

**JUDGMENT SHEET  
IN THE LAHORE HIGH COURT AT LAHORE  
JUDICIAL DEPARTMENT**

**Crl. Appeal No.76964-J of 2019  
(Abaid-ur-Rehman, etc. *versus* The State, etc.)**

**Crl. Revision No.59543 of 2019  
(Mst. Naz Parveen *versus* Abaid-ur-Rehman, etc)**

**JUDGMENT**

**Date of hearing:** 29.11.2023

**Appellants by:** M/s Pir Muhammad Masood Chishti, Pir Umair Masood Chishti, Muhammad Barjees Iftikhar Bhatti, and Kamran Javaid Malik, Advocates.

**State by:** Rana Ahsan Aziz, Addl. Prosecutor General with Arif, Inspector.

**Complainant by:** M/s Sajid Naseem Dogar and Takeel Ahmad Gujjar, Advocates.

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**Aalia Neelum, J:-** Abaid-ur-Rehman son of Abdul Latif, Caste Malik, resident of Street No.2, Green Wood Street, presently residing at School Wali Gali, Hakeem Khadim Ali Road, District Sialkot, Rehman Sddique and Muhammad Bilal, sons of Muhammad Siddique, Caste Arain, residents of Street No.1, House No.548/19, Green Wood Street, Tehsil and District, Sialkot, the appellants were involved in case F.I.R. No.21 of 2019, dated 23.01.2019, registered under Sections 302, 365-A, 201, 34 PPC, at Police Station, Kotwali, District Sialkot and were tried by the learned Judge, Anti-Terrorism Court-II, Gujranwala. The trial court seized with the matter in terms of the judgment dated 22.08.2019, convicted each of the appellants, and sentenced them to suffer imprisonment for life under Section 365-A PPC read with Section 34 PPC along with forfeiture of the whole property of each convict. The appellants, Abaid-ur-Rehman and Rehman Siddique, were also convicted and sentenced to imprisonment for life under Section 302-B PPC read with Section 34 PPC, with the direction to pay a fine of Rs.2,00,000/- each as compensation to the legal

heirs of the deceased, which would be recovered from each of them as arrears of land revenue and in default of payment of recovery thereof, each of them would undergo simple imprisonment for six months. The appellants, Abaid-ur-Rehman and Muhammad Bilal were also sentenced to imprisonment for five years of rigorous imprisonment each and payment of a fine of Rs.50,000/- each under Section 201 PPC read with Section 34 PPC. In default of payment of the fine, each of them would further undergo simple imprisonment for six months. All the sentences awarded to the appellants would run concurrently. The benefit of Section 382-B Cr.P.C. was also extended in favor of the appellants.

2. Feeling aggrieved by the judgment of the learned trial court, the appellants, Abaid-ur-Rehman, Rehman Siddique, and Muhammad Bilal, have assailed their convictions through filing instant Criminal Appeal No.76964-J of 2019 whereas the complainant being dissatisfied with the impugned judgment dated 22.08.2019, preferred a Criminal Revision No.59543 of 2019 for enhancement of sentence of the respondents No.1 to 3, from life imprisonment to capital punishment. As both matters arise from the same judgment, they are being disposed of through a single judgment.

3. The prosecution story as alleged in the F.I.R (Ex.PA/1) lodged on the complaint (Ex.PA) of Naz Parveen (PW-13)-the complainant is that on 22.01.2019, at about 02:00 p.m. complainant's son namely Faisal Ali (since dead) went out of the house and did not return after that, the complainant (PW-13) sent her Bhanja and nephew, Wajahat Anwar and Muhammad Shahid-PWs in search of her son and when they reached the house of accused Abaid-ur-Rehman, the prosecution witnesses, Wajahat Anwar and Muhammad Shahid were made hostages on gunpoint and detained in a room, where Faisal Ali (since dead) was already detained, who told them (Wajahat Anwar and Muhammad Shahid-eye witnesses) that the accused persons had abducted him from railway station, at about 5:00 p.m. The accused persons were demanding Rs.1,000,000/- as ransom, and when he, Faisal Ali (since dead) tried to escape, the accused persons inflicted butt blows on his head. Later on, the accused, Abaid-ur-Rehman, made two fire shots with his pistol, which hit the left side of the waist of Faisal Ali (since dead), whereas the accused, Rehman, also made a

fire shot, which landed at the right side of the waist of Faisal Ali (since dead), who died at the spot. After that, the accused, Abaid-ur-Rehman and Bilal took the dead body of Faisal Ali (since dead) and went away by car, whereas the accused, Rehman, detained Wajahat Anwar and Muhammad Shahid, in a room and at about 12:00 (noon), someone knocked the outer door of the house of accused, Abaid-ur-Rehman but the accused, Rehman did not open the door but subsequently, he (Rehman-accused) opened the door and went away after locking the door from outside. After that, the prosecution witnesses raised a hue and cry, and some unknown persons broke the lock and released them. After that, Wajahat Anwar and Muhammad Shahid, PWs, came to the complainant's house and narrated the whole occurrence; the complainant rushed to the police station to report the incident.

