

Stereo. H.C. JD A 38.
Judgment Sheet
IN THE LAHORE HIGH COURT,
MULTAN BENCH, MULTAN.
JUDICIAL DEPARTMENT

Murder Reference No.51 of 2019
(The State Vs. 1. Ghulam Shabbir
2. Begum Bibi)

Criminal Appeal No. 282-J of 2019
(Ghulam Shabbir Vs. The State.)

Criminal Appeal No. 287-J of 2019
(Begum Bibi Vs. The State.)

Criminal Appeal No.385 of 2021
(Ghulam Yasin Vs. The State and two others.)

J U D G M E N T

Date of hearing:	25.09.2023.
Appellants by:	Mr. Javed Iqbal Bhatti, Advocate.
State by:	Malik Riaz Ahmad Saghla, Additional Prosecutor General .
Complainant by:	Rana Muhammad Nadeem Kanju, Advocate.

SADIO MAHMUD KHURRAM, J.— Ghulam Shabbir son of Karim Bakhsh and Begum Bibi daughter of Muhammad Ilyas (convicts) were tried alongwith Muhammad Bilal and Muhammad Mukhtar alias Kudan (since acquitted), the co-accused of the convicts by the learned Additional Sessions Judge (Model Criminal Trial Court), Lodhran in case F.I.R. No. 676 of 2017 dated 20.12.2017 registered at Police Station Saddar Dunyapur, District Lodhran in respect of offences under sections 302,365,404,297,34 and 201 P.P.C. for

committing the *Qatl-i-Amd* of Muhammad Ramzan son of Muhammad Sharif (deceased). The learned trial court vide judgment dated 05.04.2019 convicted Ghulam Shabbir son of Karim Bakhsh and Begum Bibi daughter of Muhammad Ilyas (convicts) and sentenced them as infra:

Ghulam Shabbir son of Karim Bakhsh:-

- i) Death under section 302(b) P.P.C. as *Tazir* for committing *Qatl-i-Amd* of Muhammad Ramzan son of Muhammad Sharif (deceased) and directed to pay Rs.2,00,000/- as compensation under section 544-A, Cr.P.C. to the legal heirs of the deceased; in case of default of payment of compensation amount, the convict was further directed to undergo six months of simple imprisonment.
- ii) Rigorous Imprisonment for seven years under section 201 P.P.C.
- iii) Rigorous Imprisonment for one year under section 297 P.P.C.

The sentences awarded to the convict under sections 201 and 297 P.P.C. were ordered to run concurrently by the learned trial court.

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

Begum Bibi daughter of Muhammad Ilyas:-

- i) Death under section 302(b) P.P.C. as *Tazir* for committing *Qatl-i-Amd* of Muhammad Ramzan son of Muhammad Sharif (deceased) and directed to pay Rs.2,00,000/- as compensation under section 544-A, Cr.P.C. to the legal heirs of the deceased; in case of default of payment of compensation amount, the convict was further directed to undergo six months of simple imprisonment.
- ii) Rigorous Imprisonment for seven years under section 201 P.P.C.
- iii) Rigorous Imprisonment for one year under section 297 P.P.C.

The sentences awarded to the convict under sections 201 and 297 P.P.C. were ordered to run concurrently by the learned trial court.

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

Muhammad Bilal and Muhammad Mukhtar alias Kudan, the co-accused of the convicts, were however acquitted by the learned trial court.

2. Feeling aggrieved, Ghulam Shabbir son of Karim Bakhsh (convict) lodged the Criminal Appeal No.282-J of 2019 through jail, assailing his conviction and sentences. Feeling aggrieved, Begum Bibi daughter of Muhammad Ilyas (convict) lodged Criminal Appeal No. 287-J of 2019 through jail, assailing her conviction and sentences. The learned trial court submitted Murder Reference No.51 of 2019 under section 374 Cr.P.C. seeking confirmation or otherwise of the sentences of death awarded to the appellants namely Ghulam Shabbir son of Karim Bakhsh and Begum Bibi daughter of Muhammad Ilyas. The complainant of the case namely Ghulam Yasin filed Criminal Appeal No.385 of 2021 against the acquittal of the accused namely Muhammad Bilal and Muhammad Mukhtar alias Kudan by the learned trial court. We intend to dispose of the Criminal appeal No.282-J of 2019, the Criminal Appeal No.287-J of 2019, the Criminal Appeal No.385 of 2021 and the Murder Reference No.51 of 2019 through this single judgment.

3. The facts of the prosecution case were detailed by the prosecution witness namely Muhammad Imran (PW-2) in his statement recorded by the learned trial court as under:-

" Stated that on 03.09.2017, Muhammad Ramzan (since deceased) came to our house and remained there till 1-00 pm, then he returned to his house. On 21.09.2017, I along with Ghulam Yasin and Muhammad Sharif went to the house of Muhammad Ramzan to see him but he was not present in his house. I made phone call at mobile of my maternal uncle Muhammad Ramzan.. Ghulam Yasin also made phone call but the same was not attended

by Muhammad Ramzan. Begum Mai accused present in the court his wife told that Muhammad Ramzan has gone for labor. On 03.10.2017, I along with Muhammad Sharif and Ghulam Yasin again went to the house of Muhammad Ramzan who was not present in the house. We inquired about Muhammad Ramzan from Begum Mai upon which she became upset and she started misbehaving with us and said that she is not in knowledge of Muhammad Ramzan as he has gone for labor. Ghulam Yasin again made call on mobile of Muhammad Ramzan which was not attended. Ghulam Yasin obtained mobile data of Muhammad Ramzan, according to which sim of Muhammad Ramzan deceased was being used in the area of Mouza Noor Shah Gilallani and Mouza Wahi Nao. Later on, sim of Muhammad Ramzan was powered off, upon which we obtained mobile data of phone of Muhammad Ramzan. According to data, mobile sims of Ghulam Shabbir and Muhammad Bilal accused present in the court were being used in said mobile phone of Muhammad Ramzan deceased. We worried that Ghulam Shabbir, Muhammad Bilal and Begum Mai accused present in the court kidnapped Muhammad Ramzan. On 20.12.2017 on application of Ghulam Yasin FIR regarding abduction of Muhammad Ramzan was registered at P.S Saddar, Dunyapur. My statement u/s 161 Cr.P.C was also recorded.

On 22.12.2017 Ghulam Yasin obtained mobile data of mobile phone of Muhammad Ramzan which I/O took into possession vide recovery memo Exh.P-D. I and Muhammad Sharif attested recovery memo Exh.P-D. Our statements were also recorded in this regard. On 02.01.2018, Bashir Ahmad SI made phone call to Ghulam Yasin and told about arrest of accused Ghulam Shabbir. I and Muhammad Sharif accompanied Ghulam Yasin and reached police station. In our presence, Bashir Ahmad interrogated accused Ghulam Shabbir and inquired about Muhammad Ramzan upon which Ghulam Shabbir accused told that he has committed murder of Muhammad Ramzan. On query of reason for committing murder of Muhammad Ramzan Ghulam Shabbir

accused told that he had old illicit relations with Begum Mai accused and Ramzan was hurdle between their relations. He further stated that they wanted to commit murder of Muhammad Ramzan and they were in search of chance for this purpose.

He further disclosed that on 03.09.2017, Begum Mai accused made a phone call to him that Muhammad Ramzan since deceased has come to house and he sent Rs.5000/- and intoxicant substance to Begum Mai through Muhammad Bilal accused. Begum Mai accused administered intoxicant substance to Muhammad Ramzan and at about 10-00 pm, she made phone call to Ghulam Shabbir that Muhammad Ramzan has become unconscious. That he called his friend Mukhtar Kudan and asked him drop in to Chak.No.17/M. That Mukhtar Kudan came motorcycle and dropped him at Chak.No.17/M. Ghulam Shabbir asked Mukhtar Kudan to go from here and later on come to take him when he would make phone call to Mukhtar Kudan. Ghulam Shabbir told that he went inside the house. Muhammad Ramzan was lying near cattle shed behind residential room. Ghulam Shabbir asked Begum Mai to bring something to commit murder of Muhammad Ramzan upon which Begum Mai brought residential room a hatchet and Gandasa. Begum Mai caught hold legs of Muhammad Ramzan and Ghulam Shabbir gave Gandasa blow on neck of Muhammad Ramzan and much portion of his neck was cut. Body of deceased withering, Begum Mai left legs of Muhammad Ramzan and gave hatchet blow on neck of Muhammad Ramzan which dismembered his head. Ghulam Shabbir amputated legs and arms of Muhammad Ramzan and asked Begum Mai to brought something to put parts of body. Begum Mai went inside the room and brought five shoppers of fertilizer bags and one jute sack. They put parts of body of deceased in five shoppers of fertilizer bag and then put them in jute sack and later on tied. They gathered blood from place of murder and buried after digging ditch in cattle shed. After that he made phone call to Mukhtar Kudan to take him from there. On arrival of Mukhtar Kudan, Begum Mai and

Ghulam Shabbir boarded a jute sack on Motorcycle and Ghulam Shabbir sat behind there. Ghulam Shabbir and Mukhtar Kudan reached in the land of Tusadaq Shah situated in area of Mouza Noor Shah Gillani. There he sent Mukhtar Kudan and Ghulam Shabbir remained present there to bury dead body of deceased. Ghulam Shabbir took dead body of deceased in cotton crop and buried there after digging earth and watered there. Ghulam Shabbir accused in our presence and in presence of Bashir Ahmad SI sought pardon for his crime of committing murder of Muhammad Ramzan.

