

Criminal Appeal No.1503/2023

Asif Ali vs The State and another

Criminal Appeal No.1574/2023

Tauseef **vs** The State and another

Criminal Revision No.3600/2023

Muhammad Waqar Adil vs Tauseef and another

Murder Reference No.42/203

The State vs Asif Ali

J U D G M E N T

Date of hearing:	<u>28.09.2023.</u>
Appellants by:	Mr. Muhammad Ashraf Kamboh, Advocate for Asif Ali (appellant in Crl. Appeal No.1503/2023). Mr. Asghar Ali Gill, Advocate for Tauseef (appellant in Crl. Appeal No.1574/2023).
State by:	Mr. Munir Ahmad Sial, Deputy Prosecutor General.
Complainant by:	Rana Muhammad Azam Khan, Advocate for the complainant in Crl. Appeal No.1503/2023, Crl. Appeal No.1574/2023 and for the petitioner in Crl. Revision No.3600/2023.

FAROOQ HAIDER, J.:- This single judgment will dispose of **Crl. Appeal No.1503/2023** filed by Asif Ali (appellant) against his “convictions & sentences”, **Crl. Appeal No.1574/2023** filed by Tauseef (appellant) against his “convictions & sentences”, **Criminal Revision No.3600/2023** filed by Muhammad Waqar Aadil (complainant) for enhancement of sentence of Tauseef as well as compensation amount and **Murder Reference No.42/2023** sent by trial court, as all the matters have arisen out of one and the same judgment dated: 24.12.2022 passed by Addl. Sessions Judge, Nankana Sahib/trial court.

2. Asif Ali and Tauseef (appellants) were tried in complaint case titled as “**Muhammad Waqar Adil versus Asif Ali and another**” and trial court after conclusion of trial *vide* impugned judgment dated: 24.12.2022 has convicted and sentenced them as under: -

ASIF ALI

<u>Convictions</u>	<u>Sentences</u>
i) Under Section: 302 (b)/34 PPC	“Death” as <i>Taz’ir</i> with payment of compensation of Rs.5,00,000/- to the legal heirs of Muhammad Basit <i>alias</i> Arzanish (deceased) under Section: 544-A Cr.P.C. recoverable as an arrear of land revenue and in default of payment of compensation amount to further undergo S.I. for six months.
ii) Under Section: 365/34 PPC	“Seven years’ Rigorous Imprisonment” with fine of Rs.50,000/- and in default thereof to further undergo S.I. for one month. Benefit of Section: 382-B Cr.P.C. was also extended to him.
iii) Under Section: 201/34 PPC	“Seven years’ Rigorous Imprisonment” with fine of Rs.50,000/- and in default thereof to further undergo S.I. for one month. Benefit of Section: 382-B Cr.P.C. was also extended to him.

TAUSEEF

<u>Convictions</u>	<u>Sentences</u>
i) Under Section: 302 (b)/34 PPC	“Imprisonment for Life” as <i>Taz’ir</i> with payment of compensation of Rs.3,00,000/- to the legal heirs of Muhammad Basit <i>alias</i> Arzanish (deceased) under Section: 544-A Cr.P.C. recoverable as an arrear of land revenue and in default of payment of compensation amount to further undergo S.I. for six months.
ii) Under Section: 365/34 PPC	“Seven years’ Rigorous Imprisonment” with fine of Rs.50,000/- and in default thereof to further undergo S.I. for one month. Benefit of Section: 382-B Cr.P.C. was also extended to him.
iii) Under Section: 201/34 PPC	“Seven years’ Rigorous Imprisonment” with fine of Rs.50,000/- and in default thereof to further undergo S.I. for one month. Benefit of Section: 382-B Cr.P.C. was also extended to him.