4. On the basis of the written complaint (Ex. PA) of the complainant (PW-13), formal F.I.R (Ex.PA/1) was chalked out by Zeeshan Muzammil T/ASI (PW-1). After that, the investigation was entrusted to Muhammad Arif, Inspector (PW-14), who inspected the spot and prepared a rough site plan of the place of occurrence (Ex. PO). After receiving spy information, the investigating officer (PW-14) arrested the accused, Abaid-ur-Rehman, and during interrogation, the accused, Abaid-ur-Rehman, disclosed that he would have recovered the dead body of Faisal Ali (since deceased), that investigating officer (PW-14) firstly took the accused to the place of murder, i.e., rented house of accused, Abaid-ur-Rehman where the complainant along with PWs, the police of Kotwali police station and a team of P.F.S.A reached and the team of P.F.S.A collected forensic evidence from the crime scene and handed over the same to the investigating officer (PW-14), who took the same vide recovery memo (Ex.PL). After that, the investigating officer inspected the said place and prepared a rough site plan (Ex.PP) and also took into possession three empties of a 30-bore pistol (P-5/1-3) vide recovery memo (Ex. PK). After that, the accused, Abaid-ur-Rehman, led the police party along with PWs to Pull Nehar Malkhan Wala, whereupon Muhammad Aslam and Muhammad Farooq-PWs also arrived in their presence. The accused got recovered the dead body of the deceased from said canal, which was not flowing at that time. After that, the investigating

officer (PW-14) took the dead body of the deceased into possession vide recovery memo (Ex. PH) and prepared a rough site plan (Ex.PH/1). Wajahat Anwar and Muhammad Shahid-PWs identified the dead body, after that, the investigating officer prepared an identification memo (Ex.PM) and also recorded statements of PWs under Section 161 of Cr.P.C. On 24.01.2019 at about 12:15 a.m., the investigating officer prepared an injury statement (Ex. PQ), inquest report (Ex. PR), drafted an application for conducting postmortem examination on the body of the deceased (Ex.PS), handed over the dead body to Muhammad Afzal 1724/HC for escorting the same to Allama Iqbal Teaching Hospital, Sialkot and added offense under Section 201 PPC. After that, Muhammad Afzal 1724/HC handed over the postmortem report and the last worn clothes of the deceased, i.e., a grey color sweater, brown color sweater, white blue color shirt with strips, vest, grey color coat, pent with a brown color belt and a pair of black color socks, two carton parcels said to contain 09 plastic boxes containing samples, two envelops and one parcel said to contain lead bullets to the investigating officer (PW-14), who took the same into possession vide recovery memo (Ex. PG). On 25.01.2019, Mirza Tahir Tasleem, Draftsman (PW-3) inspected the place of occurrence, prepared scaled site plans (Ex. PC and Ex. PC/1) of the place of abduction, scaled site plans (Ex. PD and Ex. PD/1) of the place or murder and scaled site plans (Ex. PE and Ex. PE/1) of the place of recovery of dead body and handed over the same to the Investigating Officer (PW-14) on 26.01.2019. On 06.02.2019, the accused, Abaid-ur-Rehman, got recovered a 30-bore pistol (P-6) along with 03 live bullets (P-7/1-3) from the almirah of his residential house, which was taken into possession by the investigating officer (PW-14) vide recovery memo (Ex. PN).

5. After investigation, Muhammad Arif, Inspector (PW-14), prepared a challan and sent the same to the court of competent jurisdiction while placing the names of all accused persons in Column No.3 of the challan. On 03.04.2019, the learned trial court formally charge-sheeted the accused persons, to which they pleaded not guilty and claimed trial.

6. In order to substantiate its case, the prosecution produced as many as eleven (15) witnesses during the trial. The ocular account in this case consists

of the statements of Naz Parveen (PW-13)-the complainant, Wajahat Anwar (PW-11), and Muhammad Shahid (PW-12).

7. Dr. Zafar Iqbal (PW-15) deposed that on 24.01.2019, he conducted postmortem examination on the body of the deceased, Faisal Ali, and found the following injuries on his person: -

### **INJURIES.**

- 1. Lacerated wound on the nose just above bridge 1 cm x 1 cm.**
- 2. An abrasion of forehead 8 cm x 2.5 cm.**
- 3. Lacerated wound on right side of skull occipital area 2 x .5 cm.**
- 4. Lacerated wound on the left side of skull occipital area .5 x .3 cm.**
- 5. Lacerated wound on the left side of chest 3 cm away from sternum with averted margins 1 x 1 cm.**
- 6. Lacerated wound on the right-sided back of chest 2 x 1 cm inverted margins 7.5 cm away from the mid auxiliary line.**
- 7. Lacerated wound on the left-sided back of chest 1 x 1 cm inverted margins 7 cm away from mid auxiliary line 6 to 7 intercostals space (IS).**
- 8. Lacerated wound on left-sided back of chest 2 cm below injury No.7, 1 x 1 cm away from mid auxiliary line 6-7 ICS.**

After conducting the postmortem examination, the doctor rendered the following opinion: -

### **OPINION**

**“All injuries were ante-mortem in nature. Injuries No.6, 7, and 8 were caused by firearm and main injuries, damaging the vital organs and massive loss of blood, leading to shock and cardiopulmonary arrest, which is sufficient to cause death in the ordinary course of nature.**

**The probable time that elapsed between injuries and death was kept under observation, which he declared after going through the relevant reports as within one hour, and the time that elapsed between death and postmortem was 12 to 14 hours.”**

**Ex. PT is the correct carbon copy of the postmortem report, whereas Ex.PT/1 and Ex.PT/2 are pictorial diagrams of injuries.**

The statements of the remaining prosecution witnesses are formal.