Accused Ghulam Shabbir further stated that he can get recovered dead body of Muhammad Ramzan. Bashir SI accompanied us and accused along with police party on official vehicle to Mouza Noor Shah Gillani. When official vehicle reached near the land of accused Tusadaq Shah, accused Shabbir knocked official vehicle and said that he had buried dead body of deceased in said land. Accused Ghulam Shabbir came out of official vehicle and led for pointation of place where he had buried dead body of deceased Muhammad Ramzan. He pointed out place where he had buried dead body and asked for Kassi to get recover dead body after digging dead body. Ghulam Shabbir himself started digging earth and after digging earth 4/5 feet deep, a jute sack was recovered which was smelling. Ghulam Shabbir accused made disclosure that same was dead body of Muhammad Ramzan deceased which he buried after committing murder with Begum Mai accused. Bashir Ahmad SI made phone call to Zubair SI HIU, who reached there. Zubair Ahmad SI HIU got brought out jute sack from ditch which was opened. Dead body was into pieces and Ghulam Shabbir accused told that same was dead body of Muhammad Ramzan which he brought there and buried. I along with Muhammad Sharif and Ghulam Yasin identified dead body of Muhammad Ramzan from Taveez, Shalwar, wrist watch and some part of face which were identifiable. Zuabir SI took dead body into possession and prepared Fard-Shankhat ExP-C which was identified by me, Muhammad Sharif and Ghulam

Yasin. Police officer prepared 10 photographs of dead- body with official camera and took the same into possession vide recovery memo Exh.P-D/1 to 10 attested by me and Muhammad Sharif.

On 03.01.2018, 1, Ghulam Yasin and Muhammad Sharif along with other people were present in the house. Ghulam Shabbir accused accompanied by police was brought there. I along with Muhammad Sharif and Ghulam Yasin were called by police. Ghulam Shabbir came out of official vehicle and led to the house of Muhammad Ramzan deceased. Ghulam Shabbir pointed out place of murder of deceased and on pointation of Ghulam Shabbir took into possession blood stained earth vide recovery memo Ex.P-F attested by me and Muhammad Sharif PW. I/O also recorded our statements in this regard.

On 04.01.2018, I-along with Muhammad Sharif and others were present in our house. Begum Mai accused present in the court along with lady constable and other police officials came on official vehicle. I and Muhammad Sharif also reached there on call of I/O. Begum Mai accused led for recovery from her residential room and got recovered hatchet P-1 lying under iron box(Peti) weapon of offence. She stated that they committed murder of Muhammad Ramzan with hatchet P.1 which she washed later on. I/O took into possession hatchet P-1 vide recovery memo Exh.P-G attested by me and Muhammad Sharif. 1/0 also recorded statements in this regard.

On 07.01.2018, Muhammad Zubair SI HIU made phone call to Ghulam Yasin complainant in connection with recovery of motorcycle. I and Muhammad Sharif also accompanied Ghulam Yasin and went to P.S Saddar, Dunyapur. Accused Ghulam Shabbir led for recovery of motorcycle on official vehicle along with police party we also accompanied. Accused led for Basti soling wali Mouza Noor Shah Gillani. Accused Ghulam Shabbir led for recovery from his residential house, motorcycle Rohi P-2 red color standing outside of his residential room through which dead body of Muhammad Ramzan deceased was shifted to Mouza Noor Shah Gillani. I/O took the

motorcycle P-2 into possession vide recovery memo Exh.P-H attested by me and Muhammad Sharif. I/O recorded our statements in this regard. Ghulam Shabbir also made disclosure that Kassi with which he dug the ditch to bury dead body of deceased can also get recovered. He got recovered Kassi P-3 which I/O took into possession vide said recovery memo Exh.P-H.

On 11.01.2018, Ghulam Shabbir accused was brought by the police to the house of Muhammad Ramzan deceased. I along with Muhammad Sharif reached there on call of I/O. Ghulam Shabbir came out from official vehicle and led to a room without roof near cattle shed in the house of Muhammad Ramzan and after digging earth brought out Gandasa P-4 weapon of offence wrapped in shopper and handed over to I/O which he took into possession vide recovery memo Exh.P-J attested by me and Muhammad Sharif PW. 1/0 also recorded our statements in this regard.

On 15.01.2018, 1/O made telephone call to Ghulam Yasin in connection with recovery of mobile phone of Muhammad Ramzan deceased. I and Muhammad Sharif accompanied Ghulam Yasin to police station. Accused Ghulam Shabbir accompanied us and police party to adda Chit Nehar. At some distance on bank canal, accused Ghulam Shabbir got stopped official vehicle and came out. Accused after digging earth near the bushes, brought out Q mobile P-5 along with two Sims P-6 & P-7 and handed over to I/O. 1/0 took the same into possession vide recovery memo Exh.P-K attested by me and Muhammad Sharif Pw. I/O also recorded our statements in this regard.

On 15.01.2018, I/O took mobile data of Sim NO.0308-2863832 in the name of accused Muhammad Bilal and No.0302-9895921 in the name of accused Ghulam Shabbir consisting of 52 pages vide recovery memo Exh.P-L attested by me and Muhammad Sharif PW. I/O also recorded our statements in this regard. Accused are real culprits and be punished."

4. After the formal investigation of the case , the report under section 173 of the Code of Criminal Procedure, 1898 was submitted before the learned trial court and the accused were sent to face trial. The learned trial court framed the charge against the accused on 18.02.2019, to which the accused pleaded not guilty and claimed trial.

5. The prosecution in order to prove its case got recorded statements of **eleven** witnesses.. Muhammad Imran (PW-2) gave the same evidence as has been reproduced in Paragraph 3 of the judgment. Ghulam Yaseen (PW-1), the complainant of the case, narrated the same facts as Muhammad Imran (PW-2) till the recovery of the dead body. Muhammad Ismail (PW-3) and Muhammad Rashid (PW-4) stated that on 03.09.2017 at about 11.45 p.m they had seen the appellant namely Ghulam Shabbir carrying a sack passing in front of them, while riding on a motorcycle. Mukhtar Ahmad Patwari (PW-5) stated that on 16.01.2018, he prepared the scaled site plan of the place of occurrence (Exh.PO). Muhammad Aslam Patwari (PW-7) stated that on 02.01.2018, he prepared the scaled site plan of the place of recovery of the dead body (Exh.PQ). Khan Bahadar 4/HC (PW-8) stated that on 03.01.2018, Zubair Ahmad, SI (PW-11) handed over to him eight sealed Jars, three sealed envelopes, a sealed parcel said to contain a watch, *Taweez*, sack and a shalwar and five other plastic bags and which on 11.01.2018 he handed over to Zubair Ahmad, SI (PW-11) for their onward transmission to the office of the Punjab Forensic Science Agency, Lahore and on 04.01.2018, Zubair Ahmad, SI (PW-11) handed over to him hatchet, motorcycle and a *Kassi* and on 11.01.2018, Zubair Ahmad, SI (PW-11) handed over to him a *Gandasa*. Abdul Haq 748/C (PW-9) stated that on 02.01.2018 he escorted the dead body of the deceased to the hospital and received parcels from the Medical Officer after the

post mortem examination of the dead body of the deceased. Bashir Ahmad, SI (PW-10), investigated the case from 20.12.2017 till 02.01.2018, arrested the appellant namely Ghulam Shabbir on 02.01.2018 and narrated the facts of the investigation as conducted by him in his statement before the learned trial court. Zubair Ahmad, SI (PW-11) investigated the case from 02.01.2018 till 06.02.2018, arrested the appellant namely Begum Bibi on 04.01.2018 and narrated the facts of investigation as conducted by him in his statement before the learned trial court.

6. The prosecution also got Dr. Aihsan Ali (PW-6) examined, who on 03.01.2018 was posted as Medical Officer at the THQ hospital Dunyapur and on the same day conducted the postmortem examination of the dead body of Muhammad Ramzan son of Muhammad Sharif (deceased). Dr. Aihsan Ali (PW-6), on examining the dead body of Muhammad Ramzan son of Muhammad Sharif (deceased), observed as under:-

" EXTERNAL EXAMINATION.

A bori band, foul smelling, semi putrefied dead body received in mortuary. Bori (sack) opened and body removed in parts that were wrapped in plastic shopper bags. There were five shoppers bags, each containing different parts as upper limbs in one shopper and lower limbs in second shopper, head in third shopper, body in two other shoppers. All shoppers were opened and body parts approximated with trunk and height. Height of body found five feet 03 inches. Head was crushed and unidentifiable by face because face bones were crushed and missing, skull of head was also crushed at various sides and empty of brain black colour hair were present at skull, wearing steel watch in left arm wrist.

EXAMINATION OF CLOTHES.

Wearing white colour Shalwar stained with blood, not torn.

EXAMINATION OF NECK.

Neck was separated from rest of body, incised cutting wound at level of upper cervical vertebrae, hyoid bone was not found.

DESCRIPTION OF INJURIES.

