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Judgment Sheet

IN THE LAHORE HIGH COURT, BAHAWALPUR BENCH, BAHAWALPUR.

JUDICIAL DEPARTMENT

Murder Reference No.14 of 2022
(The State Vs. Abdul Jabbar)

Criminal Appeal No. 351-J of 2022
(Abdul Jabbar Vs. The State.)

J U D G M E N T

Date of hearing:	08.03.2023.
Appellant by:	Mr. Farooq Haider, Advocate.
State by:	Ch. Asghar Ali Gill, Deputy Prosecutor General.
Complainant by:	Mr. Sardar Shahzad Khan Dhukkar, Advocate.

SADIQ MAHMUD KHURRAM, J.– Abdul Jabbar son of Jan Muhammad (convict) was tried by the learned Additional Sessions Judge, Chishtian in case F.I.R No. 139 of 2021 dated 28.05.2021 registered in respect of offences under sections 302 and 325 P.P.C. at Police Station City B-Division Chishtian, District Bahawalnagar for committing the *Qatl-i-Amd* of Mst. Bushra Bibi daughter of Muhammad Ashraf (deceased). The learned trial court vide judgment dated 21.05.2022, convicted Abdul Jabbar son of Jan Muhammad (convict) and sentenced him as infra:

Abdul Jabbar son of Jan Muhammad :-

i) Death under section 302(b) P.P.C. as *Tazir* for committing *Qatl-i-Amd* of Mst. Bushra Bibi daughter of Muhammad Ashraf

(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 directed to undergo further six months of simple imprisonment.

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

ii) Simple Imprisonment for one year under section 325 P.P.C.

2. Feeling aggrieved, Abdul Jabbar son of Jan Muhammad (convict) lodged the Criminal appeal No.351-J of 2022 through jail, assailing his conviction and sentence. The learned trial court submitted Murder Reference No.14 of 2022 under section 374 Cr.P.C. seeking confirmation or otherwise of the sentence of death awarded to the appellant namely Abdul Jabbar son of Jan Muhammad. We intend to dispose of the Criminal appeal No.351-J of 2022 and the Murder Reference No.14 of 2022 through this single judgment.

3. Precisely, the necessary facts of the prosecution case, as stated by Muhammad Ashraf (PW-1), the complainant of the case, are as under:-

> "Stated that about 10/11 years prior to the occurrence, I got married my daughter namely Bushra Bibi with accused Abdul Jabbar, present in court and out of their wedlock three children i.e one daughter and two sons are alive, who are presently residing with their grandmother in Chak No.3/G, Tehsil Chishtian. My said daughter and her husband Abdul Jabbar accused had been residing in Basti Awanpura. One month prior to the occurrence my said daughter came to my house after quarrelling with her husband/present accused. Thereafter sister and mother of the accused came to my house and I sent my daughter with them. My daughter was working at Civil Hospital

Hasilpur and accused Abdul Jabbar forced her to resign from service, because he had suspicion that she she (sic) was having illicit relations with someone.

On 27.5.2021 I alongwith Rasheed Ahmad and Mujahid came to Chishtian Lari Adda in order to drop my son namely Muhammad Nadeem, who used to work at Lahore. After dropping my son Muhammad Nadeem we went to AwanPura in the house of my said daughter at about 10:15 PM but her house was locked. Accused Abdul Jabbar had a Karyana shop, we went to the said shop, the shutter of the shop was down but electric bulb was on. We opened the shutter and saw that rope was present on neck of accused Jabbar and he was lying on the ground in unconscious position. We made hue and cry whereupon inhabitants of the village came there. We saw that my daughter Bushra Bibi was lying in dead condition, she was soaked in blood lying on a cot while her throat was cut and nearby a blood stained 'Churri' was lying. Accused Abdul Jababr (sic) committed murder of my daughter because he was suspecting that she was having illicit relations with someone else. The accused also attempted to committed suicide himself. Thereafter we made a call on 15, upon which police came at the spot. I got recorded my version which was reducing into writing by the police. My thumb impression was obtained in this regard. After completion of police proceedings said written application (Exh.PA) was sent to police station for registration of FIR. After completion of proceedings police escorted dead body to THQ Hospital Chishtian for autopsy whereas accused Abdul Jabbar was produced before M.O for medical treatment. After that I alongwith PWs and police reached at place of occurrence where police on our pointation (sic) prepared rough site plan and recorded our statements u/s 161 Cr.P.C."

4. After the formal investigation of the case report under section 173 of the Code of Criminal Procedure, 1898 was submitted before the learned trial court and the appellant namely Abdul Jabbar son of Jan Muhammad was sent to face trial. The learned trial court framed the charge against the accused on 24.08.2021, to which the accused pleaded not guilty and claimed trial.

5. The prosecution in order to prove its case got recorded statements of **fourteen** witnesses. Muhammad Ashraf (PW-1), the complainant of the case, gave the same evidence as has been reproduced in Paragraph 3 of the judgment. Rasheed Ahmad (PW-2) stated that on 27.05.2021 he discovered the dead body of the deceased , present in the shop of the appellant . along with the appellant, also being present there in an unconscious condition and further stated that on 28.05.2021, the Investigating Officer of the case , took into possession the clothes of the appellant Shalwar (P-1) and Qameez (P-2) and on the same day also took into possession blood stained *Churri* (P-1) and a rope (P-2) from the place of occurrence as well as the last worn clothes of the deceased were produced before the Investigating Officer of the case after the post mortem examination. Zafar Iqbal (PW-3) stated that on 28.05.2021, he identified the dead body of the deceased at the time of its post mortem examination. Muhammad Nadeem (PW-4) stated that on 28.05.2021, he received the dead body of the deceased after post mortem examination. Atif Sarwar 693/HC (PW-5) stated that on 28.05.2021, the Investigating Officer of the case handed over to him one sealed parcel said to contain blood stained piece of carpet, five sealed parcels handed over to the Investigating Officer of the case by the Crime Scene Unit, one sealed parcel said to contain clothes of the appellant, one sealed parcel said to contain the last worn

clothes of the deceased, two sealed envelopes and two sealed parcels handed over by the Woman Medical Officer and on 31.05.2021, he handed over five sealed parcels and two sealed envelopes and two sealed parcels handed over by the Woman Medical Officer to Saqib Hussain Wajid, SI (PW-12) for their onward transmission to the office of the Punjab Forensic Science Agency, Lahore. Atif Sarwar 693/HC (PW-5) further stated that on 04.06.2021, he handed over the one sealed parcel said to contain blood stained piece of carpet to Saqib Hussain Wajid, SI (PW-12) for its onward transmission to the office of the Punjab Forensic Science Agency, Lahore. Yasir Irfat 966/C (PW-6) stated that on 28.05.2021 he escorted the dead body of the deceased to the hospital and received the last worn clothes of the deceased from the Medical Officer after the post mortem examination of the dead body of the deceased. Muhammad Shafique, ASI (PW-7) stated that on 28.05.2021, he got recorded the formal F.I.R (Exh.PA/1). Muhammad Farooq Draftsman (PW-13) prepared the scaled site plan of the place of occurrence (Exh.PR). Muhammad Shehroz Iqbal, SI (PW-10) investigated the case from 18.12.2021 till 03.03.2022 and narrated the facts of the investigation as conducted by him in his statement before the learned trial court. Saqib Hussain Wajid, SI (PW-12) investigated the case from 27.05.2021 till 11.06.2021, arrested the appellant on 31.05.2021 and narrated the facts of the investigation as conducted by him in his statement before the learned trial court.