8. The learned Deputy District Public Prosecutor gave up Zaheer Abbas, Tariq Mehmood 290/C, Maqsood 296/HC, Muhammad Farooq being unnecessary and closed the prosecution evidence on 10.07.2019 after tendering the reports of Punjab Forensic Science Agency, Lahore (Ex. PV, Ex. PW, Ex. PX and Ex.PY).

9. After the closure of prosecution evidence, the appellants were examined under Section 342 of Cr.P.C., wherein they refused to appear as their own witnesses in terms of Section 340 (2) Cr.P.C., in proof of the allegations leveled against them, but each of the appellants opted to produce defense evidence. In response to a particular question that why this case was against them and why the PWs had deposed against them, Abaid-ur-Rehman, Rehman Siddique, and Muhammad Bilal-appellants made the following depositions: -

**“I am innocent. It was an unseen and dark night occurrence and same was not witnessed by anyone. I neither abducted Faisal Ali (deceased) nor demand any ransom. In fact, officials of Rescue 1122 Sialkot recovered the dead body of Faisal Ali from said canal and handed over the same to Faiz Ahmad, S.I of Police Station, Sambrial. Complainant in consultation with witnesses maneuvered a false story of kidnapping and murder of deceased and thereafter, falsely implicated me in this case due to suspicions and surmises. PWs deposed against them being closely relatives of the complainant.”**

Irfan Yaoob, In-charge Control Room, Rescue 1122, Sialkot, appeared as DW-1. In documentary evidence, the appellant, Abaid-ur-Rehman, tendered an electronic copy of “Urdu Point” (Ex. DC) (under objection) and closed the defense evidence on 15.07.2019.

10. After evaluating the evidence available on record in the light of arguments advanced from both sides, the learned trial court found the prosecution version proved beyond any shadow of reasonable doubt, resulting in the appellants' conviction in the afore-stated terms.

11. We have heard the arguments advanced by the learned counsel for the parties and have minutely perused the record on the file.

12. According to the prosecution, the occurrence occurred at 5.00 p.m. on 22.01.2019 and falls within the jurisdiction of police station Kotwali, whereas the incident was reported to the police on 23.01.2019 at 02:00 p.m. by Naz Parween (PW-13)-the complainant, mother of Faisal Ali (deceased). The police station is one kilometer from the house of Naaz Parween (PW-13)-the complainant. Naz Parween (PW-13) reported the incident at the police station through the written complaint (Ex. PA), and FIR (Ex.PA/1) was computerized by Zeshan Muzamal T/ASI (PW-1) through the POLCOM operator. Naz Parween (PW-13)-the complainant mentioned in the written complaint (Ex. PA) and FIR (Ex. PA/1) that yesterday, i.e., 22.01.2019 at around 02:00 p.m., her son left the house and did not return till around 05:00 p.m., when she called her son's cell phone, the son's number was being switched off. After that, Wajahat Anwar (PW-11), the complainant's sister's son, and Muhammad Shahid (PW-12), the complainant's brother's son, went out for searching her son Faisal Ali. Who also did not make the phone call to the complainant and other relatives after 05:30 p.m. on 22.01.2019 in the evening. The complainant and other relatives became helpless to search for her son in the city. Later on, on 23.01.2019 at around 12:00 noon, Wajahat Anwar (PW-11) and Muhammad Shahid (PW-12) reached the complainant's house worried and unwell, who told the complainant that they had gone to the house of Abaid-ur-Rehman last evening at 05:30 p.m. in search of complainant's son. Abaid-ur-Rehman, along with the accused Rehman and Muhammad Bilal, also locked them in their house at gunpoint and, on seeing them, the complainant's son told them that at around 05:00 in the evening, they abducted him in their car from the front of the railway station at gunpoint and the accused has locked him in the house of Abaid-ur-Rehman. They were demanding one crore rupees for his release. Later, Faisal Ali tried to secure himself from the clutches of the accused persons, and the accused persons inflicted the butt of their pistols which hit the head of the complainant's son. Then, the accused, Abaid-ur-Rehman, fired two shots from his pistol, which hit Faisal Ali on the left side of his back. Faisal Ali died after