1. An incised circular cutting wound around the neck, sharp cut mark seen on C3, C4 & C5 vertebrae. Neck was separated from trunk.
2. Fracture of humerus(right) at upper end just below the head of humerus. Bone was separated from head of humerus. One head side end was sharp plane cutting and shaft of humerus crushed and limbs was separated from trunk.
3. Fracture of left humerus at upper and just below the head of humerus bone was separated from head. Head end of bone was plane and sharp cutting, shaft side crushed, limbs was on Judge separated from trunk at fracture site.
4. Fracture at lower end of right femur bone, 7 cm above from lower end of femur. Fracture ends of bone having plane and sharp margins. Lower right leg was separated from upper right leg at fracture site.
5. Fracture at lower end of leg femur bone, just above lower end of left femur bone. Fracture ends of bone having plane and sharp margins. Lower left leg was separated from upper left leg at fracture site.

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FINAL OPINION.

In the light of autopsy findings, police papers and reports of PFSA, Lahore Agency case NoPFSA-2018-116381-PATH- PATH-03175-10834(Histopathology Report) dated 28.03.2018 and PFSA NO.2018-116381-TOX-06259(Toxicology Analysis Report) dated 13.03.2018. Multiple injuries including fracture of skull, face, neck, upper and lower limbs were sufficient to cause death in ordinary course of nature. All injuries were ante-mortem in nature and homicidal manner. Mode of death was hemorrhagic and neurogenic shock.

According to PMR injuries NO.1,2,3,4 & 5 are declared as JGJ-Munaqillah. As far as report of PFSA NO.2018-116381- TOX-06259(Toxicology Analysis Report) dated 13.03.2018 is concerned, no poison/drug were detected in liver and stomach contents in item No.1 and according to report of PFSA-2018- 116381-PATH-03175-PATH-10834 (Histopathology Report) dated 28.03.2018. The forensic Histopathology and conclusion report: Histological examination of the submitted neck tissue reveals blood hemorrhages' and tissue necrosis suggesting ante-mortem of injury. Histological examination of sections from cervical vertebrae reveals bone, no Ante-Mortem injury seen.."

7. On 03.04.2019, the prosecution evidence was closed after tendering the reports of Punjab Forensic Science Agency, Lahore (**Exh. P.V** and **Exh.P.W.**).

8. After the closure of prosecution evidence, the learned trial court examined the appellants namely Ghulam Shabbir son of Karim Bakhsh and Begum Bibi daughter of Muhammad Ilyas under section 342 Cr.P.C. and in answer to the question *why this case against you and why the P.W.s have deposed against you*, they replied that they were innocent and had been falsely involved in the case. Ghulam Shabbir son of Karim Bakhsh and Begum Bibi daughter of Muhammad Ilyas further stated that they had not committed any offence and had been made a scapegoat in the case in order to show efficiency by the police. The appellants namely Ghulam Shabbir son of Karim Bakhsh and Begum Bibi daughter of Muhammad Ilyas opted not to get themselves examined under section 340(2) Cr.P.C did not adduce any evidence in their defence.

9. On the conclusion of the trial, the learned Additional Sessions Judge (Model Criminal Trial Court), Lodhran, convicted and sentenced the appellant as referred to above.

10. The contention of the learned counsel for the appellants precisely is that the whole case is fabricated and false. The learned counsel for the appellants submitted that the prosecution remained unable to prove the facts in issue and did not produce any unimpeachable, admissible and relevant evidence. The learned counsel for the appellants further contended that the statements of prosecution witnesses were not worthy of any reliance. The learned counsel 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 counsel for the appellants finally submitted that the prosecution had totally failed to prove the case against the appellants namely Ghulam Shabbir and Begum Bibi beyond the shadow of doubt.

11. On the other hand, the learned Additional Prosecutor General along with the learned counsel for the complainant, contended that the prosecution had proved its case beyond shadow of 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. 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. The learned Additional Prosecutor General and the learned counsel for the complainant prayed for the rejection of the appeals as lodged by Ghulam Shabbir and Begum Bibi. The learned counsel for the complainant also argued that the Criminal Appeal No.385 of 2021, assailing the acquittal of Muhammad Bilal and Muhammad Mukhtar alias Kudan by the learned trial court from the charges also merited acceptance.

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

13. After consideration of the contentions raised by the learned counsel for the appellants namely Ghulam Shabbir and Begum Bibi, the learned Additional Prosecutor General and the learned counsel for the complainant 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 especially 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. From the evidence of the prosecution available on record, it is clear that the case of the prosecution hinges upon the evidence of the confession of the appellant namely Ghulam Shabbir while in police custody leading to the recovery of the dead body of the deceased on the pointing of the appellant namely Ghulam Shabbir, the seeing of the appellant namely Ghulam Shabbir by the witnesses namely Muhammad Ismail (PW-3) and Muhammad Rashid (PW-4) on 03.09.2017 while carrying a sack, the recoveries of various articles from the appellants and the motive of the occurrence.

14. Firstly, we shall deliberate upon the evidence of the prosecution that after the appellant namely Ghulam Shabbir was arrested by Bashir Ahmad, SI (PW-10) on 02.01.2018, he, while in police custody, made a statement detailing therein the manner in which he and his co-accused had planned and committed the *Qatl-i-Amd* of Muhammad Ramzan (deceased) and thereafter directed the police to the place of the burial of the dead body of the deceased, leading to the recovery of the dead body of the deceased on the pointing of the appellant namely Ghulam Shabbir and in consequence of that information the dead body was taken into possession through recovery memo (Exh. PC). The learned Additional Prosecutor General and the learned counsel for the complainant have vehemently argued that as the appellant namely Ghulam Shabbir, after his arrest, pointed out the place from where the dead body was recovered, hence, the fact of *Qatl-i-Amd* of Muhammad Ramzan (deceased) was discovered in consequence of the information received from the appellant namely Ghulam Shabbir in the custody of a police officer, therefore, the said pointing of the place of burial of the dead body of the deceased

and its subsequent recovery by the appellant namely Ghulam Shabbir proved not only that Ghulam Shabbir and his co-accused had planned the *Qatl-i-Amd* of Muhammad Ramzan (deceased) but also executed the said plan. We have examined the prosecution evidence brought on record with regard to the recovery of the dead body on 02.01.2018 and find that the prosecution could not prove beyond shadow of doubt that it was indeed the appellant who had got recovered the said dead body. In this regard, we have noticed that according to the prosecution case itself, photographs (Exh.PD/1-10) were prepared of the place of the recovery of the dead body on 02.01.2018 and the said photographs were also produced before the learned trial court. In his statement, the prosecution witness namely Muhammad Imran (PW-2) stated as under:-

“Police officer prepared 10 photographs of dead body with official camera and took the same into possession vide recovery memo Exh.P-D/1 to 10 attested by me and Muhammad Sharif”

Similarly, Zubair Ahmad, SI (PW-11), the Investigating Officer of the case, got recorded in his statement before the learned trial court that the photographs(Exh.PD/1-10) of the place of recovery of the dead body were prepared and also taken into possession by him. We ourselves have also seen the photographs(Exh.PD/1-10) of the place of recovery of the dead body. The most conspicuous aspect of the evidence of the production of the photographs(Exh.PD/1-10) of the place of recovery of the dead body is that the appellant namely Ghulam Shabbir is not at all featured in any of the ten photographs (Exh.PD/1-10) of the place of recovery of the dead body, though a number of people are seen present at the said place while the body is being recovered. It was admitted by Zubair Ahmad, SI (PW-11) that the appellant

namely Ghulam Shabbir was not at all featured in any of the ten photographs (Exh.PD/1-10) of the place of recovery of the dead body. Zubair Ahmad, SI (PW-11), during cross-examination, admitted as under:-

“In photographs taken into possession vide .recovery memo Exh. PE (sic),
accused Ghulam Shabbir is not visible. ” (emphasis supplied)

The fact that the appellant namely Ghulam Shabbir had never got recovered the dead body on 02.01.2018, is further proved by the prosecution evidence itself as according to Ghulam Yasin (PW-1) and Muhammad Imran (PW-2), it was the appellant namely Ghulam Shabbir who himself dug out the dead body , whereas according to Bashir Ahmad, SI (PW-10), an excavator was available at the place of occurrence. Ghulam Yasin (PW-1) in his statement before the learned trial court stated as under:-

“Ghulam Shabbir accused himself dug earth 4/5 feet deep and 4/5 feet wide. It consumed one and half hour in digging earth and taking out dead body of deceased. Ghulam Shabbir dug the earth with Kassi”

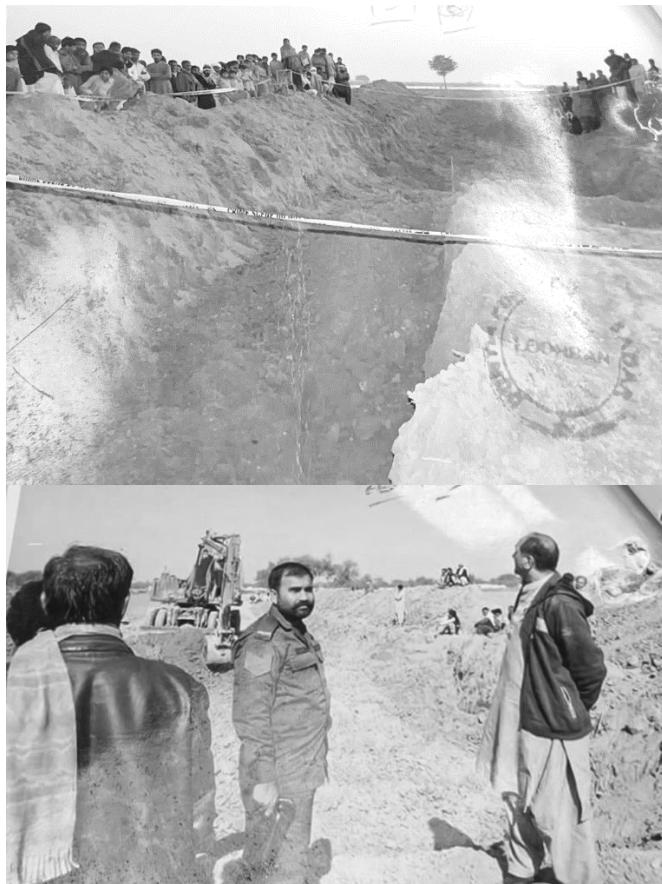
Muhammad Imran (PW-2), in his statement before the learned trial court, stated as under:-