6. The prosecution also got Dr. Iram Zafar (PW-9) examined, who on 28.05.2021 was posted as Woman Medical Officer at the THQ hospital Chishtian and on the same day conducted the postmortem examination of the dead body of Mst. Bushra Bibi daughter of Muhammad Ashraf (deceased). Dr. Iram Zafar

(PW-9) on examining the dead body of Mst. Bushra Bibi daughter of Muhammad Ashraf (deceased), observed as under:-

> " Description Of Injuries
>
> Injury No. 1
>
> An incised wound just above the larynx (sound box) starting from about 5/6 cm below the angle of mandible (right) and extending from right side to left side just near the cervical vertebrae. Transverse in direction, skin, soft tissues, muscles and neck vessels were damaged. Hyoid bone seem fractured, wound was 10/12 cm deep and almost 12/14 cm long.
>
> Injury No.2
>
> A lacerated wound of 5 cm x 1.5 cm extending from right side of lip to above the angle of mandible (right).
>
> Injury No.3
>
> Incised wound of 3 x 3 cm, bone exposed, muscles and vessels cut, tendons exposed on right metacarpophalangeal joint of right thumb."
>
> ……..
>
> After external and internal examination of dead body and receiving reports from PFSA Lahore I was of the opinion that injury No.1 was the cause of death which caused excessive bleeding which leads to cardio pulmonary arrest and death. Injury was caused with sharp edged weapon. Injury was ante-mortem at the level of neck."

The prosecution also got Dr. Syed Muhammad Shoaib Akhtar (PW-8) examined who on 28.05.2021 was posted at THQ hospital Chishtian and had examined the appellant on the same day. On examining the appellant, Dr. Syed Muhammad Shoaib Akhtar (PW-8) observed as under:-

> Examination of Clothes
>
> Wearing white clothes, clothes intact. No staining on clothes.
>
> General Physical examination:

Pulse 90 p/m, P.B 100/60 temperature A/F, R/R 16 per minute. The patient was irritable.

Description of Injuries:

Injury No.1

A bruise horizontal in position in front of neck 5 cm below chin present.

The patient was referred to BVH Bahawalpur for further management. Final opinion was KUO till receipt surgical notes BVH Bahawalpur.

Surgical/treatment notes of Abdul Jabbar son of Jan Muhammad, BVH Registration No.160379-603-66 issued on 01.7.2021, received on 03.3.2022. As per treatment notes, patient received with strangulation from ceiling fan with strangulation marks extending from one sternomastoid muscle to other on anterior aspect of neck. Patient was present with hypertension and was resuscitated and after neurosurgical evaluation and ENT evaluation was performed by the said specialty respectively for the treatment notes please refer to the concerned wards i.e. neurosurgery ward, ENT ward, Patient was shifted to the ward and discharged on 31.5.2021 in satisfactory condition."

The prosecution also got Dr. Waleed Bin Tariq (PW-11) examined who stated that on 27.05.2021, he was posted at THQ hospital Chishtian and at about 11.55 p.m had examined the appellant as an emergency case. The prosecution also got Dr. Hafiz Aamir Bashir (PW-14) examined who stated that on 28.05.2021, he was posted as Medical Officer at BV hospital Bahawalpur and on the same day examined the appellant and observed as under:-

Treatment notes:

> Patient received with strangulation from ceiling fan with strangulation marks extending from one sternomastoid muscle to other on anterior aspect of neck. Patient was present with hypertension and was resuscitated and after neurosurgical evaluation and ENT evaluation was performed by the said specialty respectively for the treatment notes please refer to the concerned wards i.e. neurosurgery ward, ENT ward, Patient was shifted to the ward and discharged on 31.5.2021 vide discharge slip Exh.PK/2, in satisfactory condition.
>
> I issued surgical treatment notes No.E-97 Exh.PK/1, which bears my signature and stamp.":

7. On 12.04.2022, the learned Assistant District Public Prosecutor gave up the prosecution witnesses namely Muhammad Mujahid, Muhammad Aamir and Uzair Farrukh 76/C as being unnecessary and closed the prosecution evidence after tendering the reports of Punjab Forensic Science Agency, Lahore **(**Exh.PS, Exh.PT and Exh.PU).

8. After the closure of prosecution evidence, the learned trial court examined appellant namely Abdul Jabbar son of Jan Muhammad under section 342 Cr.P.C. and in answer to question *why this case against you and why the P.W.s have deposed against you*, he replied that he was innocent and had been falsely involved in the case. He further stated that he had not committed the occurrence and had been made a scapegoat in the case in order to show efficiency by the police. The appellant namely Abdul Jabbar son of Jan Muhammad opted not to

get himself examined under section 340(2) Cr.P.C , however, got Maryam Jabbar (DW-1) examined in his defence.

9. On the conclusion of the trial, the learned Additional Sessions Judge, Chishtian convicted and sentenced the appellant as referred to above.

10. The contention of the learned counsel for the appellant precisely is that the whole case is fabricated and false. The learned counsel for the appellant 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 appellant further contended that the statements of prosecution witnesses were not worthy of any reliance. The learned counsel for the appellant 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 appellant finally submitted that the prosecution had totally failed to prove the case against the appellant beyond the shadow of doubt.

11. On the other hand, the learned Deputy Prosecutor General along with the learned counsel for the complainant contended that the prosecution has proved its case beyond the shadow of a doubt by producing independent witnesses. The learned Deputy Prosecutor General along with the learned counsel for the complainant further argued that the deceased died as a result of injuries suffered at the hands of the appellant. The learned Deputy Prosecutor General along with the learned counsel for the complainant further contended that the medical evidence also supported the facts in issue. The learned Deputy Prosecutor General

along with the learned counsel for the complainant further argued that the recovery of the *Churri* (P-1) and the reports of the Punjab Forensic Science Agency, Lahore also provided support to the prosecution case. The learned Deputy Prosecutor General along with 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 offender with the innocent in this case. Lastly, they prayed for the rejection of the appeal.

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

13. After consideration of the contentions raised by learned counsel for the respective parties and scanning the evidence, it is pertinent to mention here that in the instant matter, ocular evidence is not available. There can be no dispute regarding the fact that the case is built on circumstantial evidence. In dealing with circumstantial evidence, the rules 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 statements of the prosecution witnesses namely Muhammad Ashraf (PW-1) and Rasheed Ahmad (PW-2), who stated that they discovered the dead body of the deceased inside the shop of the appellant and also found the appellant to be present in an unconscious condition in the same shop, making them perceive that the appellant had murdered the deceased, the evidence of the presence of the dead body of the deceased inside the shop of the appellant , the recovery of the *Churri* (P-1) from

the place of occurrence, the blood stained *Shalwar* and *Qameez* of the appellant and the report of the Punjab Forensic Science Agency, Lahore (Exh.PU).