being beaten. Later, at 11:00 p.m., the accused put the body of the complainant's son in the car and took it somewhere while the accused, Rehman, kept watching over him at home. On 23.01.2019. at around 12:00 p.m., some people knocked on the door of the house of the accused, Abaid-ur-Rehman, but the accused, Rahman, did not open the door. Later, in frustration, the accused, Rehman, escaped from the spot by locking the door from outside. The complainant's sister's son and brother's son made hue and cry, and unknown persons broke the door, and they reached the complainant's house after saving their lives. Muhammad Shahid (PW-12) deposed during cross-examination that when he received the information about the missing of Faisal Ali (deceased) through the complainant, he informed 15. However, the record of 15 calls was not secured by the police nor produced by the prosecution. Wajahat Anwar (PW-11) stated that he did not inform the police about the missing of Faisal Ali (deceased) when he left the house of the complainant for the search of Faisal Ali. However, the police station is at a distance of one kilometer. Wajahat Anwar (PW-11) deposed during cross-examination, "On 22.01.2019, I came to know about missing of Faisal Ali (deceased) at 5.00 PM. Volunteers, this fact was told to me by complainant as I was present in her house, at that time. I had reached house of complainant at 5.00 PM, on that day. I proceeded from my residence to the house of complainant, on that day. I got free from my business at 3.00 PM, on that day. The moment, I came to know about missing of Faisal Ali (deceased), we departed from the house of complainant on that day. Faisal Ali (deceased) was a tutor. He used to do tuition at an academy and was not a home tutor. The said academy was in his name and was situated in Factory Area, Sialkot. On 22.01.2019, we did not go to said academy. We did not contact any employee of said academy. Volunteers, on that day, we contacted accused Abaid ur Rehman, who used to run said academy in absence of deceased. I contacted said accused through cell phone. The cell phone of said accused was not available with me on that day. Volunteers, I obtained the same from complainant. I obtained cell phone of accused Abaid ur Rehman from complainant, at her house, on that day. I did not tell this fact to the police, during investigation. ----- On coming to know about missing of Faisal Ali (deceased) on 22.01.2019 through complainant, I

did not inform the police.” Muhammad Shahid (PW-12) deposed during cross-examination that, “I reside in Mohallah Deputy Bagh, Sialkot. I reside in the house of Faisal Ali (deceased). ----- Faisal Ali (deceased) was tutor and had academy with his name situated at Shahab Pura. Faisal Ali (deceased) had no specific time for attending academy. Volunteers, he also tutored in his house. Faisal Ali (deceased) was also a home tutor. He used to visit 8/10 houses for the said purpose. I do not know the names of owners of houses, in which Faisal Ali (deceased) used to visit for tuition. Faisal Ali (deceased) was the only tutor of his academy. ----- I received information of missing of Faisal Ali (deceased) at about 5.00 PM and I was informed by complainant. I did not inquire from the complainant the routine arrival of Faisal Ali (deceased) in his house after tuition work. I also did not inquire from the complainant that in whose house deceased used to visit for tuition.” Muhammad Shahid (PW-12) resides in the complainant's house, but he was not aware of the timing of the arrival of Faisal Ali (deceased), nor did he inquire from the complainant. The prosecution has not brought on the record any evidence revealing that Faisal Ali (deceased) was the tutor and had an academy with his name situated at Shahab Pura or Factory Area, Sialkot. Both prosecution witnesses, i.e., PW-11 and PW-12, admitted during cross-examination that when they returned after being released from the house of the accused-Abaid-ur-Rehman situated at Khadim Ali Road, Gali School Wali, Sialkot, to the house of the complainant their close relatives and dear ones were present there, but they did not report the missing of them along with Faisal Ali (deceased) to police. There is no explanation regarding the delay in lodging the FIR. Besides, during examination-in-chief, Wajahat Anwar (PW-11) deposed, “I and PW Muhammad Shahid went to the house of Mst. Naz Parveen and narrated the whole incident to her.” Similarly, Muhammad Shahid (PW-12) deposed during his testimony. During cross-examination, Wajahat Anwar (PW-11) deposed, “We got drafted application through computer from my brother Muhammad Ahmad, for lodging report of the occurrence. On 23.01.2019, after reaching complainant’s house, we left for Police Station and reached there at about 1.45/2.00 PM and remained present at said Police Station for about 15/20 minutes and from there, we did not proceed

**to our house.”** Whereas, Muhammad Shahid (PW-12) deposed during cross-examination that, **“We left the house of complainant for registration of case at about 2.00 P.M. The nephew of the mother of Faisal Ali (deceased) drafted application for registration of the case. Volunteers, his name is Ahmad. The said Ahmad is under Metric. We stayed at Police Station for 35 minutes.”** Naz Perveen (PW-13), the complainant, deposed in examination-in-chief that, **“I filed an application Ex. PA for registration of the case, which bears my signature.”** An entire criminal case depends on the first information rendered through a complaint before the police, and the entire evidence depends on said document. The complainant (PW-13), as per the complaint (Ex. PA), went to the police station to report the incident, but before visiting the police station, Wajahat Anwar (PW-11) and Muhammad Shahid (PW-12) deposed that the complainant's nephew "Muhammad Ahmad," prepared the application for the registration of a criminal case on the computer which was presented before the police. Non-mentioning this fact in the application/complaint (Ex. PA) indicates that Naz Perveen (PW-13)-the complainant, had not stated the complete truth and that the F.I.R. came into existence after due deliberations and consultations. The author of the complaint (Exh. PA) should have stated that they prepared the complaint under the instructions of the complainant. It is also not a case of the prosecution that Naz Perveen (PW-13)-the complainant, asked Wajahat Anwar (PW-11) and Muhammad Shahid (PW-12) to prepare a complaint and accordingly, the complaint was prepared by "Muhammad Ahmad," which was read over to the complainant and after that she (PW-13) signed the complaint. Even the complainant (PW-13) had not stated the preparation of the complaint in the complaint (Ex. PA) and her statement before the trial court; therefore, in these circumstances, the chance of consultations and deliberations on the part of the complainant (PW-13), cannot be ruled out. However, it is obligatory on the part of the court to take notice of the delay and examine in the backdrop of the case whether the prosecution has offered any acceptable explanation and, if such an explanation has been offered, whether the same deserves acceptance being found to be satisfactory. Let us analyze the prosecution evidence to see whether the