3. Primarily, Muhammad Waqar Adil (complainant/PW-1) set the machinery of law into motion by moving application (Ex.PA/1) regarding missing of his paternal nephew namely Muhammad Basit *alias* Arzanish to

Muhammad Nawaz 837/H.C./Moharrar (CW-12) in Police Station: Mangtanwala, District: Nankana Sahib mentioning therein that he is permanent resident of *Khaki Shah Morr Khanda*, Police Station: Mangtanwala and works as labourer; on 09.09.2020 in the morning, real paternal nephew of the complainant namely Muhammad Basit *alias* Arzanish aged about 20-years, who was performing his duty in Department of Bureau of Statistics Survey, Nankana Sahib, had gone for his duty and did not return home, whose features are colour: wheatish, height: 5-Feet and 7-Inches, wearing light green coloured shirt (قمیض), white trouser (شلوار), Sandal and having small beard and mobile phone bearing numbers 0306-6722203 and 0303-4856151; complainant lastly contacted him at 09:57 p.m. (night) through No.0303-4856151 who told the complainant that he was present at bridge of *Morr Khanda Canal* and will shortly (تھوڑی دیر تک) return home but did not reach home and his mobile numbers were continuously switched off, complainant has been searching for him but he is not being traced; Farooq Aslam, Khalid Hussain are witnesses that his nephew has been abducted by some unknown accused; prayed for registration of case and recovery of his nephew. On the basis of aforementioned application (Ex.PA/1), case was registered *vide* F.I.R. No.775/2020 (Ex.CW12/A) on 09.09.2020 under Section: 365 PPC (subsequently, after recovery of dead body of the deceased, offences Under Sections: 302, 34 PPC were also added) at Police Station: Mangtanwala, District: Nankana Sahib and being dissatisfied with the conduct of the police, complainant filed “**complaint**” (Ex.PB) against Asif Ali and Tauseef under Sections: 302, 201, 365, 34, 404 PPC alleging therein that he on 10.09.2020 moved application (mentioned above) in Police Station: Mangtanwala and reproduced contents of Ex.PA/1 in first paragraph of the complaint.

It has been also mentioned in the complaint (Ex.PB) that complainant alongwith his family members was searching his paternal nephew namely Muhammad Basit *alias* Arzanish; at 08:00 a.m. on 11.09.2020, Khalid Hussain and Muhammad Mursaleen met the complainant and told him that they had gone to Mandi Faizabad in connection with some property and were returning on motorbike; at about 09:30 p.m. on 09.09.2020, they stopped the motorbike at Cigarette Corner situated at Q.B. Link Canal, Lahore near Jaranwala Road where Asif Ali, Tauseef and Muhammad Basit *alias* Arzanish were present; they saw Asif etc. in the light of bulb, who were drinking bottles; complainant alongwith both witnesses immediately went to Zulfiqar

S.I. at Chowki Morr Khanda and got recorded their statements but said Investigating Officer with *mala fide* intention did not get record their statements.

It has been further mentioned in the complaint (Ex.PB) that complainant alongwith his family members was searching his paternal nephew Muhammad Basit *alias* Arzanish; on 12.09.2020 Asif Ali s/o Ashiq and Javed Iqbal met the complainant and told him that on 09.09.2020 in the evening, they both had gone to *Mouza Kotowala*, Tehsil & District: Nankana Sahib in order to meet Haji Shah Muhammad, who was not present in his house, they waited for a long time in the meanwhile, Nazir Ahmad brother of said Haji Shah Muhammad met them and thereafter when they were returning on their vehicle FSB-857 and reached at bridge of Q.B. Link Canal, Lahore-Jaranwala Road at 10:30 p.m., they saw Asif Ali and Tauseef in the light of their vehicle while grappling with an unknown aged about 20-22 years and in their view, they while catching the arms of unknown, pushed and threw him in the canal, and after sitting on motorcycle CD-70 fled away towards Mangtanwala; they saw the occurrence in the light of the vehicle; they told the complainant about the occurrence turn by turn upon which complainant believed that both accused persons have murdered his paternal nephew while pushing and throwing him in the canal.

Motive behind the occurrence as per complaint (Ex.PB) was that Mst. Shumaila Bibi, Basit *alias* Arzanish (deceased of the case) and accused persons were employees of Bureau of Statistics, Nankana Sahib where Basit *alias* Arzanish (deceased of the case) developed relations with Mst. Shumaila Bibi, however, Asif Ali had also love affection with Mst. Shumaila Bibi; Asif Ali and Tauseef in connivance with each other and with a planning in order to get Mst. Shumaila Bibi, while enticing (ورغلاء پھسلاکر) Muhammad Basit *alias* Arzanish, murdered him by throwing him in the canal.

