court in the case of Mst. Asia Bibi v. The State (PLD 2019 SC 64) while relying on the the earlier judgments of this Court has categorically held that "if a single circumstance creates reasonable doubt in a prudent mind about the apprehension of guilt of an accused, then he/she shall be entitled to such benefit not as a matter of grace and concession, but as of right. Reference in this regard may be made to the cases of Tariq Pervaiz v. The State (1998 SCMR 1345) and Ayub Masih v. The State (PLD 2002 SC 1048)." The same view was reiterated in Abdul Jabbar v. State (2010 SCMR 129) when this court observed that once a single loophole is observed in a case presented by the prosecution, such as conflict in the ocular account and medical evidence or presence of eye-witnesses being doubtful, the benefit of such loophole/lacuna in the prosecution's case automatically goes in favour of an accused."

32. For what has been discussed above, the Criminal Appeal No.526-J of 2021 lodged by Kashif Nouman alias Kashi son of Sarfraz Hussain (appellant) is accepted and the conviction and sentence of the appellant awarded by the learned trial court through the impugned judgment dated 24.08.2021 are hereby set-aside. The Criminal Appeal No.527-J of 2021 lodged by Mst. Nuzhat Rasheed widow of Naveed Iqbal (appellant) is also accepted and the conviction and sentence of the appellant awarded by the learned trial court through the impugned judgment dated 24.08.2021 are hereby set-aside. The appellants namely Kashif Nouman alias Kashi son of Sarfraz Hussain and Mst. Nuzhat Rasheed widow of Naveed Iqbal are ordered to be acquitted. Appellants namely Kashif Nouman alias Kashi son of Sarfraz Hussain and Mst. Nuzhat Rasheed widow of Naveed Iqbal are directed to be released forthwith if not required in any other case.

33. **Murder Reference No.33 of 2021** is answered in **Negative** and the sentence of death awarded to Kashif Nouman alias Kashi son of Sarfraz Hussain is **Not Confirmed**.

(MUHAMMAD TARIQ NADEEM)
JUDGE

(SADIQ MAHMUD KHURRAM)
JUDGE

Raheel

Approved for reporting

Judge