14. According to the prosecution witnesses namely Muhammad Ashraf (PW-1) and Rasheed Ahmad (PW-2), it was on 27.05.2021 at about 10.15 p.m, when they proceeded to inquire about the deceased and arrived at the shop of the appellant where they found the shutter door of the shop downed, however, the electric light bulb being on, so they went inside the shop and discovered the dead body of the deceased inside the shop of the appellant and also found the appellant to be present in an unconscious condition in the same shop, convincing them that the appellant had murdered the deceased. A perusal of the statements of the prosecution witnesses namely Muhammad Ashraf (PW-1) and Rasheed Ahmad (PW-2) proves that both the witnesses failed to establish that they were the first to arrive at the place of occurrence and the first to discover the presence of the dead body of the deceased inside the shop of the appellant and the first to find the appellant to be present in an unconscious condition in the same shop. Both the prosecution witnesses namely Muhammad Ashraf (PW-1) and Rasheed Ahmad (PW-2) admitted that the shop of the appellant, where the dead body was found present, was in *Basti Awan Pura*, whereas the prosecution witness namely Muhammad Ashraf (PW-1) was resident of Mauza *Mehr Shareef*, whereas the prosecution witness namely Rasheed Ahmad (PW-2) was the resident of *Tibbi Tanki*, Tehsil Chishtian. Both the prosecution witnesses namely Muhammad Ashraf (PW-1) and Rasheed Ahmad (PW-2) also admitted that *Basti Awan Pura* was at a distance from their residences. The prosecution witness namely Muhammad Ashraf (PW-1) admitted during cross-examination , as under:-

> "**Mahar Sharif is at a distance of about five kilometers from Basti Awanpura**. It is incorrect to suggest that the above said distance is about 14/15 kilometers. **The distance between Basti AwanPura and Basti Tibba Tainki is about 1/1/2 kilometer.**
>
> ……..
>
> PW Muhammad Rasheed is husband of sister of my wife. " (emphasis supplied)

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

> "**The distance between AwanPura and Mahar Sharif is three kilometers**. It is incorrect to suggest that the above mentioned distance is about 14/15 kilometer. **The distance between Awanpur and Tibba Tainki is about one kilometer.**
>
> …….
>
> Complainant Muhammad Ashraf is husband of my sister in law. "

As both the prosecution witnesses namely Muhammad Ashraf (PW-1) and Rasheed Ahmad (PW-2) were not the residents of *Basti Awan Pura*, therefore, being conscious of this fact that there did not exist any reason for them to had proceeded to the place of the recovery of the dead body , the prosecution witnesses namely Muhammad Ashraf (PW-1) and Rasheed Ahmad (PW-2) came up with a reason that as they had to board Muhammad Nadeem (PW-4) on a bus for Lahore, therefore, on 27.05.2021, they accompanied Muhammad Nadeem (PW-4) to the Bus stop and returning from the same went to the matrimonial

house of the deceased to inquire about her. The prosecution witness namely Muhammad Ashraf (PW-1), in his examination in-chief ,stated as under:-

> "On 27.5.2021 I alongwith Rasheed Ahmad and Mujahid came to Chishtian Lari Adda in order to drop my son namely Muhammad Nadeem, who used to work at Lahore. After dropping my son Muhammad Nadeem we went to AwanPura in the house of my said daughter at about 10:15 PM but her house was locked. "

The prosecution witness namely Rasheed Ahmad (PW-2), in his examination in-chief recorded by the learned trial court , stated as under:-

> "Stated on 27.5.2021 I alongwith complainant Muhammad Ashraf and Mujahid came to Chishtian Lari Adda in order to drop Muhammad Nadeem son of complainant, who used to work at Lahore. After dropping Muhammad Nadeem we went to AwanPur in the house of complainant's daughter Bushra Bibi (now deceased) at about 10:15 PM, but her house was locked. "

Incidentally the prosecution also got Muhammad Nadeem (PW-4) examined, however, Muhammad Nadeem (PW-4) did not state that on 27.05.2021, the prosecution witnesses namely Muhammad Ashraf (PW-1) and Rasheed Ahmad (PW-2) had accompanied him to the bus stop when he was to proceed to Lahore. In his statement before the learned trial court, Muhammad Nadeem (PW-4) stated as under:-

> "Stated that I am resident of Mahar Sharif and labourer by profession. On 28.5.2021, I received dead body of deceased Mst. Bushra Bibi my sister after autopsy for her funeral ceremony and burial through receipt Exh.PG. 1.0 recorded my statement u/s 161 Cr.P.C in this regard on the same day.
>
> XXX Cross examination by learned counsel for the accused.

> I reached at Lari Adda on 27.5.2021 at about 10:00 PM. I had boarded the bus for Lahore, when I reached at Bahawalnagar at about 10:45 PM, then I received information of occurrence and as such I returned back to place of occurrence. ”

The above referred portions of the statements of the prosecution witnesses namely Muhammad Ashraf (PW-1) , Rasheed Ahmad (PW-2) and Muhammad Nadeem (PW-4) fully denude the false claim of the prosecution witnesses namely Muhammad Ashraf (PW-1) and Rasheed Ahmad (PW-2) that as they had to board Muhammad Nadeem (PW-4) on a bus for Lahore, therefore, on 27.05.2021, they had accompanied Muhammad Nadeem (PW-4) to the Bus stop and returning from the same went to the matrimonial house of the deceased to inquire about her. The very reason for which the prosecution witnesses namely Muhammad Ashraf (PW-1) and Rasheed Ahmad (PW-2) claimed to had left their residences was denied by their own witness namely Muhammad Nadeem (PW-4). We have also noted that the prosecution witnesses namely Muhammad Ashraf (PW-1) and Rasheed Ahmad (PW-2) claimed that they had gone on a motorcycle to drop Muhammad Nadeem (PW-4) at the bus stop in Chishtian, however admitted that the said motorcycle under their use was never produced before the Investigating Officer of the case . Muhammad Ashraf (PW-1) , during cross-examination , admitted as under:-

> “We left Muhammad Nadeem at Larri Ada through motorcycle, but the said **motorcycle was not produced before the I.0** ”

In this manner, the prosecution witnesses namely Muhammad Ashraf (PW-1) and Rasheed Ahmad (PW-2) could not even prove that on 27.05.2021, they

accompanied Muhammad Nadeem (PW-4) to the Bus stop and while returning from the same went to the matrimonial house of the deceased to inquire about her and finding the same to be locked, arrived at the shop of the appellant where they found the shutter door of the shop downed, however, electric light bulb being on, so they went inside the shop and discovered the dead body of the deceased inside the shop of the appellant and also found the appellant to be present in an unconscious condition in the same shop.