prosecution has proved its case that the accused persons-appellants abducted for ransom and committed the offence of murder of Faisal Ali.

13. We have gone through the evidence produced by the prosecution. The prosecution case is that Faisal Ali (deceased) was first abducted for ransom and then assaulted at the rented premises of the accused-appellant Abaid-ur-Rehman situated at Khadim Ali Road, Gali School Wali, Sialkot, and subsequently, he was killed and his dead body was thrown in Upper Chanab, Pull Nehar Malkhanwala Canal. None of the witnesses stated that at the relevant time and relevant date, they had seen the accused-appellants at "Front of Railway Road," where Faisal Ali (deceased) was abducted. The prosecution put reliance on the statements of Wajahat Anwar (PW-11) and Muhammad Shahid (PW-12) that they informed Naz Perveen (PW-13), the complainant and mother of the deceased, that "**Faisal Ali (deceased) stated to the PWs that he was abducted at about 5.00 PM, in front of Railway Road, by accused persons Abaid ur Rehman, Muhammad Bilal and Rehman and they demanded Rs. 1 Crore for his release.**" Naz Perveen (PW-13), the complainant, deposed about the abduction of her son, Faisal Ali, from the front of the Railway Road on the information given to her by Wajahat Anwar (PW-11) and Muhammad Shahid (PW-12). Wajahat Anwar (PW-11) and Muhammad Shahid (PW-12) were the prime witnesses in the case of Faisal Ali's abduction for ransom and murder. They had deposed in court, alleging that the accused-appellants were responsible for the abduction for ransom and murder of Faisal Ali. Wajahat Ali (PW-11) deposed during examination-in-chief that, "**Faisal Ali (deceased) stated to us that he was abducted at about 5.00 PM, in front of Railway Road, by accused persons Abaid ur Rehman, Muhammad Bilal and Rehman (present in court) and they demanded Rs. 1 Crore for his release.**  
**On resistance of Faisal Ali (deceased), accused persons gave butt blows at his head -----**" Similarly, Muhammad Shahid (PW-12) deposed during his testimony. The fact that Faisal Ali (deceased) was abducted from the front of the Railway Road was not verified during the investigation. Muhammad Arif Inspector (PW-14)-the investigating officer admitted during cross-examination, "**I did not verify the factum of abduction of Faisal Ali (deceased) from**

**neighboring shop keepers. Vounteers, I called 2/3 shop-keepers to associate them in the said proceedings but they refused to do so. I did not mention this fact in my case diary. I did not verify above mentioned factum of abduction from the vicinity of Railway Station from 23.01.2019 to onward till the submission.**” So, the first part of the occurrence relates to the abduction of Faisal Ali (deceased) on 22.01.2019 at 05:00 p.m. from the front of Railway Road could not be verified. No incriminating material was found from the first place of occurrence. Besides, Muhammad Arif Inspector (PW-14)-the investigating officer, deposed that he summoned the draftsman Mirza Tahir Tasleem (PW-3) on 25.01.2019. He visited the place of abduction of Faisal Ali (deceased) situated at Band Gali, Mohallah Deputy Bagh Sialkot, Railway Road near Railway Station Sialkot. He took rough notes on the pointing of Wajahat Anwar (PW-11), Muhammad Shahid (PW-12), and Naz Perveen (PW-13), the complainant. It is relevant to mention here that the place of abduction, allegedly told by Faisal Ali (deceased), is at a distance of one kilometer from the house of the deceased/complainant. During cross-examination, Wajahat Ali (PW-11) deposed that **“Railway Station, Sialkot is surrounded by busy commercial area comprising many shops.”** It is an admitted fact that Wajahat Anwar (PW-11), Muhammad Shahid (PW-12), and Naz Perveen (PW-13), the complainant, were not witnesses of the abduction of Faisal Ali (deceased). So, the site plan (Ex. PC) prepared by Mirza Tahir Tasleem (PW-3) on the pointing of the place of abduction with details of the positions of accused persons by Wajahat Anwar (PW-11), Muhammad Shahid (PW-12), and Naz Perveen (PW-13), the complainant is irrelevant. The statements of Wajahat Anwar (PW-11) and Muhammad Shahid (PW-12) that Faisal Ali (deceased) told them that the accused persons abducted him from the front of the Railway Station are not admissible in evidence. The same are unreliable, unbelievable, and untrustworthy for it to be considered substantive evidence.