Dead body of the deceased was recovered on 13.09.2020 at 07:45 a.m. from Burji No.375 opposite *Village Beharipur* Q.B. Link Cannal with the help of officials of Rescue 1122 i.e. CW-1 to CW-7 in presence of Mukhtar Ahmad Inspector/Investigating Officer (CW-14) as well as Muhammad Mohsin (PW-6) and Muhammad Waqas (PW-7); on personal search of the dead body of the deceased, Investigating Officer (CW-14) recovered original I.D. Card (Ex.CW-14/1) of the deceased, ATM Card of Allied Bank (Ex.CW-14/2) and wallet black coloured (Ex.CW-14/3) from the right flank pocket; Kamran

Ali (Team Incharge of Rescue 1122/CW-2) produced torn out shalwar (Ex.CW-14/4) and the same was taken into possession by the Investigating Officer (CW-14); he also secured Qameez (P-10) and Chappal (P-11) of the deceased after autopsy *vide* memo (Ex.CW-14/5 = Ex.PD); accused persons were arrested in the case on 24.09.2020 and on 26.09.2020, on the pointing out of Touseef (appellant), a mobile phone Q-Keypad (Ex.CW-14/8) alongwith two SIMs was recovered by the Investigating Officer through memo (Ex.CW-14/Q); then on 28.09.2020, on the pointing out of Asif (appellant), the Investigating Officer recovered two mobile phones alongwith two sims (Ex.CW-14/10 and Ex.CW-14/11) and red coloured motorcycle UNITED bearing registration No.4591/LEW-17B (Ex.CW-14/12) *vide* memo (Ex.CW-14/Y).

Appellants/accused persons were summoned by the trial court to face the trial, they were formally charge sheeted to which they pleaded not guilty and claimed trial; complainant produced as many as eight witnesses to prove the charge against the accused whereas fifteen witnesses were examined by the trial court as Court Witnesses; direct evidence was furnished by Javed Iqbal (PW-4) and Asif Ali s/o Muhammad Ashiq (PW-5); evidence of last-seen was furnished by Muhammad Mursaleen (PW-2) and Khaliq Hussain (PW-3); medical evidence was furnished by Dr. Danish Tamoor Ghazi (CW-15) whereas Zulfiqar Ali S.I. (CW-13) and Mukhtar Ahmad Inspector (CW-14) deposed about investigation of the case. Thereafter statements of the appellants were recorded under Section: 342 Cr.P.C. in which they refuted the allegations levelled against them; they did not opt to appear as their own witnesses under Section: 340(2) Cr.P.C and also did not produce any evidence in their defence.

Trial court after conclusion of the trial has convicted and sentenced the appellants as mentioned above through the impugned judgment dated: 24.12.2022.

4. Learned counsel for both the appellants have submitted in unison that convictions recorded and sentences awarded to the appellants through impugned judgment are against the 'law and facts' of the case; evidence produced by prosecution is neither trustworthy nor corroborated/supported by any other independent evidence. Learned counsel for the appellants finally prayed for acquittal of the appellants.

5. Learned Deputy Prosecutor General and learned counsel for the complainant have supported the impugned judgment to the extent of conviction recorded and sentence awarded to Asif Ali (appellant), however, while supporting impugned judgment to the extent of convictions recorded against Tauseef (appellant) have prayed for enhancement of his sentences as well as compensation by accepting aforementioned criminal revision and also prayed for dismissal of appeals filed by the appellants.

6. **Arguments heard. Record perused.**

7. It has been noticed that as per case of prosecution, Muhammad Basit *alias* Arzanish (paternal nephew of the complainant) went to his job on 09.09.2020 but did not come back, however, matter was not promptly reported to the police by Muhammad Waqar Adil (complainant/PW-1) rather with delay on 10.09.2020 at 06:50 p.m.; in this regard, relevant portion of statement of complainant (PW-1) is hereby reproduced: -

“On 09.09.2020 at 10:00 pm to 10.09.2020 till 07:00 pm I have not informed the police about the occurrence.”