15. We have also noted that the prosecution witnesses namely Muhammad Ashraf (PW-1) and Rasheed Ahmad (PW-2) also make absolutely incorrect statements with regard to the details of the events which took place subsequent to the discovery of the dead body as well as the appellant inside the shop of the appellant. Both the prosecution witnesses namely Muhammad Ashraf (PW-1) and Rasheed Ahmad (PW-2) claimed that they reached at the THQ hospital Chishtian at about **08.30 a.m** on **28.05.2021** along with the dead body of the deceased as well as the Investigating Officer of the case and till their arrival at the hospital, they remained present in *Basti Awan Pura*. The prosecution witness namely Muhammad Ashraf (PW-1) , during cross-examination , admitted as under:-

> " We reached at THQ Hospital Chishtian **at about 08:30 AM** and at that time I was accompanying Rasheed, Mujahid, Imran and Zafar. **The dead body was received by Muhammad Nadeem my son**. Prior to reaching at THQ Hospital Chishtian we remained at Basti Awanpura." (emphasis supplied)

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

> "**We reached at THQ Hospital Chishtian at about 10:00 AM** and at that time I was accompanying Ashraf, Mujahid, Muhammad Nadeem, Zafar Iqbal Muhammad Amir and **Saquib Hussain ASI**. We proceeded to THQ Hospital Chishtian from Basti Awan Pura. " (emphasis supplied)

Contradicting the statements of prosecution witnesses namely Muhammad Ashraf (PW-1) and Rasheed Ahmad (PW-2) , the Investigating Officer of the case namely Saqib Hussain Wajid, SI (PW-12) stated that the dead body of the deceased arrived at the THQ hospital Chishtian on **28.05.2021 at 12.00 a.m (night)**. Saqib Hussain Wajid, SI (PW-12), during cross-examination stated as under:-

> " The dead body reached at THQ Hospital Chishtian on 28.5.2021 after 12:00 (night)."

Even Dr.Iram Zafar (PW-9) stated that the dead body of the deceased was received at the hospital on **28.05.2021, at 05.30 a.m.** and she conducted the post mortem examination of the deceased on the same day at **06.15 a.m.** No other witness supported the statements of the prosecution witnesses namely Muhammad Ashraf (PW-1) and Rasheed Ahmad (PW-2) that they had arrived at the THQ hospital along with the Investigating Officer of the case and the dead body of the deceased at **08.30 a.m** {*as stated by Muhammad Ashraf (PW-1*)} or **10.00 a.m** {*as stated by Rasheed Ahmad (PW-2)*} on 28.05.2021.

16. It is also a fact that at the time of conducting the post mortem examination of the dead body of the deceased, Dr.Iram Zafar (PW-9) noted that the eyes and mouth of the deceased were open and observed as under:-

> "A dead body of middle aged healthy female lying supine on mortuary table with **eyes and mouth open**, " (emphasis supplied)

Dr.Iram Zafar (PW-9) , during cross-examination , also stated as under:-

> "It is correct that eyes and mouth of the deceased were open at the time of examination "

The stance set up by the prosecution in the present case is that the prosecution witnesses namely Muhammad Ashraf (PW-1) and Rasheed Ahmad (PW-2) had discovered the dead body of the deceased and had remained with the dead body. The mouth and eyes of the deceased were found open at the time of post mortem examination by Dr.Iram Zafar (PW-9), thus, if the prosecution witnesses namely Muhammad Ashraf (PW-1) and Rasheed Ahmad (PW-2) were present then, at least after the death, as is a consistent practice of such close relatives, they would have closed the eyes and mouth of the deceased on her expiry. Thus, the open eyes and mouth of the deceased force a hostile interpretation against the prosecution's version regarding the presence of the prosecution witnesses namely Muhammad Ashraf (PW-1) and Rasheed Ahmad (PW-2) at the place of occurrence where the dead body was allegedly discovered by them . The august Supreme Court of Pakistan in the case of "*MUHAMMAD RAFIQUE alias FEEQA vs. The State"* **(2019 SCMR 1068)** has held as under:

> *"What has further irked this Court is that in column No. 9 of the Marg Report (Ex.PW9/1), and even in the Post Mortem Report (Ex.PW-10/A), the mouth of the deceased has been stated to be open, which clearly indicates that the dead body was not attended to by his close relatives after being pronounced dead. However, the stance set up by the prosecution in the present case is that Arshad Ali - the brother, and Nazir Ahmad - the uncle of the deceased Muhammad Azam were present at the time of his death, and remained with him, even thereafter. Thus, the said posture of the deceased raises an adverse inference against the*

prosecution's version regarding the presence of the said persons at the place and time of occurrence."

17. Another factor proving the absence of the prosecution witnesses namely Muhammad Ashraf (PW-1) and Rasheed Ahmad (PW-2) at the place of the discovery of the dead body of the deceased was the delay in the post mortem examination of the dead body. According to the prosecution witnesses namely Muhammad Ashraf (PW-1) and Rasheed Ahmad (PW-2) they had discovered the dead body at about **10.15 p.m on 27.05.2021**, the oral statement (Exh.PA) of the prosecution witness namely Muhammad Ashraf (PW-1) was recorded at the place of recovery of the dead body by Saqib Hussain Wajid, SI (PW-12) , the Investigating Officer of the case on **27.05.2021 at 11.55 p.m** but the post mortem examination of the dead body was conducted by Dr.Iram Zafar (PW-9) on **28.05.2021 at 06.15 a.m.** Dr.Iram Zafar (PW-9) also noted fully developed rigor mortis at the time of conducting the post-mortem examination of the dead body of the deceased. Additionally, as mentioned above, according to the statement of Saqib Hussain Wajid, SI (PW-12) , the Investigating Officer of the case , the dead body had been sent to the hospital as early as at about 12.00 a.m. (night). When the dead body had arrived at the hospital as early as at about 12.00 a.m. (night) then there did not exist any reason for delay in conducting the post mortem examination of the dead body of the deceased except the reason which is apparent that by that time the details of the occurrence were not known and the said time was used to not only to procure the attendance of the witnesses but also to fashion a false narrative of the oral statement (Exh.PA). No explanation was offered to justify the said delay in conducting the post mortem examination. This clearly establishes that the prosecution witnesses namely Muhammad Ashraf (PW-1) and

Rasheed Ahmad (PW-2) , claiming to have discovered the dead body , were not present at the place of the recovery of the dead body and the delay in the post mortem examination was used to procure their attendance and formulate a false narrative, after consultation and concert. It has been repeatedly held by the august Supreme Court of Pakistan that such delay in the post mortem examination is reflective of the absence of witnesses and the sole purpose of causing such delay is to procure the presence of witnesses and to further advance a false narrative to involve any person. Reliance in this regard is placed on the case of "*Khalid alias Khalidi and two others vs. The State"* **(2012 SCMR 327)** ,the case of "*Mian SOHAIL AHMED and others vs. The State and others"* **(2019 SCMR 956)** and the case of "*MUHAMMAD RAFIQUE alias FEEQA vs. The State"* **(2019 SCMR 1068)** .All the facts mentioned above prove that the prosecution witnesses namely Muhammad Ashraf (PW-1) and Rasheed Ahmad (PW-2) could not prove that the appellant had murdered the deceased was a fact, which they, the prosecution witnesses namely Muhammad Ashraf (PW-1) and Rasheed Ahmad (PW-2) , could have perceived by any sense.