14. Per the prosecution evidence, the complainant's son, Faisal Ali, went missing at about 05:00 p.m. on 22.01.2019. At 05:30 p.m., Wajahat Anwar (PW-11) and Muhammad Shahid (PW-12) reached the house of the accused-Abaid-ur-Rehman situated at Khadim Ali Road, Gali School Wali, Sialkot, in

search of Faisal Ali (deceased). The accused persons-appellants assaulted and killed Faisal Ali, and at 11:00 p.m., the accused put the body of the complainant's son in the car and took it somewhere. The accused persons, the appellants, in the rented premises of Abaid-ur-Rehman, detained Wajahat Anwar (PW-11) and Muhammad Shahid (PW-12). Unknown persons released them at 12:00 noon by breaking the lock of the door of the house of accused-Abaid-ur-Rehman. Wajahat Anwar (PW-11) and Muhammad Shahid (PW-12) went to the house of the complainant. They told her about the incident, drafted the application for registration of the case, and went to the police station at 01:45/2:00 p.m. to report the incident. The formal FIR was got computerized (Ex.PA/1) by Zeeshan Muzammil T/ASI (PW-1), chalked out through the POLCOM operator (not produced as a witness) at 02:35 p.m. Muhammad Arif Inspector (PW-14)-the investigating office deposed during examination-in-chief that, "On 23.01.2019, I was posted as Incharge, Homicide Investigation Unit, City Circle, Sialkot. On the same day, investigation of this case was entrusted to me. I alongwith Muhammad Sarwar, Muhammad Afzal, Maqsood Ahmad and Tayyab Ali constables reached the place of abduction i.e. Railway Road near Railway Station in the area of P.S Kotwali, Sialkot, by official vehicle bearing registration No.STG-14, driven by Muhammad Arif 226/DC, where Muhammad Riaz Dar Inspector/SHO, Police Station Kotwali alongwith complainant Naz Parveen and PWs Wajahat Anwar, Muhammad Shahid were present. I associated them with investigation and recorded statements u/s 161 Cr.P.C of above said PWs and supplementary statement of complainant. I inspected the place of abduction and on the pointation of PWs, prepared rough site plan Ex.PO thereof. Thereafter, I searched for accused persons. On receipt of spy information, I apprehended accused Abaid ur Rehman (present in court) from Greenwood Street, Sialkot, interrogated him and caused his formal arrest, who during interrogation in presence of said PWs, made disclosure and he could get recovered dead body of deceased Faisal Ali. After said disclosure, I firstly took said accused to the place of murder i.e. rented house of accused Abaid ur Rehman where complainant alongwith PWs, police of Police Station Kotwali and P.F.S.A team comprising Muhammad Rizwan Junior Scientist,

who collected forensic evidence from the crime scene and made the same into eight sealed parcels and handed over the same to me-----”

Contrary to the above deposition, Muhammad Arif Inspector (PW-14)-the investigating office deposed during cross-examination that, “I straight away went to Greenwood Street from the place of abduction to arrest accused Abaid ur Rehman.-----I arrested accused Abaid ur Rehman (present in court) from Greenwood Street, near Pakorra shop. I did not associate with investigation the persons of locality including owner of said Pakorra shop, at the time of arrest of accused Abaid ur Rehman. At the time of arrest of accused Abaid ur Rehman (present in court), SHO, Police Station Kotwali Sialkot was also present there beside the raiding party who came with me from Homicide Unit, City Circle Sialkot including eye-witnesses. I did not mention this fact in my case diary. From above mentioned place of arrest of accused Abaid ur Rehman, I straight away went to the place of murder of Faisal Ali (deceased) i.e. Mohallah Chah Lalariyan which falls within the territorial limits of Police Station Civil Line, Sialkot and is situated at a distance of about 1/ 1½ K.M from the place of arrest of accused Abaid ur Rehman.----- When I reached at the place of murder, members of crime scene unit were not present there. Volunteers, they arrived there soon after my arrival. PWs Wajahat and Shahid were already present with me, at that time. I did not mention this fact in my case diary.” In all eventuality, as per the prosecution case, the dead body of Faisal Ali was recovered by Muhammad Arif Inspector (PW-14)-the investigating officer, who on the disclosure of the accused-Abaid-ur-Rehman reached the place of recovery of a dead body at about 05:00/05:15 p.m. on 23.01.2019. However, Rizwan Mehmood, Junior Forensic Scientist (PW-7), deposed during cross-examination that, “On 23.01.2019, I was on duty in second shift, which was from 3.00 PM to 11.00 PM. On the said date, I received call from D.P.O Office at 7.37 PM. I did not get mentioned the said time of receiving call in my statement u/s 161 Cr.P.C.-----After departing from our office, firstly, we went to Police Station Kotwali and then the police took us to the Crime Scene. I did not get mentioned this fact in my statement u/s 161 Cr.P.C. We reached the Crime Scene at 9.18 PM, on that day.” From the

deposition of Muhammad Arif Inspector (PW-14)-the investigating officer reveals that before reaching the place of recovery of the dead body of Faisal Ali at about 05:00/05:15 p.m., he met with members of the Forensic Science Agency at the rented house of the accused-Abaid-ur-Rehman situated at Khadim Ali Road, Gali School Wali, Sialkot. Rizwan Mehmood, Junior Forensic Scientist (PW-7), stated that at 09:18 p.m. on 23.01.2019, the forensic team reached the place of the murder of Faisal Ali. This suggests that Muhammad Arif Inspector (PW-14)-the investigating officer, had deliberately concealed facts from the court.