“Ghulam Shabbir accused dug the earth with Kassi. ”

Bashir Ahmad, SI (PW-10), the Investigating Officer of the case, admitted to the presence of the excavator at the place of recovery of the dead body on the day when the dead body was discovered. Bashir Ahmad, SI (PW-10), the Investigating Officer of the case, admitted during cross-examination as under:-

“Accused Ghulam Shabbir present in the court himself dug the earth which was received from people working in the fields with excavator who had also Kassi with them ”

A bare perusal of the photographs (Exh.PD/1-10) of the place of recovery of the dead body reveals that an excavator was not only available at the place of the recovery of the dead body but the earth was also excavated using the said excavator. The relevant photographs out of photographs (Exh.PD/1-10), prove not only the absence of the appellant namely Ghulam Shabbir at the place of recovery, on the day of the recovery of the dead body but also the use of an excavator to dig the earth, are being reproduced under:-





We cannot close our eyes to the evidence which has been brought on the record by the prosecution itself and which evidence shatters the whole claim of the prosecution that it was the appellant Ghulam Shabbir who dug out the dead body

15. We have also noted with concern that the prosecution witnesses who claimed to have been present at the place of the recovery of the dead body, their names were not mentioned in the inquest report (Exh.PP/2) when the same was prepared. We have also noted that both the prosecution witnesses namely Ghulam Yasin (PW-1) and Muhammad Imran (PW-2) were not mentioned either in column No.4 of the inquest report (Exh.PP/2) as being the witnesses who had identified the dead body of the deceased at the time of preparation of the inquest report (Exh.PP/2) nor were mentioned at page 4 of the inquest report (Exh.PP/2) as witnesses who were present at the place of recovery of the dead body at the time of preparation of the inquest report (Exh.PP/2). Zubair Ahmed SI (PW-11), the Investigating Officer of the case, admitted that the inquest report (Exh.PP/2) was not signed by the prosecution witnesses namely Ghulam Yassen (PW-1) and Muhammad Imran (PW-2) and stated during cross-examination as under:-

“I have not obtained signatures of witnesses of identification of dead body in inquest report.”

This fact also points towards the absence of the prosecution witnesses namely Ghulam Yasin (PW-1) and Muhammad Imran (PW-2) at the place of recovery of the dead body at the time of preparation of the inquest report (Exh.PP/2) by Zubair Ahmed SI (PW-11) , the Investigating Officer of the case.

16. We have also noted with grave concern that both the prosecution witnesses namely Ghulam Yasin (PW-1) and Muhammad Imran (PW-2) made substantial improvements to their previous statements with regard to the taking of the appellant namely Ghulam Shabbir to the place of the recovery and the arrival of the witnesses and the appellant namely Ghulam Shabbir at the said place and the recovery of the dead body , however, both the prosecution witnesses namely Ghulam Yasin (PW-1) and Muhammad Imran (PW-2) were confronted with their previous statements in this regard and the improvements made by them were brought on record. The prosecution witness namely Ghulam Yasin (PW-1) was cross-examined and the learned trial court observed as under:-

“ I got mentioned in my statement before police that when Ghulam Shabbir led for recovery of dead body of deceased when we reached in the back side of Dera of Tussadaq Shah, accused Ghulam Shabbir asked to stop the official vehicle and came out of official vehicle. **Confronted with Exh.D-A where factum of reaching the back side of Dera of Tussadaq Shah and asking to stop official vehicle is not mentioned.** I got recorded in my statement that accused Ghulam Shabbir in southern side of road at a distance of 200 feet pointed out place where dead body of deceased was buried. **Confronted with Exh.D-A where distance of 200 feet and southern side from road is not mentioned.** I did not deposed before police that at the time of occurrence, there was cotton crop in the field but now land is lying vacant. **I did not got mentioned in my statement that Muhammad Bashir SI took out dead body of deceased from ditch.** Accused

Ghulam Shabbir that he and Begum Mai be forgiven dead body of Muhammad Ramzan recovered. **However, I did not get mentioned this fact in my statement recorded before police.”** (emphasis supplied)

Muhammad Imran (PW-2) was cross-examined and the learned trial court observed as under:-

“ I also recorded in my statement before the police that accused Ghulam Shabbir disclosed that he can get recovered dead body of Muhammad Ramzan. Bashir SI accompanied us and accused along with police party on official vehicle to Mouza Noor Shah Gillani. **Confronted with Exh.D-D where it is not so recorded.** I also recorded in my statement before the police that accused Shabbir knocked official vehicle and said that he had buried dead body of deceased in said land. **Confronted with Exh.D-D where it is not so recorded.** I also recorded in my statement before the police. Ghulam Shabbir pointed out place where he had buried dead body and asked for Kassi to get recover dead body after digging dead body. **Confronted with Exh.D-D where it is not so recorded.** I also recorded in my statement before the police that Bashir Ahmad SI made phone call to Zubair SI HIU, who reached there. Zubair Ahmad SI HIU got brought out jute sack from ditch which was opened. Confronted with Exh.D-D where it is not so recorded”

By improving their previous statements, both the prosecution witnesses namely Ghulam Yassen (PW-1) and Muhammad Imran (PW-2) impeached their own credit.

17. The scrutiny of the prosecution evidence also reveals that though the witnesses admitted the presence of a large number of people at the place of the recovery of the dead body on 02.01.2018, however, none of those people joined the investigation of the case nor appeared before the learned trial court in support of the claim of the prosecution that it was the appellant Ghulam Shabbir who dug out

the dead body on 02.01.2018. The prosecution witness namely Ghulam Yasin (PW-1) admitted during cross-examination as under:-

“More than 100 people had gathered at the time of digging earth ”

However, Bashir Ahmed SI (PW-10) ,the Investigating Officer of the case admitted during cross-examination that none of those were present at the place of recovery of the dead body were joined in the investigation of the case and stated as under:-

“I did not associate any respectable of locality as no one was ready to become witness. I have not mentioned this fact in my any case diary that no one is ready to join proceedings. Dead body was recovered from the land of Tussadaq Shah but I did not join him in proceeding.”

Similarly, Zubair Ahmad, SI (PW-11), the other Investigating Officer of the case, also admitted during cross-examination ,as under:-

“On 02.01.2018, I reached Mouza Noor Shah Gillani at 1-30/2-00 pm. Many people were present there but I cannot tell the number of people present there. Complainant and PWS joined investigation. I also asked to join investigation the people who had gathered there but they were not ready to join investigation. I have not mentioned this fact in my any case diary. Jute sack was already opened before my reaching there. ”

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 refusal of the people present at the place of recovery of the dead body to appear in support of the prosecution case reflects poorly upon the same and raises the likelihood that had the said people appeared as witnesses before the learned trial court , they would not have supported the claim of the prosecution regarding the recovery of the dead body of the deceased by the appellant namely Ghulam Shabbir.

18. As mentioned above, it was also the prosecution case that after the appellant namely Ghulam Shabbir was arrested by Bashir Ahmad, SI (PW-10) on 02.01.2018, he, while in police custody, made a statement detailing therein the manner in which he and his co-accused had planned and committed the *Qatl-i-Amd* of Muhammad Ramzan (deceased) and thereafter directed the police to the place of the burial of the dead body of the deceased, however, we find that both the prosecution witnesses namely Ghulam Yasin (PW-1) and Muhammad Imran (PW-2) admitted to had made substantial improvements in their previous statements and admitted that their assertions of the appellant namely Ghulam Shabbir making a confession in police custody of planning and committing the *Qatl-i-Amd* of Muhammad Ramzan (deceased) was not mentioned by them in their previous statements. The prosecution witness namely Ghulam Yasin (PW-1), admitted during cross-examination as under:-