18. The learned Deputy Prosecutor General and the learned counsel for the complainant have laid great stress upon the fact that the appellant was present, in an unconscious condition, inside the same shop where the dead body of the deceased was also present, therefore, this circumstance prove the guilt of the appellant. The fact that the appellant was lying unconscious at the scene of occurrence is accepted by all the prosecution witnesses including the Investigating Officer, who sent the appellant to the THQ hospital Chishtian for

medical attention. Since he was sent by the Investigating Officer himself, the prosecution ought to have placed on record the material indicating what made him unconscious, what was the probable period of such unconsciousness and whether the appellant was falsely projecting it. The prosecution got Dr. Waleed Bin Tariq (PW-11) examined who stated that on **27.05.2021**, he was posted at THQ hospital Chishtian and at about **11.55 p.m** had examined the appellant as an emergency case. The prosecution also got Dr. Syed Muhammad Shoaib Akhtar (PW-8) examined, who on 28.05.2021 was posted at THQ hospital Chishtian and had examined the appellant on the same day. On examining the appellant, Dr. Syed Muhammad Shoaib Akhtar (PW-8) observed a bruise, horizontal in position, present in front of the neck, 5 cm below the chin of the appellant and the appellant was referred to BV. Hospital Bahawalpur for further management. The prosecution also got Dr. Hafiz Aamir Bashir (PW-14) examined who stated that on 28.05.2021, he was posted as Medical Officer at BV hospital Bahawalpur and on the same day examined the appellant and observed that the appellant was received at the hospital with the history of *strangulation from ceiling fan* and had *strangulation marks extending from one sternomastoid muscle to the other*, present on the anterior aspect of the neck. No effort was made by the Investigating Officer of the case to determine as to since when the appellant was unconscious when he was discovered by the Investigating Officer of the case and subsequently sent to the hospital for examination. The prosecution case is also silent as to the ligature used for strangulating the appellant. Only the rope (P-2) was taken into possession by the Crime Scene Unit, however, it was not declared that the same was present around the neck of the appellant and had been removed from the same by the Investigating Officer of the case or the Crime Scene Unit or by any

Medical Officer who had examined the appellant. According to the exhibit sheet (Exh.PP), the rope (P-2) was tied around the iron girder near the ceiling fan present at the place of occurrence. Moreover, most importantly, according to the report of Punjab Forensic Science Agency, Lahore (Exh.PU), the DNA profile of the deceased was found present on the rope (P-2) but no DNA of the appellant was found present on the rope (P-2). Had the appellant touched the rope (P-2) , as was suggested by the prosecution witnesses that the appellant had attempted to commit suicide by hanging himself from the girder using the rope (P-2), then the DNA of the appellant must have been discovered on the rope (P-2), however, it was not. The relevant portion of the report of Punjab Forensic Science Agency, Lahore (Exh.PU) reads as under:-

> " 7. A rope tied with girder near ceiling fan at crime scene.
>
> 7.1 Swab(s) taken from the knot-area of rope.
>
> 7.2 Swab(s) taken from other than knot area of rope
>
> ……..
>
> The DNA profile obtained from item #7.2 is a mixture of at least two individuals with major and minor components. **The major component of the DNA profile obtained from this item is consistent with the DNA profile of Bushra Bibi item #4)**. The probability of finding an unrelated individual at random in the population as being a major contributor to the DNA obtained from this item is approximately one in 9 quintillion in Caucasians. The minor component of the DNA profile obtained from this item is partial and inconclusive
>
> The DNA profile obtained from item #7.1 is partial and inconclusive." (emphasis supplied)

When an individual touches an object, epithelial cells are left behind. Touch DNA is also known as epithelial DNA. The same traditional DNA analysis procedures are used to analyze and examine these remaining epithelial cells as are used to analyze and examine bodily fluids. The amount left behind is often less than 100 picograms and is also called low copy DNA. This is evidence with "no visible staining that would likely contain DNA resulting from the transfer of epithelial cells from the skin to an object. Due to development, lower amounts of human DNA can be detected and, possibly, a full or partial STR profile can be generated. DNA evidence has emerged as a powerful tool to identify perpetrators of unspeakable crimes and to exonerate innocent individuals accused of similarly heinous actions. The report of the Punjab Forensic Science Agency, Lahore (Exh.PU) conclusively proves that the appellant had not handled the rope (P-2). Furthermore, the fact that the appellant was lying unconscious and no material having been placed on record clearly indicating that the appellant was falsely projecting to be unconscious, the hypothesis that the appellant could be innocent is a possibility.

19. The prosecution also made no effort to prove the exact time when the occurrence took place. The only evidence produced by the prosecution to prove the time of occurrence was the evidence of Dr.Iram Zafar (PW-9), who on 28.05.2021 was posted as Woman Medical Officer at the THQ hospital Chishtian and on the same day had conducted the postmortem examination of the dead body of Mst. Bushra Bibi daughter of Muhammad Ashraf (deceased). Dr.Iram Zafar (PW-9) explained that in the instant case, she conducted the post mortem

examination on **28.05.2021 at 06.15 a.m**. and noted fully developed rigor mortis at the time of conducting the post-mortem examination of the dead body of the deceased. Dr.Iram Zafar (PW-9) also opined that according to her estimation, the time between death and post mortem examination was **within 24 hours** . Dr.Iram Zafar (PW-9), during her statement before the learned trial court, stated as under:-

> "Probable time that lapsed between injury and death immediately and between death and postmortem **within 24 hours**.
>
> ……..
>
> Rigor mortis were fully developed. Usually within 6 to 8 hours rigor mortis are fully developed on a dead body. It is correct that rigor mortis develops early in cold season. The duration of developing of rigor mortis varies. Rigor mortis may develop within 10-12 hours depending upon the body**. In the instant case the rigor mortis might have developed within 10-12 hours**. Usually, the rigor mortis starts to disappear after 12 hours after developing." (emphasis supplied)

Rigor mortis is a term which stands for the stiffness of voluntary and involuntary muscles in human body after death. It starts within 2 to 4 hours of death and fully develops in about 12-hours in temperate climate. Similarly, the reverse process with which *rigor mortis* disappears is called *algor mortis*. In support of duration required to develop *rigor mortis*, an extract from "*The Principles And Practice Of Medical Jurisprudence" by Alfred Swaine Taylor,MD* , is being referred hereunder:-

> "*In sudden natural deaths occurring in a temperate climate during average seasonal conditions rigor mortis usually commences within 2 to 4 hours of death. It reaches a peak in about 12 hours and starts to*

> *disappear after another 12 hours. The cadaver becoming limp some 36 hours after death."*

Likewise, Dr. S. Siddiq Husain in Chapter-V of his book "*Forensic Medicine and Toxicology"*, observed that in temperate climate the *rigor mortis* completes in 8 to 12 hours. Similarly, William Carroll in his research article titled as "*An Examination of Muscle Function"*, has declared a similar duration for *rigor mortis* to develop. In Chapter 15 'POST-MORTEM CHANGES AND TIME SINCE DEATH", from page 351 to page 352 of Rai Bahadur Jaising P. Modi's *A Textbook of Medical Jurisprudence and Toxicology* (26th Edition 2018) ,it has been discoursed as under:-:

> "Rigor mortis generally occurs, while the body is cooling. It is in no way connected with the nervous system, and it develops even in paralyzed limbs, provided the paralyzed muscle tissues have not suffered much in nutrition. It is retarded by perfusion with normal saline.
>
> Owing to the setting in of rigor mortis all the muscles of the body become stiff, hard, opaque and contracted, but they do not alter the position of body or limb. A joint rendered stiff and rigid after death, if flexed forcibly by mechanical violence, will remain supple and flaccid, but will not return to its original position after the force is withdrawn; whereas a joint contracted during life in cases of hysteria or catalepsy will return to the same condition after the force is taken away.
>
> Rigor mortis first appears in the involuntary muscles, and then in the voluntary. In the heart it appears, as a rule, within an hour after death, and may be mistaken for hypertrophy, and its relaxation or dilatation, atrophy or degeneration. The left chambers are affected more than the

right. Post-mortem delivery may occur owing to contraction of the uterine muscular fibres.