As per application (Ex.PA/1) moved by Muhammad Waqar Adil (complainant/PW-1) for registration of case, Muhammad Basit *alias* Arzanish (paternal nephew of the complainant) went to his job but did not come back, he was contacted through phone by the complainant whereupon he replied that he is at bridge of *Morr Khanda Canal* and will shortly (تھوڑی دیر تک) come to home but did not reach home, however, any voice transcript of said phone call between the complainant (PW-1) and deceased of the case could not be produced by the prosecution to prove said fact. Bridge of *Morr Khanda Canal* is at a considerable distance i.e. 20 k.m. from the alleged place of throwing Muhammad Basit *alias* Arzanish into the canal and relevant portion of statement of the complainant (PW-1) is reproduced: -

“The inter-se distance of More Khunda canal and QB canal bridge is about 20km.”

even otherwise, this piece of evidence does not tell anything about the occurrence or the accused, hence of not much evidentiary value against the appellants.

Prosecution produced another piece of evidence i.e. last-seen comprising of statements of Muhammad Mursaleen (PW-2) and Khaliq Hussain (PW-3), who claimed that they work as “property dealers” and on 09.09.2020 went to *Mandi Faizabad* in connection with some property; on their return, they stopped motorbike at Cigarette Corner situated at Q.B. Link

Canal, Lahore near Jaranwala Road to purchase cigarette where they saw in the light of bulb that Asif Ali, Tauseef (present appellants) and Muhammad Basit *alias* Arzanish (now deceased of the case) were having cold drinks; however, they neither could tell the distance between their village and Mandi Faizabad where they had gone nor could prove the cause for which statedly they had gone there; in this regard, relevant portion of statement of Muhammad Mursaleen (PW-2) is hereby reproduced: -

“I do not know the distance in between Faizabad and my village and Faizabad and Dhari Bhattian. During investigation as well as in this private complaint I did not produce any my visiting card, my office picture, pad of business as property dealer.”

Similarly, relevant portion of statement of Khaliq Hussain (PW-3) is reproduced as under: -

“I do not know the distance in between Faizabad and my village and Faizabad and Dhari Bhattian. During investigation as well as in this private complaint I did not produce any my visiting card, my office picture, pad of business as property dealer.”

Site plan (Ex.CW-14/BB) produced by the prosecution during trial of the case does not reflect presence of said witnesses at aforestated place as well as of the appellants and deceased of the case “**with cold drinks**” and even any shop/stall/Khokha "کھوکھا" of cold drinks/cigarettes is not mentioned therein; said site plan also does not show availability of any bulb there and even any shop keeper of shop/stall/Khokha "کھوکھا" of cold drinks/cigarettes neither joined the investigation nor was produced during trial of the case. Any other site plan showing said place where these both witnesses saw appellants and deceased with cold drinks is not available on record. Both said witnesses even did not produce their motorcycle during trial of the case.

Statements of Muhammad Mursaleen (PW-2) and Khaliq Hussain (PW-3) were not recorded under Section: 161 Cr.P.C. and in this regard, any application was also not moved by the complainant to the police high ups; relevant portion of statement of the complainant (PW-1) in this regard is reproduced as under: -

“The statements of PWs Khaliq and Mursaleen u/s 161 Cr.P.C. have not been recorded by the investigating officer and in this regard I have not moved any application to the high ups of the police and first time this fact has been narrated by me in private complaint.”

Both aforementioned witnesses i.e. Muhammad Mursaleen (PW-2) and Khaliq Hussain (PW-3) are not resident of said place i.e. Q.B. Link Canal or its surrounding, so, they are “**chance witnesses**”, who could not

establish any plausible reason regarding their presence at relevant “time & place” of occurrence as detailed above; furthermore, these witnesses were introduced at belated stage in complaint (Ex.PB) filed in June, 2021.

It is relevant to mention here that dead body of the deceased was not found at the place where statedly both aforementioned witnesses saw the appellants with deceased; in this regard, relevant portion of statement of complainant/PW-1 is reproduced as under: -

“The place where the dead body recovered at a distance of 05/06 km from QB link canal bridge.”