“I got recorded in my statement recorded on 02.01.2018 that accused Ghulam Shabbir made disclosure that he committed murder of my brother Muhammad Ramzan since deceased. **Confronted with Exh.D-A where it is not so recorded.** I also got recorded in my statement on 02.01.2018 that accused Ghulam Shabbir

admitted that he had illicit relations with Begum Mai accused and used to visit the house of deceased in connection of illicit relations. **Confronted with Exh.D-A, where it is not so recorded.** I also got recorded in my statement that Ghulam Shabbir disclosed that he planned to commit murder of Muhammad Ramzan to remove hurdle from his way. **Confronted with Exh.D-A, where it is not so recorded. I did not got (sic) mentioned in my statement** dated 02.01.2018 that accused admitted that Begum Mai asked Ghulam Shabbir to send Rs.5000/- and some intoxicant substance. Volunteered, accused Ghulam Shabbir made this disclosure during course of investigation. It is incorrect to suggest that volunteered portion of my statement is false. **I also did not got (sic) mentioned in my statement** that due to intoxicant Muhammad Ramzan would become unconscious and they would commit his murder. **I also did not got (sic) mentioned in my statement** before police that Ghulam Shabbir accused sent amount and intoxicant to Begum Mai. Volunteered Ghulam Shabbir made this disclosure investigation. It is incorrect to suggest that volunteered portion of my statement is false. **I also did not got (sic) mentioned in my statement** that Ghulam Shabbir made phone call to Mukhtar and asked him to leave him at Chak.No.17/M. Volunteered accused Ghulam Shabbir made this disclosure during course of investigation. It is incorrect to suggest that volunteered portion of my statement is false. **I also did not got (sic) mentioned that** Mukhtar accused left Ghulam Shabbir at Chak.No.17/M on Rohi Motorcycle. Volunteered accused Ghulam l-Shabbir made this disclosure during course investigation. It is incorrect to suggest that volunteered of portion of my statement is false. **I also did not got (sic) mentioned in my statement** that he asked Mukhtar Kudan accused to take him from there when he would become free. Volunteered accused Ghulam Shabbir made this disclosure during course of investigation. It is incorrect to suggest that volunteered portion of my statement is false. **I also did not got (sic) mentioned in my statement** that when Ghulam Shabbir went to house of Muhammad Ramzan, he was lying unconscious in cattle shed in back side of

house. Volunteered accused Ghulam Shabbir made this disclosure during course of investigation. It is incorrect to suggest that volunteered portion of my statement is false. **I also did not got (sic) mentioned in my statement** that as they had already planned to commit murder of Muhammad Ramzan; so Ghulam Shabbir asked Begum Mai to bring hatchet and Gandasa to commit murder of Muhammad Ramzan. Volunteered accused Ghulam Shabbir made this disclosure during course of investigation. It is incorrect to suggest that volunteered portion of my statement is false. **I also did not got (sic) mentioned** that Begum Mai brought hatchet and Gandasa from her room. Volunteered accused Ghulam Shabbir made this disclosure during course of investigation. It is incorrect to suggest the volunteered portion of my statement is false. **I also did not got (sic) mentioned that** Begum Mai caught hold deceased from his legs and Ghulam Shabbir gave blow of Gandasa due to neck of Muhammad Ramzan was cut. Volunteered accused Ghulam Shabbir made this disclosure during course of investigation. It is incorrect to suggest that volunteered portion of my statement is false. I also did not got mentioned that Begum Mai gave hatchet blow due to which head of Muhammad Ramzan was amputated and his body started withering. Volunteered accused Ghulam Shabbir made this disclosure during course of investigation. It is incorrect to suggest that volunteered portion of my statement is false. **I also did not got (sic) mentioned** that Ghulam Shabbir separated legs and arms of Muhammad Ramzan. Volunteered accused Ghulam Shabbir made this disclosure during course of investigation. It is incorrect to suggest that volunteered portion of my statement is false. **I also did not got (sic) mentioned** in my statement that Begum Mai accused brought from her residential room 05 empty ploythin shoppers of fertilizer and one sack of jute and tied it in the same. Volunteered accused Ghulam Shabbir made this disclosure during course of investigation. It is incorrect to suggest that volunteered portion of my statement is false. I also did not got recorded in my statement that accused after digging pit in cattle shed put blood in said ditch to save their skin. Volunteered accused Ghulam Shabbir made

this disclosure during course of investigation. It is incorrect to suggest that volunteered portion of my statement is false. I also did not got mentioned in my statement that Ghulam Shabbir made phone call to Mukhtar Kudan who came there some time. Volunteered accused Ghulam Shabbir made this disclosure during course of investigation. It is incorrect to suggest that volunteered portion of my statement is false. I also did not got mentioned in my statement that Ghulam Shabbir and Begum Mai boarded jute sack in which dead body of Muhammad Ramzan was and Ghulam Shabbir behind him. Volunteered accused Ghulam Shabbir made this disclosure during course of investigation. It is incorrect to suggest that volunteered portion of my statement is false. I also did not got mentioned in my statement that Ghulam Shabbir and Mukhtar Kudan took dead body of Muhammad Ramzan to Noor Shah Gillani in lands of Tussadaq Shah. Volunteered accused Ghulam Shabbir made this disclosure during course of investigation. It is incorrect to be suggest that volunteered portion of my statement is false. I also did not got mentioned that Mukhtar and Ghulam Shabbir unloaded jute sack in landed property of Tussadaq Shah and Mukhtar Kudan went from there. Volunteered accused Ghulam Shabbir made this disclosure during course of investigation. It is incorrect to got suggest that volunteered portion of my statement is false. I also did not got mentioned that Ghulam Shabbir took dead body in cotton fields and after digging 4/5 feet led earth, buried dead body of deceased and irrigated fields. Volunteered accused Ghulam Shabbir made this disclosure during course of investigation. It is incorrect to suggest that volunteered portion of my statement is false. I also did not got mentioned that Ghulam Shabbir and Begum Mai committed murder of Muhammad Ramzan and requested for apology. Volunteered accused Ghulam Shabbir made this disclosure during course of investigation. It is incorrect to suggest that volunteered portion of my statement is false. **I also did not get mentioned in my statement that Ghulam Shabbir stated that he can get recovered dead body of deceased.”**

(emphasis supplied)

The prosecution witness namely Muhammad Imran (PW-2), admitted during cross-examination as under:-

“ I recorded in my statement on 02.01.2018 that Bashir SI made phone call to Ghulam Yasin and told about arrest of Ghulam Shabbir accused. I recorded in my statement that on 02.01.2018, I along with Ghulam Yasin and Sharif went to police station. **Confronted with Exh.D-D where it is no.** so recorded. I got recorded in my statement that Bashir SI interrogated Ghulam Shabbir accused in our presence and he disclosed that he has committed murder of Muhammad Ramzan. **Confronted with Exh.D-D, where it is not so recorded.** I got recorded in my statement that Ghulam Shabbir stated that he committed murder of Muhammad Ramzan as he was hurdle in their way, hence, they committed murder of Muhammad Ramzan. **Confronted with Exh.D-D where it is not so recorded.** I recorded in my statement that accused want to commit murder of Muhammad Ramzan and they were in search of chance for this purpose. Confronted with Exh.D-D where it is not so recorded. I recorded in my statement before police that Ghulam Shabbir further disclosed that on 03.09.2017, Begum Mai accused made a phone call to him that Muhammad Ramzan since deceased has come to house and he sent Rs.5000/- and intoxicant substance to Begum Mai through Muhammad Bilal accused Begum Mai accused administered intoxicant substance to Muhammad Ramzan and at about 10-00 pm, she made phone call to Ghulam Shabbir that Muhammad Ramzan has become unconscious. **Confronted with Exh.D-D where it is not so recorded.** I also got recorded in my statement that he called his friend Mukhtar Kudan and asked him to drop in Chak.No.17/M. That Mukhtar Kudan came on motorcycle and dropped him at Chak.No.17/M. Ghulam Shabbir asked Mukhtar Kudan to go from here and later on come to take him when he would make phone call to Mukhtar Kudan. **Confronted with Exh.D-D where it is not so recorded.** I got recorded in my statement before the police that Ghulam Shabbir told that he went inside the house. Muhammad Ramzan was

lying near cattle shed behind residential room. Ghulam Shabbir asked Begum Mai to bring something to commit murder of Muhammad Ramzan upon which Begum Mai brought residential room a hatchet and Gandasa. **Confronted with Exh.D-D where it is not so recorded.** I also recorded in my statement before the police that Begum Mai caught hold legs of Muhammad Ramzan and Ghulam Shabbir gave Gandasa blow on neck of Muhammad Ramzan and much portion of his neck was cut. Body of deceased withering, Begum Mai left legs of Muhammad Ramzan and gave hatchet blow on neck of Muhammad Ramzan which dismembered his head. **Confronted with Exh.D-D where it is not so recorded.** I also recorded in my statement before the police that Ghulam Shabbir amputated legs and arms of Muhammad Ramzan and asked Begum Mai to brought something to put parts of body. Begum Mai went inside the room and brought five shoppers of fertilizer bags and one jute sack. They put parts of body of deceased in five shoppers of fertilizer bag and then put them in jute sack and later on tied. They gathered blood from place of murder and buried after digging ditch in cattle shed. **Confronted with Exh.D-D where it is not so recorded.** I also recorded in my statement before the police that he made phone call to Mukhtar Kudan to take him from there. On arrival of Mukhtar Kudan, Begum Mai and Ghulam Shabbir boarded a jute sack on Motorcycle and Ghulam Shabbir sat behind there. Ghulam Shabbir and Mukhtar Kudan reached in the land of Tusadaq Shah situated in area of Mouza Noor Shah Gillani. There he sent Mukhtar Kudan and Ghulam Shabbir remained present there to bury dead body of deceased. **Confronted with Exh.D-D where it is not so recorded.** I also recorded in my statement before the police that Ghulam Shabbir took dead body of deceased in cotton crop and buried there after digging earth and watered there. Ghulam Shabbir accused in our presence and in presence of Bashir Ahmad SI sought pardon for his crime of committing murder of Muhammad Ramzan. **Confronted with Exh.D-D where it is not so recorded”**

In this manner, it was proved during cross-examination that the prosecution witnesses namely Ghulam Yasin (PW-1) and Muhammad Imran (PW-2) had blatantly and dishonestly improved their previous statements wherein no such facts had been recorded . Article 151 of the Qanun-e-Shahadat Order 1984 provides as under:-

"151. Impeaching credit of witness. The credit of a witness may be impeached in the following

ways by the adverse party, or, with the consent of the Court, by the party who calls him:

(1) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;

(2) by proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence ;

(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted ;"

By improving their previous statements, the prosecution witnesses namely Ghulam Yasin (PW-1) and Muhammad Imran (PW-2) impeached their own credit. The august Supreme Court of Pakistan in the cases of "Muhammad Ashraf Vs. State" (**2012 SCMR 419**), "Muhammad Mansha Vs. The State" (**2018 SCMR 772**) and Muhammad Arif Vs. The State (**2019 SCMR 631**) took a serious notice of the improvements introduced by witnesses and rejected their evidence.