In the voluntary muscles rigor mortis follows a definite course. It first occurs in the muscles of the eyelids, next in the muscles of the back of the neck and lower jaw, then in those of the front of the neck, face, chest and upper extremities, and lastly extends downwards to the muscles of the abdomen and lower extremities. Last to be affected are the small muscles of the fingers and toes. It passes off in the same sequence. However, according to H.A. Shapiro this progress of rigor mortis from proximal to distal areas is apparent only, it actually starts in all muscles simultaneously but one can distinguish the early developing and fully established stage, which gives an indication of the time factor.

Time of Onset.- This varies greatly in different cases, but the average period of its onset may be regarded as three to six hours after death in temperate climates, and it may take two to three hours to develop.

Duration-In temperate regions, rigor mortis usually lasts for two to three days. In northern India, the usual duration of rigor morts is 24 10 48 hours in winter and 18 to 36 hours in summer. According to the investigations of Mackenzie, in Calcutta, the average duration is nineteen hours and twelve minutes, the shortest period being three hours, and the the longest forty hours." In Colombo, the average duration is 12 to 18 hours. When rigor mortis sets in early, it passes off quickly and vice versa. In general, rigor mortis sets in one to two hours after death, is well developed from head to foot in about twelve hours. Whether rigor is in the developing phase, established phase, or maintained phase is decided by associated findings like marbling, right lower abdominal discolouration, tense or taut state of the abdomen,

> disappearance of rigor on face and eye muscles. If on examination, the body is stiff, the head cannot be fixed towards the chest, then in all probability, the death might have occurred six to twelve hours or so more before the time of examination."

The opinion of Dr.Iram Zafar (PW-9) regarding the time between the death of the deceased and the post mortem examination of the dead body of the deceased also covers the prosecution case with a shroud of deep doubt. It was the case of the prosecution itself that the dead body of the deceased was found inside a shop, which shop was surrounded by many other shops. The prosecution witness namely Saqib Hussain Wajid, SI (PW-12), the Investigating Officer of the case, during cross-examination , stated as under:-

> "I reached at place of occurrence at 10:40 PM on 27.5.2021. It is correct that place of occurrence **is thickly populated area**. It is correct that no people of the locality except the private PWs joined the investigation. I did not investigate the private persons of the vicinity. The houses are adjacent with the shop (place of occurrence). **So many houses are situated near the place of occurrence**. The mattled (sic) road is leading in front of the place of occurrence and the same is **a busy road**. " (emphasis supplied)

In this scenario, when the place of occurrence was a shop surrounded by many other shops and houses, then if the murder been committed during rush hours , as suggested by the prosecution ,the same could not have gone unnoticed. The circumstances in which a dead body remained present for such a long period inside an open shop, without being discovered earlier and the circumstances in which and the period for which the appellant remained unconscious, needed to be proved by the prosecution, however, they were not, hence, clouding the whole case, putting it under layers and layers of dirt of uncertainty.

20. The learned Deputy Prosecutor General and the learned counsel for the complainant have placed great stress upon the recovery of the blood stained *Shalwar* and *Qameez* of the appellant and have stated that the recovery of the said blood stained *Shalwar* and *Qameez* of the appellant proved that the appellant was the one who had murdered the deceased . Though it is correct that the *Shalwar* and *Qameez* of the appellant were indeed found to be stained with blood by the Punjab Forensic Science Agency, Lahore after analysis and the DNA of the deceased was also found present on the *Shalwar* of the appellant by the Punjab Forensic Science Agency, Lahore , however, it was not proved that how and when the said *Shalwar* and *Qameez* of the appellant were taken into possession and sent to the Punjab Forensic Science Agency, Lahore. According to the Saqib Hussain Wajid, SI (PW-12) , the Investigating Officer of the case, he was handed over the *Shalwar* and *Qameez* of the appellant at the **THQ hospital** by Uzair Farrukh 76/C (given up prosecution witness), who in turn had received the same from the Medical Officer who had examined the appellant. The prosecution witness namely Saqib Hussain Wajid, SI (PW-12), the Investigating Officer of the case, in his statement before the learned trial court , stated as under:-

> "Thereafter I proceeded to THQ Hospital Chishtian where Uzair Farukh 76/C produced before me clothes of injured Abdul Jabbar i.e. Shalwar P-1, Qameez P-2 which I took into possession vide recovery memo Exh.PC,
>
> ……
>
> The clothes of injured accused were handed over to me at THQ Hospital Chishtian, which I made into a sealed parcel and took into possession. "

According to the prosecution evidence, Dr. Waleed Bin Tariq (PW-11) posted at THQ hospital Chishtian, had examined the appellant on **27.05.2021** at about **11.55 p.m** as an emergency case. and Dr. Syed Muhammad Shoaib Akhtar (PW-8), also posted at THQ hospital Chishtian, had examined the appellant on **28.05.2021**. Neither Dr. Waleed Bin Tariq (PW-11) nor Dr. Syed Muhammad Shoaib Akhtar (PW-8) stated in their statements before the learned trial court that they had handed over any blood stained *Shalwar* and *Qameez* of the appellant at the THQ hospital to Uzair Farrukh 76/C (given up prosecution witness). To the contrary, Dr. Syed Muhammad Shoaib Akhtar (PW-8) stated that the appellant was wearing white clothes and there were no stains present on his clothes. Dr. Syed Muhammad Shoaib Akhtar (PW-8), in his statement before the learned trial court , stated as under:-

> "Stated that on 28.5.2021 I was posted at THQ Hospital Chishtian. On the same day injured **Abdul Jabbar was produced before me by Uzair Farrukh 76/C** alongwith injury statement Exh.PH for his medical examination. After giving first aid as per MLC record register Exh.Pl, the patient was referred to BVH Bahawalpur for further management.
>
> I followed identification mark i.e scar mark on right side of face.
>
> Brief History
>
> History of violence.
>
> Examination of Clothes
>
> **Wearing white clothes, clothes intact. No staining on clothes**. "

The above reproduced statement of Dr. Syed Muhammad Shoaib Akhtar (PW-8) clearly proves that manipulation was made by Saqib Hussain Wajid, SI (PW-12), the Investigating Officer of the case, to pad up the prosecution case, with creation of false evidence.