So, testimony of these both witnesses is not confidence inspiring; even otherwise, evidence of last-seen being weakest type of evidence requires strong corroboration which is missing in the case; in this regard, case of **“ALTAF HUSSAIN versus FAKHAR HUSSAIN and another”**

(PLJ 2008 SC 687) can be safely referred and relevant portion from its Paragraph No.7 is reproduced below: -

“It is settled principle of law that the last seen evidence is a weakest type of evidence unless corroborated with some other piece of evidence which is conspicuously missing in this case. This piece of evidence has been disbelieved by the trial Court as well as learned High Court and rightly so. So far as circumstantial evidence is concerned it does not lead to the conclusion in any manner that the respondent had any hand in the affair and caused the murder in question. Needless to emphasis that all the pieces of evidence should be so linked that it should give the picture of a complete chain, one corner of which should touch the neck of the deceased and other corner to the neck of the accused. Failure of one link will destroy the entire chain.”

Further guidance on the subject can also be sought from the case of **“MUHAMMAD ABID versus THE STATE and another”** (PLD 2018 SC 813).

Now coming to direct evidence produced by the prosecution comprising of statements of Javed Iqbal (PW-4) and Asif Ali (PW-5), who claimed that on 09.09.2020 they had gone to *Mouza Kotowala* for meeting with Haji Shah Muhammad Arain, who was not available in his house, they remained waiting for him but he did not come back and his brother Nazir Ahmad met them there and thereafter they were coming back on car bearing registration No.FSB/857 to their house, at about 10:30 p.m. they reached on Bridge Q.B. Link Canal where they saw in the light of their car, that Asif Ali and Tauseef (present appellants) were scuffling with unknown

person aged about 21/22 years and in their view, Asif Ali and Tauseef (present appellants) caught hold arms of unknown person, pushed him in Q.B. Link Canal, Jaranwala Road, they identified Asif Ali and Tauseef in the light of their car and it came into their knowledge that Muhammad Waqar Adil (complainant/PW-1) and his family members were searching Muhammad Basit *alias* Arzanish (deceased), they called the complainant and told said fact. It goes without saying that prosecution did not produce aforestated Nazir Ahmad to establish the fact that both said witnesses had gone to *Mouza Kotowala* and met him on said day; in this regard, relevant portion of statement of Javed Iqbal (PW-4) is reproduced as under: -

“I did not produce Nazir Ahmad before the police.”

Similarly, relevant portion of statement of Asif Ali (PW-5) is as under: -

“I did not produce Nazir Ahmad before the police.”

Aforementioned witnesses further stated that when they were coming back at 10:30 p.m. they saw that appellants were scuffling with unknown person aged about 20/21 years and pushing him in the canal and they saw the occurrence in the lights of their car, meaning thereby that their only source of identification of the appellants as well as victim was “lights of car” but said car has not been produced during trial of the case; furthermore, they did not raise any alarm/hue and cry and in this regard, relevant portion of statement of Javed Iqbal (PW-4) is reproduced: -

“I did not raise any alarm at bridge of QB Link Canal.”

They did not try to save the victim or overpower/apprehend the appellants although appellants were just two in number and not armed with any weapon and if these witnesses, who were also two in number had intervened for saving the victim, then they alongwith victim could had become three in number and it was very easy for them to rescue the victim and overpower/apprehend the accused but they did not do so rather in their view, they let the appellants to complete their task i.e. throwing the victim in the canal and remained there as silent spectators; furthermore, they did not apprehend the appellants even after the occurrence and let them escape from there on their motorbike although witnesses were having car with them but they neither stopped the appellants nor chased them; police post was very much near from there i.e. just at a distance of 25/30 meter and in

this regard, relevant portion of statement of Javed Iqbal (PW-4) is reproduced as under: -

“Police Chowki is 25/30 meter away from the QB link bridge towards Mangtanwala side.”

but they did not call for help from said police post; copy of any written application or intimation or statement about giving intimation regarding the occurrence by both witnesses (mentioned above) to said police post has not been produced during trial of the case; any witness from said police post to establish that these both witnesses went to said police post to report said incident has not been produced before the Court. Furthermore, both aforementioned witnesses claimed that many shops and houses were there at said place; in this regard, relevant portion of statement of Javed Iqbal (PW-4) is reproduced as under: -

“There are residential houses as well as shops on both side of QB Link Canal Bridge.”