19. We have also noted that though the dead body allegedly was got recovered on **02.01.2018** and was brought to the hospital at **08.00 p.m**, however, the police papers were produced before Dr.Aihsan Ali (PW-6) with substantial delay on **03.08.2018 at 08.00 a.m.** Dr.Aihsan Ali (PW-6), in his statement before the learned trial court, stated as under:-

“Dead body of deceased Muhammad Ramzan son of Muhammad Sharif caste Jamoo, aged 25/30 years approximately r/o Chak. No.17/M Tehsil Dunyapur District, Lodhran was received at dead house at THQ Hospital, Dunyapur **on 02.01.2018 at 8-00 pm.**

.....

Complete police papers were received on 03.01.2018 at 8-00 am and I conducted the autopsy of the deceased on the same at 8-30 am on the same day.” (emphasis supplied)

The reason which is apparent for the delayed submission of the police papers was that the said time was taken to prepare documents and create false statements with regard to the alleged statement of the appellant namely Ghulam Shabbir, made by him in police custody with regard to the planning and the commission of *the Qatl-i-Am*d of Muhammad Ramzan deceased and the procuring of witnesses to prove the recovery of the dead body by the appellant namely Ghulam Shabbir, both which efforts of the prosecution were exposed as being sham. There was no reason, other than the ones mentioned above, for the delayed submission of the police papers to Dr. Aihsan Ali (PW-6). In this manner, the prosecution failed to prove that the appellant namely Ghulam Shabbir, after his arrest on 02.01.2018, made a statement detailing the planning and execution of the plan regarding the *Qatl-i-Am*d of Muhammad Ramzan (deceased) and that he also got recovered the dead body.

20. The learned Additional Prosecutor General and the learned counsel for the complainant have also placed reliance on the statements of the prosecution witnesses namely Muhammad Ismail (PW-3) and Muhammad Rashid (PW-4) that the said witnesses had seen the appellant namely Ghulam Shabbir on 03.09.2017 at

about 11.45 p.m. while carrying a sack, plying on a motorcycle and submitted that the sack which was seen by the prosecution witnesses namely Muhammad Ismail (PW-3) and Muhammad Rashid (PW-4) contained the dead body of the deceased and therefore proved a relevant fact of the prosecution case. We have scrutinized the statements of the prosecution witnesses namely Muhammad Ismail (PW-3) and Muhammad Rashid (PW-4) and find that they are not worthy of any reliance. Both the prosecution witnesses namely Muhammad Ismail (PW-3) and Muhammad Rashid (PW-4) claimed to have seen the appellant namely Ghulam Shabbir on **03.09.2017 at about 11.45 p.m.** while carrying a sack, plying on a motorcycle, however, did not make any statement either to the police nor revealed the said fact to the complainant of the case, who had been searching for his brother since 03.09.2017. The prosecution witness namely Muhammad Ismail (PW-3) admitted during cross-examination, as under:-

“ **From 03.09.2017 to 04.01.2018**, I did not inform police about carrying of jute sack on motorcycle.” (emphasis supplied)

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

“We did not make any hue and cry not tried to apprehend them. We did not inform police on 03.09.2017. ”

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 plausible explanation for such delay. No explanation, much less plausible, has been given by both the prosecution witnesses namely Muhammad Ismail (PW-3) and Muhammad Rashid (PW-4) for them not getting their

statements under section 161 of the Code of Criminal Procedure, 1898 recorded immediately and therefore no value can be attached to their statements. 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".

Furthermore, the prosecution witnesses namely Muhammad Ismail (PW-3) and Muhammad Rashid (PW-4) admitted that during the course of the investigation, they did not show to the Investigating Officer of the case the place where they had allegedly seen the appellant namely Ghulam Shabbir on 03.09.2017. The prosecution witness namely Muhammad Ismail (PW-3), admitted during cross-examination, as under:-

“We did not show the place to I/O where we witnessed accused taking jute sack on motorcycle.”

Zubair Ahmad, SI (PW-11), the Investigating Officer of the case, also admitted during cross-examination , as under:-

“On 05.01.2018, Ismail and Rashid appeared before me and I recorded their statements u/s 161 Cr.P.C. They did not appear prior to this before police. I did not visit the place where they witnessed accused taking jute sack on motorcycle nor I prepared rough site plan of said place. I did not collect copy of Warabandi from Ismail and Rashid PWS.”

In this manner, the statements of the prosecution witnesses namely Muhammad Ismail (PW-3) and Muhammad Rashid (PW-4) have no evidentiary value.

21. We have also noted that the very question of the identity of the dead body which was recovered could not be proved by the prosecution. It was the prosecution case itself that the dead body was recovered in pieces as contained in five separate plastic bags, which plastic bags had then been put in a jute bag. According to the prosecution witnesses namely Ghulam Yasin (PW-1) and Muhammad Imran (PW-2) they had identified the dead body from the watch which was worn by the dead body , shalwar, *taweez* and one side of the face which was identifiable. The prosecution witness namely Ghulam Yasin (PW-1) in his statement before the learned trial court , stated as under:-

“I along with Muhammad Sharif and Imran PWS identified the dead body of deceased Muhammad Ramzan from his watch, shalwar, Taveez & one side of his face which was identifiable ”

Similarly, the prosecution witness namely Muhammad Imran (PW-2) , in his statement before the learned trial court , stated as under:-

“I along with Muhammad Sharif and Ghulam Yasin identified dead body of Muhammad Ramzan from Taveez, Shalwar, wrist watch and some part of face which were identifiable ”

A perusal of the prosecution evidence reveals that the identity of the dead body could not have been made by the indicators which, according to the prosecution witnesses namely Ghulam Yasin (PW-1) and Muhammad Imran (PW-2), they had used to identify the dead body. Both the prosecution witnesses namely Ghulam Yasin (PW-1) and Muhammad Ismail (PW-3) stated that some part of the face of the dead body was identifiable and for that reason, they were able to identify the same as being that of Muhammad Ramzan (deceased), however, Dr. Aihsan Ali (PW-6), who conducted the post mortem examination of the dead body of the deceased, was of the opinion that for the fact that the head was crushed and the face bones were also crushed and missing, therefore, the dead body was not identifiable. Dr. Aihsan Ali (PW-6), in his statement before the learned trial court, stated as under:-

“ Head was crushed and un-identifiable, by face because face bones were crushed and missing, skull of head was also crushed at various sides and empty of brain..
.....

As head of deceased was crushed, hence circumference of head of deceased could not be taken
.....

It is correct that face bones of deceased were missing and crushed, hence were un-identifiable.” (emphasis supplied)

Even the prosecution witness namely Ghulam Yasin (PW-1) himself admitted during cross-examination that he had not stated that a part of the face of the dead body was identifiable and stated as under:-

“I also did not record in my statement that one side of face of dead body was identifiable ”

In this manner, the claim of the prosecution witnesses namely Ghulam Yasin (PW-1) and Muhammad Ismail (PW-3) that they had identified the dead body from a part of its face was contradicted by Dr. Aihsan Ali (PW-6). Then the prosecution witnesses namely Ghulam Yasin (PW-1) and Muhammad Ismail (PW-3) also claimed that they had identified the dead body of the deceased due to the *Taweez* (*Amulet*) which was present on the dead body of the deceased , however, this claim was also contradicted by Dr. Aihsan Ali (PW-6) who stated that he had not found any *Taweez* (*Amulet*) which was present on the dead body of the deceased at the time of post mortem examination. Dr. Aihsan Ali (PW-6) admitted during cross-examination as under:-

“ I have not mentioned factum of "Taveez" in external examination of dead body”

With regard to the claim of the prosecution witnesses namely Ghulam Yasin (PW-1) and Muhammad Ismail (PW-3) that they had identified the dead body of the deceased with the help of a watch and a shalwar, we find that both the said articles were not produced before the learned trial court so as to determine whether they were of such unique features that they could have belonged only to the deceased. Furthermore, Zubair Ahmad, SI (PW-11), who prepared the inquest report (Exh.PP/1) admitted during cross-examination that the columns relating to the availability of any article on the dead body at the time of its recovery or the

columns related to the identification of the dead body had no entries made in them.