21. The learned Deputy Prosecutor General and the learned counsel for the complainant have placed great reliance upon the recovery of the *Churri* (P-1) from the place of occurrence and have stated that the recovery of the said *Churri* (P-1) from the place of occurrence proved that the same had been used by the appellant to commit the murder. The Investigating Officer of the case and the Crime Scene Unit did not gather the fingerprints either from the shop or even on the *Churri (P-1)* which was allegedly used for committing the offence in question. If the fingerprints on the *Churri (P-1)* were to be that of the appellant alone, such factor could certainly have weighed against the appellant. In this case, besides the above mentioned omission, a strong fact pointing towards the innocence of the appellant has been noted by us, being that the *Churri (P-1)* recovered from the place of occurrence, which was sent to the Punjab Forensic Science Agency, Lahore for analysis, had DNA of the deceased present on its handle and no DNA of the appellant was found present on the said *Churri (P-1)*. The relevant portion of the report of Punjab Forensic Science Agency, Lahore (Exh.PU) reads as under:-

> "8. A knife collected from ground near western wall at crime scene
>
> 8.1 Swab(s) taken from blade of knife.
>
> 8.2 Swab(s) taken from handle of knife.
>
> ……..

> The DNA profile obtained from item #1.1,3.2, 5, 6,**8.1 and 8.2 matches the DNA profile of Bushra Bibi (item #4).** The probability of finding an unrelated individual at random in the population as being the source of DNA obtained these items is approximately one in 9 quintillion in Caucasians." (emphasis supplied)

The report of the Punjab Forensic Science Agency, Lahore (Exh.PU) supports the claim of the appellant that he was innocent for the reason that had the appellant handled the *Churri (P-1)* which was found from the place of occurrence, then his DNA profile must had been obtained from the said *Churri (P-1)* because had he touched the Churri (P-1), then the epithelial cells from the skin of the appellant must have been left behind on the *Churri (P-1)* handled by him and subsequently the presence of DNA profile of the appellant would have been identified on the *Churri (P-1)* by the Punjab Forensic Science Agency, Lahore . The absence of any DNA profile of the appellant on the *Churri (P-1)* sent to the Punjab Forensic Science Agency, Lahore for DNA analysis creates further doubt regarding the involvement of the appellant in the occurrence. Moreover, the presence of the DNA of the deceased on the handle of the *Churri (P-1)* creates deep crevices of ambiguity in the prosecution case. It has not been explained as to why the DNA profile of the deceased was found on the handle of the *Churri (P-1)* and no DNA profile of the appellant was found by the Punjab Forensic Science Agency, Lahore on the said handle.

23. The learned Deputy Prosecutor General and the learned counsel for the complainant have also relied upon the evidence of motive and submitted that it corroborated the prosecution case. The motive of the occurrence as stated by Muhammad Ashraf (PW-1) in the oral statement (Exh. PA) was that the appellant

had doubts over the moral conduct of the deceased and the appellant suspected the deceased of having illicit relations with other men. It was candidly admitted by the prosecution witness namely Saqib Hussain Wajid, SI (PW-12), the Investigating Officer of the case, that there was no evidence collected during the investigation of the case regarding the alleged motive and admitted during cross-examination , as under:-

> " It is correct that I did not collect evidence regarding the motive."

There is no evidence on record that Mst. Bushra Bibi (deceased) was facing any threat to her life at the hands of the appellant prior to the occurrence rather to the contrary she was living with the appellant till her tragic death. This also proves that the appellant and the deceased were having a happy and a healthy marital life and hence there did not exist any reason for the appellant to have murdered his loving wife. The prosecution witnesses failed to provide evidence enabling us to determine the truthfulness of the motive alleged and the fact that the said motive was so compelling that it could have led the appellant to have committed the *Qatl-i-Amd* of the deceased. There is a poignant hush with regard to the particulars of the motive alleged. No independent witness was produced by the prosecution to prove the motive as alleged. Even otherwise, a tainted piece of evidence cannot corroborate another tainted piece of evidence. The august Supreme Court of Pakistan has held in the case of *Muhammad Javed v. The State* **(2016 SCMR 2021)** as under:

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

23. The learned Deputy Prosecutor General has also argued that the dead body of the deceased was found present inside the shop of the appellant, therefore, the appellant be presumed to had murdered the deceased. It has been argued by the learned Deputy Prosecutor General that where any person dies an unnatural death in the shop of such accused, as in this case, then some part of the onus lies on him to establish the circumstances in which such unnatural death had occurred. The prosecution is bound to prove its case against an accused person beyond a reasonable doubt at all stages of a criminal case and the accused person could not be convicted merely on the basis of a presumption that since the murder of a person had taken place in his house, therefore, it must be he and none else who would have committed that murder. The learned Deputy Prosecutor General submits that it was in the knowledge of the appellant how the deceased died so it was the appellant who was responsible, in the absence of any explanation. The law on the burden of proof, as provided in Article 117 of the Qanun-e-Shahadat, 1984, mandates the prosecution to prove, and that too, beyond any doubt, the guilt of the accused for the commission of the crime for which he is charged. The said provision provides:

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

On a conceptual plain, Article 117 of the Qanun-e-Shahadat, 1984 enshrines the foundational principle of our criminal justice system, whereby the accused is presumed to be innocent unless proved otherwise. Accordingly, the burden is placed on the prosecution to prove beyond doubt the guilt of the accused, which

burden can never be shifted to the accused, unless the legislature by express terms commands otherwise. It is only when the prosecution is able to discharge the burden of proof by establishing the elements of the offence, which are sufficient to bring home the guilt of the accused then, the burden is shifted upon the accused, inter alia, under Article 122 of the Qanun-e-Shahadat, 1984, to produce evidence of facts, which are especially in his exclusive knowledge, and practically impossible for the prosecution to prove, to avoid conviction. Article 122 of Qanun-e-Shahadat,1984 reads as under:

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

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

> *"Needless to emphasis that in spite of section 106 of the Evidence Act in criminal case the onus rests on the prosecution to prove the guilt of the accused beyond reasonable doubt and this section cannot be construed to mean that the onus at any stage shifts on to the accused to prove his*

> *innocence or make up for the inability and failure of the prosecution to produce evidence to establish the guilt of the accused. Nor does it relieve! the prosecution of the burden to bring the guilt home to the accused. It is only after the prosecution has on the evidence adduced by it, succeeded in raising reasonable inference of the guilt of the accused, unless the same is rebutted, that this section wherever applicable, comes into play and the accused may negative the inference by proof of some facts within his special knowledge. If, however, the prosecution fails to prove the essential ingredients of the offence, no duty is cast on the accused to prove his innocence."*

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

> *"It has been argued by the learned counsel for the complainant that in the cases of Arshad Mehmood v. The State (2005 SCMR 1524) and Saeed Ahmed v. The State (2015 SCMR 710) this Court had held that where a wife of a person or any vulnerable dependent dies an unnatural death in the house of such person then some part of the onus lies on him to establish the circumstances in which such unnatural death had occurred. The learned counsel for the complainant has maintained that the stand taken by the appellant regarding suicide having been committed by the deceased was neither established by him nor did it fit into the circumstances of the case, particularly when the medical evidence contradicted the same. Be that as it may holding by this Court that some part of the onus lies on the accused person in such a case does not mean that the entire burden of proof shifts to the accused person in a case of this nature. It has already been clarified by this Court in the case of Abdul Majeed v. The State (2011 SCMR 941) that the prosecution is bound to prove its case against an accused person beyond reasonable doubt at all stages of a criminal case and in a case where the prosecution asserts presence of some eye-witnesses and such claim of the prosecution is not established by it there the accused person could not be convicted merely on the basis of a presumption that since the murder of his wife had taken place in his house, therefore, it must be he and none else who would have committed that murder.*
>
> *……*
>
> *In a case of this nature the appellant could not have been convicted for the alleged murder merely because he happened to be the husband of the deceased."*