but even then they did not raise any alarm and their said conduct is not natural rather raises eyebrows; even otherwise when on bank of canal there might had been many places having no population, shops, residences or police post and it was easy for the appellants to complete task by throwing Muhammad Basit *alias* Arzanish in the canal there but why they opted place for throwing him into the canal which is surrounded by shops, houses and police post, is a question mark and this version does not appeal to a common prudent man rather possibility cannot be ruled out that this place has been introduced as place of throwing Muhammad Basit *alias* Arzanish into the canal just to show presence of witnesses and seeing the occurrence; said both witnesses are not residents of said place and having no business over there; in this regard, relevant portion of statement of Javed Iqbal (PW-4) is reproduced as under: -

“I have no shop or business in surroundings of QB Link Canal Bridge.”

similarly, relevant portion of statement of Asif Ali (PW-5) is reproduced below: -

“I have no shop or business in surroundings of QB Link Canal Bridge.”

So, they are also “chance witnesses” who could not establish any plausible reason for their presence over there particularly when they neither produced Nazir Ahmad (mentioned above) during trial of the case nor

produced their aforementioned car. It is common practice that if some one's nearer or dearer goes missing then first of all he establishes contact with the persons who are closely related to him for two reasons i.e. for inquiring about presence of missing person with them and second for intimating them regarding his missing; it is own claim of the complainant that Muhammad Mursaleen (PW-2), Khaliq Hussain (PW-3), Javed Iqbal (PW-4) and Asif Ali (PW-5) were having close relationship with the complainant; in this regard, relevant portion of statement of the complainant (PW-1) is reproduced as under: -

"I have no blood relation with Khaliq and Mursaleen, Asif and Javed PWs however I have close relationship with them."

(emphasis added)

Now question does arise that why the complainant did not immediately establish contact with said witnesses for inquiring presence of Muhammad Basit *alias* Arzanish with them or at least to intimate them that Muhammad Basit *alias* Arzanish is missing; furthermore, when Javed Iqbal (PW-4) and Asif Ali (PW-5) were having close relationship with the complainant (as mentioned above) and Muhammad Basit *alias* Arzanish (deceased) was real paternal nephew of the complainant, then why they both did not identify Muhammad Basit *alias* Arzanish (mentioned above) when they saw that appellants were scuffling with him and why they did not intervene or why they did not immediately intimate the complainant and if it is supposed for a moment that they had not earlier seen Muhammad Basit *alias* Arzanish and thus could not identify him, then it was mandatory for the prosecution to get dead body of Muhammad Basit *alias* Arzanish after its recovery to be identified by these witnesses i.e. Javed Iqbal (PW-4) and Asif Ali (PW-5) to establish that it was dead body of the same person who was seen by them scuffling with the appellants and thrown by the appellants into the canal but this mandatory exercise has not been done, which is fatal omission for the prosecution. Therefore, for the aforementioned reasons, this piece of evidence has lost its efficacy and its evidentiary value is nil hence of no help to the prosecution.

In view of above, both pieces of evidence i.e. last seen and direct evidence are neither confidence inspiring nor reliable, hence, discarded.

It goes without saying that as per statement of Dr. Danish Tamoor Ghazi (CW-15), **dead body of the deceased was not identifiable**, time between injury and death could not be ascertained, unnatural cause of death could not be ascertained and the doctor could not tell conclusively that death of the deceased was caused due to throwing in canal or dead person was thrown in the canal and at the time of postmortem examination, dead body was completely decomposed and unidentifiable; relevant portions of statement of Dr. Danish Tamoor Ghazi (CW-15) are reproduced below: -

“Putrefaction of body was found and grossly evident.”

“Probable Time And That Elapsed:

A. Between injury and death cannot be ascertained.”

*“So in view of the difference between physical and hispathological and toxicological examination from PFSA **I am of the opinion that unnatural cause of death cannot be ascertained in this case.**”*

(emphasis added)

“I cannot tell conclusively that death of deceased was caused due to throwing in canal or dead person was thrown in the canal. Volunteered that as per histopathology report from PFSA regarding diatom tests for drowning the report was negative indicative of results not corresponding to drowning as a cause of death but physical examination during the post-mortem revealed changes indicative of drowning. ”

“It is correct that the at the time of post-mortem examination dead body was completely decomposed and unidentifiable.”