15. The other circumstance that throws a cloud of doubt on the testimony of the prosecution witnesses, including Muhammad Arif Inspector (PW-14)-the investigating office, is that he deposed that the dead body was got recovered by accused Abaid-ur-Rehman on 23.01.2019 at 5:00/5:15 p.m. Muhammad Arif Inspector (PW-14)-the investigating office deposed during cross-examination that, **“One cannot reach at the gate of place of murder situated at Mohallah Chah Lalariyan, in four wheel vehicle.”** Muhammad Arif Inspector (PW-14)-the investigating office further deposed during cross-examination that, **“It took 3/4 hours in whole proceedings carried out at Upper Chenab Canal, Pull Malkhan Wala. I did not prepare relevant police papers at above mentioned place. Volunteers, I prepared police papers at Allama Iqbal Hospital, Sialkot.-----I prepared injury statement Ex.PQ and inquest report Ex.PR after midnight. Column No.2 of inquest report is over written. Volunteers, the same was corrected due to clerical mistake. I have not mentioned the corresponding hole upon clothes mentioned in column No.7 of inquest report Ex.PQ.”** Wajahat Anwar (PW-11) deposed during examination-in-chief that, **“On the same day i.e. 23.01.2019, I and PW Muhammad Shahid joined the investigation. In our presence, accused Abaid ur Rehman (present in court) in custody, got recovered dead body of deceased Faisal Ali from Canal of Upper Chenab, Pull Nehar Malkhan Wala. I and PW Muhammad Shahid identified dead body of deceased Faisal Ali. I.O prepared identification memo Ex.PM, which was attested by me and PW Muhammad Shahid.”** Similarly

Muhammad Shahid (PW-12) deposed during examination-in-chief. Wajahat Anwar (PW-11) also deposed during examination-in-chief that, "I alongwith PW Shahid escorted the dead body of deceased to Civil Hospital Sialkot and remained for 3/4 minutes at said hospital." It has been noticed that in the inquest report (Ex. PQ) even the names of Wajahat Anwar (PW-11) and Muhammad Shahid (PW-12) have not been mentioned. The inquest report of Faisal Ali (Ex. PR), if prepared after registration of the FIR and the investigating officer (PW-14) met with the complainant (PW-13), Wajahat Anwar (PW-11), and Muhammad Shahid (PW-12), and they identified the dead body at the place of recovery of dead body, there is no reason that why the details which we have found missing from the inquest report of Faisal Ali (Ex. PR) should not have been there. Besides, FIR (Ex. PA/1) was lodged at 02:35 p.m. on 23.01.2019. In the column No.3 of the inquest report (Ex. PR), the timing and date regarding receiving information of the incident is mentioned at 2:00 p.m. on 23.01.2019. On the last page of the inquest report (Ex. PR), the date of preparation was mentioned as 24.01.2019, whereas the column relating to the place where the inquest report was prepared was left blank. In addition, there is cutting and overwriting in column No.2 regarding the place where the dead body was recovered, creating doubt about the time of reporting the incident. The absence of those details is indicative of the fact that the prosecution story was still in the embryo and had not been given any shape and that the FIR was recorded later on after due deliberations and consultations and was then ante-timed to provide it with the colour of a promptly lodged FIR. At the bottom of the column of the brief history of the inquest report of Faisal Ali (Ex. PR), it was mentioned as under: -

"جناب عالی ملزمان نے سائلہ کے بیٹے تاداں کی خاطر اغوا کر کے ناقص قتل کے عکین جرم کا ارتکاب کیا ہے گزارش ہیکہ ملزمان کے خلاف کارروائی کی جاوے۔ مقدمہ درج رجسٹر ہو کر تفتیش مقدمہ محمد عارف انپکٹر HIU سٹر کل سیالکوٹ کے سپرد ہوئی کارروائی حسب ضابط عمل میں لاتے ہوئے کاغذات برائے پوسٹ مرتب کر کے نعش مقتول برائے پوسٹ مارٹم محمد افضل HC / بعد کرنے مناسب بندوبست ہسپتال بھجوائی جا رہی ہے۔ شناخت کنندگان نعش مندرجہ خانہ نمبر 4 ہمراہ بھجوائے گئے ہیں بعد کرنے پوسٹ مارٹم وجہ موت سے آگاہ کیا جاوے۔"