Zubair Ahmad, SI (PW-11), admitted during cross-examination, as under:-

“I also prepared inquest report. In column No.8 & 9 of inquest report, I have mentioned as putrefied. Column of identification of dead body of inquest report is blank. **Column No.14,15,16,18,19 & 21 of inquest report are blank.** ”

We have also noted that according to the prosecution witness namely Khan Bahadar 4/HC (PW-8), on 03.01.2018, Zubair Ahmad, SI (PW-11) handed over to him eight sealed Jars, three sealed envelopes, a sealed parcel said to contain a watch, Taweez, sack and a shalwar and five other plastic bags which on 11.01.2018 he handed over to Zubair Ahmad, SI (PW-11) for their onward transmission to the office of the Punjab Forensic Science Agency, Lahore, however, the prosecution withheld the report of the Punjab Forensic Science Agency, Lahore with regard to the analysis of the shalwar, *taweez* (amulet) and the watch and it has not been explained as to whether the said articles ever reached the Punjab Forensic Science Agency, Lahore and as mentioned above, the said shalwar, *taweez* (amulet) and the watch were never produced before the learned trial court . In this manner, all the indicators which according to the prosecution witnesses namely Ghulam Yasin (PW-1) and Muhammad Imran (PW-2) were used by them to identify the dead body were either not available or their presence was not proved. Furthermore, it was admitted by Zubair Ahmad, SI (PW-11) , the Investigating Officer of the case , that he had taken Ghulam Yasin (PW-1) , the brother of the deceased to the Punjab Forensic Science Agency, Lahore so as to establish the identity of the dead body and on **12.01.2018**, the samples of Ghulam Yasin (PW-1) were also submitted to the Punjab Forensic Science Agency, Lahore

for the determination of the identity of the dead body. Zubair Ahmad, SI (PW-11) , in his statement before the learned trial court , stated as under:-

“ On 12.01.2018, I submitted parcels relating to case in PFSA Lahore intact which Moharrer handed over to me on 11.01.2018. On the same day, DNA test of complainant/brother of deceased was also conducted for identification of deceased at PFSA Lahore”

The above portion of the cross-examination of Zubair Ahmad, SI (PW-11) proves that had the identity of the dead body which was recovered on 02.01.2018 been established, then there was no need for taking the prosecution witness namely Ghulam Yasin (PW-1) to the Punjab Forensic Science Agency, Lahore on **12.01.2018** for the purpose of determining the identity of the dead body. Furthermore, the said report of the Punjab Forensic Science Agency, Lahore regarding the determination of the identity of the dead body was never produced before the learned trial court raising the apparent reason for its withholding being that had it been produced, the same would have gone against the prosecution case. In this manner, the very question as to whose body was recovered on 02.01.2018 was not proved by the prosecution with any certainty.

22. We have also noted that the prosecution failed to prove, with any decree of certainty , the cause of death of the deceased. The prosecution witnesses namely Ghulam Yasin (PW-1) and Muhammad Imran (PW-2) had claimed that the appellant namely Ghulam Shabbir had made a statement that he had sent some tranquilizer to the appellant namely Begum Bibi, for her to administer it to the deceased and when the appellant namely Begum Bibi, had allegedly administered the said sedatives to the deceased and he became unconscious, the appellant namely Ghulam Shabbir then arrived at the house of deceased, however, according

to the report of the Punjab Forensic Science Agency, Lahore (Exh. PV), no drugs or poison were detected in the liver and stomach contents sent to it. The relevant portion of the report of the Punjab Forensic Science Agency, Lahore (Exh. PV) reads as under:-

“ Results and Conclusion:

Drugs/poisons are not detected in liver and stomach contents in item # 01.”

Furthermore, we have also noticed that though Dr. Aihsan Ali (PW-6) has opined that the injuries which he observed on the dead body were anti-mortem in nature, however, the report of the Punjab Forensic Science Agency, Lahore (Exh. PW) mentioned that none of the injuries was ante-mortem. Dr. Aihsan Ali (PW-6) during cross-examination admitted that at the time of post-mortem examination of the dead body, he had not opined regarding the injuries being ante-,mortem or post-mortem, however, had based his opinion on the report of the Punjab Forensic Science Agency, Lahore (Exh. PW). Dr. Aihsan Ali (PW-6) during cross-examination, stated as under:-

“It is correct that in initial post mortem report, I have not mentioned the injuries as ante-mortem or post mortem. Volunteered, as final opinion was subject to reports of PFSA and Labs. hence, in my final opinion that the injuries were ante-mortem”

We find that Dr. Aihsan Ali (PW-6) fell in error while perusing the report of the Punjab Forensic Science Agency, Lahore (Exh.PW) and concluding that the injuries observed by him were ante mortem for the fact that in the report of the Punjab Forensic Science Agency, Lahore (Exh.PW) it was clearly mentioned that

there was no evidence of any ante mortem injury. The relevant portion of the report of the Punjab Forensic Science Agency, Lahore (Exh.PW) reads as under:-

“Forensic Histopathology Examination & Conclusion Report

Histological examination of the submitted neck tissue reveals blood haemorrhages, and tissue necrosis suggesting antemortem nature of injury.

Histological examination of sections from cervical vertebrae reveals bone, **no Ante-Mortem injury seen**”(emphasis supplied)

In this manner, we have reached an irresistible conclusion that the prosecution failed to even prove the cause of death of the deceased.

23. The learned Additional Prosecutor General and the learned counsel for the complainant have also relied upon the recovery of the blood stained earth by the appellant namely Ghulam Shabbir on 03.01.2018 from the place where the deceased was done to death and have submitted that the said recovery also was a relevant fact. In this regard we have noticed that the said blood stained earth was allegedly recovered on 03.01.2018 from the house of the deceased, however, it was admitted by the prosecution witness namely Ghulam Yasin (PW-1) that the deceased had three children of various ages living with him at the time of his death but the said children were not joined in the investigation of the case. The prosecution witness namely Ghulam Yasin (PW-1) admitted as under:-

“Marriage of Begum Mai was contracted with Muhammad Ramzan 10/12 years ago and from their wedlock, three children were born. Elder daughter of Muhammad Ramzan is aged about 9/10 years whereas the other daughter is aged about 7 years and younger son is aged about 6 years. **Neither police joined the above said children in investigation nor we produced them before the police ”**

Had the occurrence taken place inside the house of the deceased then it must have been witnessed by the said children, however, the said children were not joined in the investigation of the case and the prosecution withheld the best evidence available in the case. Furthermore, it has been noticed that though the said blood stained earth was taken into possession through recovery memo (Exh.PF) and according to the statement of Khan Bahadar 4/HC (PW-8) he had handed over the said sealed parcel to Zubair Ahmad, SI (PW-11) for its onward transmission to the office of the Punjab Forensic Science Agency, Lahore, however, no report of the Punjab Forensic Science Agency, Lahore was produced by the prosecution during the course of the trial. In this manner, there is no evidence on record that what was recovered on 03.01.2018 was indeed the blood stained earth and the blood was that of the deceased. In this manner, the recovery of the blood stained earth by the appellant namely Ghulam Shabbir on 03.01.2018 proves no relevant fact or any fact in issue.

24. The learned Additional Prosecutor General and the learned counsel for the complainant have also relied upon the recovery of the motorcycle (P-2) from the appellant namely Ghulam Shabbir and have submitted that it was the same motorcycle which was used by the appellant to take the dead body of the deceased to its burial place. We have noticed that the prosecution witnesses namely Muhammad Ismail (PW-3) and Muhammad Rashid (PW-4), in their statements before the learned trial court, did not state either the make or the colour or the registration number or the model number of the motorcycle upon which they had allegedly seen the appellant namely Ghulam Shabbir carrying a sack , therefore, the recovered motorcycle (P-2) cannot be said to be the same on which he was seen

riding on 03.09.2017 by the prosecution witnesses namely Muhammad Ismail (PW-3) and Muhammad Rashid (PW-4) and hence, proves no fact.

25. The learned Additional Prosecutor General and the learned counsel for the complainant have also relied upon the recovery of the *Kassi* (P-3) and *Gandasa* (P-4) from the appellant namely Ghulam Shabbir and have stated that the said recovery also provided support of the prosecution case. With regard to the recovery of *Kassi* from the appellant Ghulam Shabbir on 07.01.2018, it was observed by the learned trial court that the word *Kassi* was not mentioned in the statement of the prosecution witness namely Muhammad Imran (PW-2) recorded on 07.01.2018 and obvious manipulation had been made in this regard. The learned trial court , during the cross-examination of Muhammad Imran (PW-2) , observed as under:-

“I also recorded in my statement before the police that I/O took into possession *Kassi* with which after digging earth dead body of deceased was recovered. Learned counsel for accused stated that copy of statement of Muhammad Imran recorded u/s 161 Cr.P.C does not bear factum of mentioning *Kassi*. **Learned DDPP for state produced carbon copy of statement of Muhammad Imran recorded u/s 161 Cr.P.C on 07.01.2018 in which *Kassi* is mentioned but the same is apparently subsequently added because hand writing and last line in statement u/s 161 Cr.P.C is different**” (emphasis supplied)

The said observation of the learned trial court is in itself sufficient to prove the sham nature of the recovery of the *Kassi* (P-3). With regard to the recovery of the *Gandasa* (P-4) from the appellant Ghulam Shabbir on 11.01.2018, it has been observed that the said *Gandasa* (P-4) was never sent to the Punjab Forensic Science Agency, Lahore for analysis and therefore, its recovery is inconsequential. Moreover, the said *Gandasa* (P-4) was recovered on **11.01.2018** from the same

house from where the blood stained earth had been taken into possession on **03.01.2018**. Zubair Ahmad, SI (PW-11), the Investigating Officer of the case had already visited the place of the recovery of the blood stained earth on 03.01.2018 and had spent a substantial time present there and had the *Gandasa* (P-4) been also present within the same vicinity, then its presence would have been detected by Zubair Ahmad, SI (PW-11) even on 03.01.2018, however it was not which proves that only a false proceeding was created and actually nothing was got recovered by the appellant namely Ghulam Shabbir on 11.01.2018.