(emphasis added)

Similarly, as per statements of officials of Rescue 1122 (who recovered the dead body of the deceased from the canal) i.e. Yasir Javed (CW-1), Kamran Ali (CW-2), Khalid Mehmood (CW-3), Sajid Hussain (CW-4), Muhammad Saeed Akram (CW-5), Maqsood Ali (CW-6) and Muhammad Anwar (CW-7), condition of dead body was un-identifiable; relevant portion of statement of CW-1 is reproduced as under: -

“It is correct that condition of dead body was un-identifiable.”

So, medical evidence did not support/confirm ocular version of the prosecution.

So far as recovery of mobile phones, SIMs and C.D.R. is concerned, suffice it to say that ownership of said mobile phones has not been duly proved; documents issued by cellular company *qua* ownership of SIMs also could not be brought on record and proved. Call Data Record (CDR) merely shows presence of SIMs in territorial jurisdiction/area of cellular phone tower and not the person carrying the SIM and it also does not show that the

persons using the same are present together. Mere CDR without voice transcript, is of no avail to the prosecution; in this regard, case of **“Mst. Saima Noreen vs The State and another” (2022 LHC 8798)** can be advantageously referred and relevant portion from the same is hereby reproduced: -

“10. Although any accused or witness can claim or admit possession and use of any SIM ‘Subscriber Identity Module’ by him or anybody else at the time of occurrence or any other relevant time yet mere such claim or admission is not sufficient for relying on CDR ‘Call Data Record’ of said SIM because CDR only shows use of SIM in territorial/geographical jurisdiction of ‘Cell Phone Tower’ installed by telecom operator and does not disclose that who is actually/exactly carrying and using said SIM; however, ‘Voice Record Transcript’ or ‘End to End Audio Recording’ can reflect the detail/identification of the user. Therefore, without ‘Voice Recording Transcript’, mere ‘Call Data Record’ (CDR) alone of the SIM is inconclusive piece of evidence regarding identity of its user/carrier;”

Hence, this piece of evidence is also of no avail.

As far as pointing out place of feeding victim by the appellants without any recovery is of no avail similarly disclosing/pointing out place where deceased was thrown (which was already in the knowledge of the prosecution) is of no legal value.

Recovery of red coloured motorcycle UNITED on the pointing out of Asif Ali (appellant) is also of no help to the prosecution as colour and registration number of motorcycle statedly used in the occurrence has neither been mentioned in the F.I.R. (Ex.CW-12/A) nor in the complaint (Ex.PB) which was filed after a considerable delay; whereas recovery of other articles i.e. CNIC, ATM, wallet, shoes, clothes are not enough to identify the accused, so same is also of no help to the case of prosecution.

Motive was not mentioned in the F.I.R. though introduced subsequently in the complaint (Ex.PB) yet any witness could not be produced by the prosecution during trial of the case who disclosed the motive to the complainant; even any person who was witness of any relationship between deceased and Mst. Shumaila Bibi or of interest of Asif Ali with Shumaila Bibi or of annoyance of Asif Ali with deceased of the case for said reason, was not produced during trial, so motive has not been proved.

8. Nutshell of the above discussion is that prosecution has been failed to prove its case against the appellants, therefore, there is no need to discuss defence version.

9. In view of what has been discussed above, **Criminal Appeal No.1503/2023** filed by Asif Ali (appellant) and **Criminal Appeal No.1574/2023** filed by Tauseef (appellant) are allowed; convictions recorded and sentences awarded to the appellants through impugned judgment dated: 24.12.2022 are hereby set-aside. Both appellants are acquitted of the charge, they be released from jail forthwith, if not required in any other case.

10. Resultantly, death sentence awarded to Asif Ali (appellant) is **NOT CONFIRMED** and Murder Reference (**M. R. No.42 of 2023**) is answered in **NEGATIVE**.

11. For the reasons recorded *supra*, **Criminal Revision No.3600/2023** filed by Muhammad Waqar Adil (complainant/PW-1) for enhancement of sentence of Tauseef and compensation, stands **dismissed**.

(Malik Shahzad Ahmad Khan)
Judge

(Farooq Haider)
Judge

APPROVED FOR REPORTING

(Malik Shahzad Ahmad Khan)
Judge

(Farooq Haider)
Judge