In a criminal case, the burden of proof is on the prosecution and article 122 of the Qanun-e-Shahadat, 1984 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and

which he could prove without difficulty or inconvenience. If the article was to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not. Article 122 of the Qanun-e-Shahadat, 1984 cannot be used to undermine the well-established rule of law that, save in a very exceptional class of cases, the burden is on the prosecution and never shifts. Throughout the web of the Law, one golden thread is always to be seen, that it is the duty of the prosecution to prove the accused's guilt subject to any statutory exception. No matter what the charge, the principle that the prosecution must prove the guilt of the accused is the law and no attempt to whittle it down can be entertained. In a case of this nature, the appellant could not have been convicted for the alleged murder merely because he happened to be running the shop where the occurrence took place, specially in the circumstances when the shop was found to be open, the appellant himself was found to be unconscious and the possibility of an intruder could not be ruled out. An accused person cannot be convicted merely because he did not explain the circumstances in which the deceased had lost her life. The august Supreme Court of Pakistan has held in the case of "*MUHAMMAD JAMSHAID and another vs. The State and others"* (**2016 SCMR 1019**) as under:

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

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

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

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

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

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

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

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

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

24. It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused. It may be noted here that the circumstances concerned *must or should* and not *may be* established. There is not only a grammatical but a legal distinction between *may be* proved and *must be or should* be proved. Certainly, it is a primary principle that the accused *must be* and not merely *may be* guilty before a court can convict and the mental distance between *may be* and *must be* is long and divides vague conjectures from sure

conclusions. This indicates the cardinal principle of criminal jurisprudence that a case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has special relevance in cases where in the guilt of the accused is sought to be established by circumstantial evidence. It is a cardinal principle of justice and law that only the intrinsic worth and probative value of the evidence would play a decisive role in determining the guilt or innocence of an accused person. Even evidence of an uninterested witness, not inimical to the accused, may be corrupted deliberately while evidence of an inimical witness, if found consistent with the other evidence corroborating it, may be relied upon. Reliance in this regard may be placed on the case of *Waqar Zaheer vs. The State* (**1991 PSC 281**).It is a known and settled principle of law that the prosecution primarily is bound to establish guilt against the accused without a shadow of reasonable doubt by producing trustworthy, convincing and coherent evidence enabling the Court to draw a conclusion about whether the prosecution has succeeded in establishing accusation against the accused or otherwise and if it comes to the conclusion that charges, so imputed against the accused, have not been proved beyond a reasonable doubt, then the accused becomes entitled to acquittal. In such a situation, the Court has no jurisdiction to abridge the such right of the accused. To ascertain as to whether the accused is entitled to the benefit of the doubt, the Court can conclude by considering the agglomerated effect of the evidence available on record as held

in the cases of *Safdar Ali v. The Crown* (**PLD 1953 F.C. 93**) and *Muhammad Luqman v. The State* (**PLD 1970 SC 10**). In the instant case, we have scanned the prosecution evidence in-depth and we are persuaded to hold that the prosecution has failed to produce trustworthy, confidence-inspiring and consistent evidence against the appellant. Conversely, the evidence so brought on record appears to have been fabricated to prove the prosecution case. Even otherwise, the evidence suffers from material discrepancies, contradictions and omissions and for such reasons it has not proved the case against the appellant intrinsically and if the evidence of such defective quality is accepted, it would produce an illusory judgment which apparently would not be sustainable in the eye of the law in view of the principles laid down by the august Supreme Court of Pakistan in the judgments referred to hereinabove. Even otherwise, the prosecution evidence is inconsistent, thus, on basis of the same, the appellant cannot further be immured because he has every right to claim guarantee of the Constitution which provides that every citizen of the country shall be dealt with in accordance with the law. These self-negating and contradictory statements of the witnesses reflect that the witnesses are not truthful and they are supporting the afterthought, fabricated and concocted story meant to create incriminating evidence to strengthen the case of the unwitnessed occurrence against the appellant. The august Supreme Court of Pakistan in the case of *Imran alias Dully and another Vs. the State and others* **(2015 SCMR 155)** at page 164 has held as under:-

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

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

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

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

> *"Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace*

> *and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted". Reliance in this behalf can be made upon the cases of Tariq Pervez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Muhammad Akramv.The State (2009 SCMR 230) and Muhammad Zamanv.The State (2014 SCMR 749)."*

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

> *"9. Mere heinousness of the offence if not proved to the hilt is not a ground to avail the majesty of the court to do complete justice. This is an established principle of law and equity that it is better that 100 guilty persons should let off but one innocent person should not suffer. As the preeminent English jurist William Blackstone wrote, "Better that ten guilty persons escape, than that one innocent suffer." Benjamin Franklin, who was one of the leading figures of early American history, went further arguing "it is better a hundred guilty persons should escape than one innocent person should suffer." All the contradictions noted by the learned High Court are sufficient to cast a shadow of doubt on the prosecution's case, which entitles the petitioner to the right of benefit of the doubt. It is a well settled principle of law that for the accused to be afforded this right of the benefit of the doubt it is not necessary that there should be many circumstances creating uncertainty and if there is only one doubt, the benefit of the same must got to the petitioner. This Court in the case of Mst. Asia Bibi v. The State (PLD 2019 SC 64) while relying on the the earlier judgments of this Court has categorically held that "if a single circumstance creates reasonable doubt in a prudent mind about the apprehension of guilt of an accused, then he/she shall be entitled to such benefit not as a matter of grace and concession, but as of right. Reference in this regard may be made to the cases of Tariq Pervaiz v. The State (1998 SCMR 1345) and Ayub Masih v. The State (PLD 2002 SC 1048)." The same view was reiterated in Abdul Jabbar v. State (2010 SCMR 129) when this court observed that once a single loophole is observed in a case presented by the prosecution, such as conflict in the ocular account and medical evidence or presence of eye-witnesses being doubtful, the benefit of such loophole/lacuna in the prosecution's case automatically goes in favour of an accused."*

26. For what has been discussed above Criminal Appeal No.351-J of 2022, lodged by Abdul Jabbar son of Jan Muhammad (appellant) is allowed and the conviction and sentence of the appellant awarded by the learned trial court through the impugned judgment dated 21.05.2022 are hereby set-aside. Abdul

Jabbar son of Jan Muhammad (appellant) is ordered to be acquitted by extending him the benefit of doubt. Abdul Jabbar son of Jan Muhammad is in custody and he is directed to be released forthwith if not required in any other case.

27. **Murder Reference No.14 of 2022** is answered in **Negative** and the sentence of death awarded to Abdul Jabbar son of Jan Muhammad is **Not Confirmed**.

(MUHAMMAD AMJAD RAFIQ)
JUDGE

(SADIQ MAHMUD KHURRAM)
JUDGE

Raheel

APPROVED FOR REPORTING

JUDGE