26. The learned Additional Prosecutor General and the learned counsel for the complainant have also relied upon the recovery of the Mobile phone (P-5) and two Subscriber Identity Module (SIM) cards (P-6 and P-7) from the appellant namely Ghulam Shabbir on 15.01.2018. Zubair Ahmad, SI (PW-11), the Investigating Officer of the case, admitted during cross-examination that he did not get the identity of the mobile phone (P-5) established as the International Mobile Equipment Identity(IMEI) number of the recovered mobile phone (P-5) was not readable. Zubair Ahmad, SI (PW-11), during cross-examination, as under:-

“In Exh.P-K it is mentioned that IMEI of recovered mobile P-5 is not readable

.....

I did not try to trace IMEI number of mobile P-5. I did not prepare any "Fard-Shanakht" P-5.”

With regard to the recovery of the two Subscriber Identity Module (SIM) cards (P-6 and P-7) from the appellant namely Ghulam Shabbir on 15.01.2018, Zubair Ahmad, SI (PW-11), the Investigating Officer of the case, admitted that he had not

taken into possession any document so as to prove that in whose names the two Subscriber Identity Module cards (P-6 and P-7) were registered. Zubair Ahmad, SI (PW-11), admitted during cross-examination, as under:-

“ I got confirmed ownership of SIMS from mobile companies. I did not obtain written certificate in this regard. I also did not record statement of official of mobile company in this regard ”

27. The learned Additional Prosecutor General and the learned counsel for the complainant have also relied upon the recovery of the hatchet (P-1) from the appellant namely Begum Bibi on 04.01.2018. With regard to the recovery of the hatchet (P-1) from the appellant namely Begum Bibi on 04.01.2018, it has been observed that the said hatchet (P-1) was never sent to the Punjab Forensic Science Agency, Lahore for analysis and therefore, its recovery is inconsequential. Moreover, the said hatchet (P-1) was recovered on **04.01.2018** from the same house from where the blood stained earth had been taken into possession on **03.01.2018**. Zubair Ahmad, SI (PW-11) had already visited the place of the recovery of the blood stained earth on **03.01.2018** and had spent a substantial time present there and had the hatchet (P-1) been also present within the same area, then its presence would have been observed by Zubair Ahmad, SI (PW-11) even on 03.01.2018, however it was not which proves that only a dishonest proceeding was created and actually nothing was got recovered by the appellant namely Begum Bibi on 04.01.2018.

28. The prosecution has also relied upon the Call Data Record collected during the investigation of the case so as to prove the guilt of the appellants. With regard to the allegation against the appellant namely Ghulam Shabbir that he had used a

Subscriber Identity Module (SIM) registered in his name to make a call from the mobile phone device of the deceased, it has been admitted by the prosecution witnesses that no evidence was produced during the investigation of the case to establish the identity of the mobile phone device under the use of the deceased. The prosecution witness namely Ghulam Yasin (PW-1), admitted during cross-examination , as under:-

“I did not submit any application to police regarding the manufacturing company or model of mobile of deceased. I did not produce any purchase receipt of said mobile to the police ”

Similarly, Bashir Ahmad, SI (PW-10), the Investigating Officer of the case also admitted during cross-examination, as under:-

“Complainant did not produce any purchase receipt of mobile by deceased. Complainant also did not record any statement giving detail and description of mobile owned by deceased. I obtained CDR of mobile officially but did not get verify SIMs from any telecommunication company ”

Furthermore, Ghulam Yasin (PW-1) also admitted that in his written application (Exh. PB) submitted by him for the registration of the F.I.R, it had not been mentioned that the Subscriber Identity Module (SIM) registered in the name of the accused was used for making a call from the mobile phone device of the deceased. The prosecution witness namely Ghulam Yasin (PW-1), during cross-examination, admitted as under:-

“In application Exh.P-B, **it was not mentioned that Sims were used in Mobile phone of Ramzan on 07.12.2017.** Mobile phone of Muhammad Bilal accused 0308-2863832 was mentioned in application Exh.P-B, **confronted with Exh.P-B**

where it is not so recorded. Mobile No.0302-9895921 was not mentioned in Exh.P-B ” (emphasis supplied)

According to the prosecution case, Subscriber Identity Module (SIM) having Mobile No.0302-9895921 was registered in the name of the appellant namely Ghulam Shabbir, but, as mentioned above, despite the fact that the written application (Exh.PB) was submitted on 20.12.2017, however, in the same it had not been mentioned that the Subscriber Identity Module (SIM) having Mobile No.0302-9895921 was used to make a call from the mobile phone device of the deceased. It was also admitted by Zubair Ahmad, SI (PW-11) that the Call Data Record taken into possession by him on 15.01.2018 through recovery memo (Exh.PL)/1-52 did not bear the signatures of the issuing authority. Zubair Ahmad, SI (PW-11) admitted during cross-examination as under:-

“ On 15.01.2018, I collected mobile data vide recovery PL memo Exh.P-L. Mobile data does not bear any signatures of issuing authority. I also did not record any statement of Telecommunication Company.”

Furthermore, no Call Data Record of the mobile phone device under the use of Begum Bibi was obtained nor even the mobile number of any Subscriber Identity Module (SIM) registered in the name of the appellant namely Begum Bibi was produced before the Investigating Officer of the case, during the investigation of the case. Bashir Ahmad, SI (PW-10), the Investigating Officer of the case, admitted during the cross-examination , as under:-

“ No mobile number of Begum Mai accused was produced to me by complainant or PWS. ”

It is also stressed again 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 conversation is not relevant to prove any fact supporting the prosecution case against the appellants. Considering the above-mentioned facts in the given circumstances discussed above, doubt is created in the prosecution case, the benefit of which cannot be denied to the appellant. 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.”

29. 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 prosecution witnesses was that the appellant namely Ghulam Shabbir had developed an illicit liaison with the appellant namely Begum Bibi and as the deceased was a hindrance in the continuation of the said intimacy between the appellants namely Ghulam Shabbir and Begum Bibi, therefore, he was murdered. We have perused the statements of the prosecution witnesses and find that they failed to prove the motive of the occurrence as stated by them. The prosecution witness namely Ghulam Yasin (PW-1) was found to have improved his statement

with regard to the motive of the occurrence and the said improvement was duly brought on record during the course of his cross-examination and the learned trial court observed as under:-

“ I also got recorded in my statement on 02.01.2018 that accused Ghulam Shabbir admitted that he had illicit relations with Begum Mai accused and used to visit the house of deceased in connection of illicit relations. **Confronted with Exh.D-A, where it is not so recorded”**

Furthermore, Zubair Ahmad, SI (PW-11), the Investigating Officer of the case, also admitted that he did not collect any evidence with regard to the alleged motive of the occurrence. It has also been brought on record that the deceased and the appellant namely Begum Bibi had been married for a period of 10-12 years before the occurrence and had also been blessed with the birth of three children. There is no evidence on record that Muhammad Ramzan son of Muhammad Sharif (deceased) was facing any threat to his life at the hands of the appellants prior to the occurrence. 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 appellants namely Ghulam Shabbir and Begum Bibi 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."

30. Considering all the above circumstances, we entertain serious doubt in our minds regarding the involvement of the appellants namely Ghulam Shabbir son of Karim Bakhsh and Begum Bibi daughter of Muhammad Ilyas 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 Pervaiz v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Muhammad Akram v. The State (2009 SCMR 230) and Muhammad Zaman v. 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 go to the petitioner. This Court in the case of Mst. Asia Bibi v. The State (PLD 2019 SC 64) while relying on 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."

31. For what has been discussed above the Criminal Appeal No.282-J of 2019 lodged by Ghulam Shabbir son of Karim Bakhsh (appellant) is **allowed** and the conviction and sentences of the appellant namely Ghulam Shabbir awarded by the learned trial court through the impugned judgment dated 05.04.2019 are hereby set-aside. The Criminal Appeal No.287-J of 2019 lodged by Begum Bibi daughter of Muhammad Ilyas (appellant) is **also allowed** and the conviction and sentences of the appellant namely Begum Bibi daughter of Muhammad Ilyas awarded by the learned trial court through the impugned judgment dated 05.04.2019 are hereby set-aside. Both the appellants namely Ghulam Shabbir son of Karim Bakhsh and Begum Bibi daughter of Muhammad Ilyas are ordered to be acquitted by extending them the benefit of doubt. Ghulam Shabbir son of Karim Bakhsh and Begum Bibi daughter of Muhammad Ilyas are in custody and they are directed to be released forthwith if not required in any other case.

32. Pursuant to the discussion made and conclusions arrived at above, the Criminal Appeal No.385 of 2021, lodged by the complainant of the case namely Ghulam Yasin, assailing the acquittal of Muhammad Bilal son of Imam Bakhsh

and Muhammad Mukhtar alias Kudan son of Muhammad Rafique by the learned trial court from the charges is hereby **dismissed**.

33. **Murder Reference No.51 of 2019** is answered in **Negative** and the sentences of death awarded to Ghulam Shabbir son of Karim Bakhsh and Begum Bibi daughter of Muhammad Ilyas are **Not Confirmed**.

(MUHAMMAD AMJAD RAFIQ)
JUDGE

(SADIQ MAHMUD KHURRAM)
JUDGE

Raheel

Approved for Reporting

JUDGE