Interestingly, as per the prosecution case, Muhammad Arif Inspector (PW-14)-the investigating officer had stated that on 23.01.2019, the accused Abaid-ur-Rehman led to recover the dead body of Faisal Ali from Upper Chanab, Pull Nehar Malkhanwala Canal at 05:00/05:15 p.m. on 23.01.2019. The column of brief facts does not mention that the appellant-accused Abaid-ur-Rehman got recovered the dead body. Further, as per the postmortem report (Ex. PT) and Dr. Zafar Iqbal (PW-15), police papers were received in the hospital on 24.01.2019 at 03:30 AM, though the dead body was received a day earlier, i.e., on 23.01.2019 at 09:30 p.m. and the autopsy was conducted at 03:40 a.m. on 24.01.2019. Dr. Zafar Iqbal (PW-15) deposed during cross-examination, **"The police papers were handed over to me 3.30 AM (night) on 24.01.2019. According to police papers, the dead body was reportedly found from Canal Upper Chenab near Police Station Ugoki, Sialkot"** Dr. Zafar Iqbal (PW-15) also deposed during examination-in-chief that, **"I did not find any piece of cloth/fabric while observing injuries No.6 & 7."** It creates doubt that the time of the alleged occurrence is not the same as stated by Wajahat Anwar (PW-11), Muhammad Shahid (PW-12), and Naz Perveen (PW-13)-the complainant. The prosecution witnesses, i.e., Wajahat Anwar (PW-11) and Muhammad Shahid (PW-12), deposed that on 22.01.2019 at 11:00 p.m., the accused persons Abaid-ur-Rehman and Bilal took away the dead body of Faisal Ali, and the appellant-accused Abaid-ur-Rehman got recovered the dead body at 05:00/05:15 p.m. on 23.01.2019. Whereas, Dr. Zafar Iqbal (PW-15) deposed that the time lapse between the death and postmortem examination of the dead body was 12 to 14 hours. If we go backward from 03:40 a.m. on 24.01.2019, the 12 to 14 hours would be between 3:40 p.m. to 1:40 p.m. on 23.01.2019. This shows that death had not occurred as deposed by Wajahat Anwar (PW-11) and Muhammad Shahid (PW-12). We further noticed that Dr. Zafar Iqbal (PW-15), who conducted the postmortem examination, had noted that the duration between the injury and death is one hour. It indicated that the incident did not occur as stated by the prosecution. This also created doubt about the prosecution story and the time of occurrence.

16. Wajahat Anwar (PW-11), Muhammad Shahid (PW-12), and Naz Perveen (PW-13)-the complainant, have made dishonest improvements in their statement before the court. We straightway come to the material improvements/discrepancies/contradictions in the prosecution evidence brought on the record by the defence. Wajahat Anwar (PW-11) deposed during cross-examination that “On seeing Faisal Ali (deceased) present in said house of accused Abaid ur Rehman, we did not raise hue & cry, at that time. We also did not raise hue & cry, at the time of occurrence of murder. Volunteers, we were at gun point, at that time. Accused Abaid ur Rehman was armed with gun, when he opened the door. I did not get this fact mentioned in my any statement u/s 161 Cr.P.C.-----I do not remember whether I got mentioned that accused Rehman Siddique detained us on gun point whole the night. Confronted with Ex.DB where the fact of gun point is not mentioned. I got mentioned in my statement u/s 161 Cr.P.C that on 23.01.2019, accused Rehman made a telephonic call to Mst. Naz Parveen through cell phone of Faisal Ali (deceased) and demanded Rs.1 Crore as ransom. Confronted with Ex.DB where said date is not mentioned.” Naz Perveen (PW-13)-the complainant, deposed during cross-examination that “I had not seen the academy of my son (deceased). My son (deceased) was also a home tutor. He used to visit 5/6 houses in connection with Tuition. I did not inform to the Police Station regarding missing of my son (deceased), however, I told to the Wajahat and Shahid PWs on 22.01.2019. I had got mentioned in application Ex.PA that accused Rehman detained the PWs in the house on gun point whole the night confronted in Ex.P.A, where gun point is not mentioned. No other my statement was recorded by the police.” The prosecution failed to prove that the accused-appellants demanded ransom and kept Wajahat Anwar (PW-11) Muhammad Shahid (PW-12) at gunpoint. The improvements and discrepancies in the evidence of Wajahat Anwar (PW-11) and Naz Perveen (PW-13), the complainant, were material, and the same is enough proof for disbelieving and discrediting their evidence. In such circumstances, witnesses may not inspire confidence. If their evidence is found to be in conflict and contradiction with other evidence or with the statement already recorded, in such a case, it cannot be held that persecution proved its case beyond reasonable

doubt. Respectful reliance in this regard is placed on the judgment of the august Supreme Court of Pakistan in the case of "**Muhammad Rafique and others v. The State and others**" (2010 SCMR 385), wherein it has been held as under: -

*"This Court in the case of Saeed Muhammad Shah v. State 1993 SCMR 550 observed that if a witness improves his statement on material aspects of the case then such improvement is not worthy of reliance and the evidence of such witness requires corroboration. In the case of Khalid Javed v. State 2003 SCMR 1419 while reiterating the above rule, it was further observed that such witness is to be considered to be wholly unreliable and it is not advisable to place explicit reliance upon his evidence."*

The fact that Faisal Ali was murdered by the accused-appellants at the rented premises of Abaid-ur-Rehman situated at Khadim Ali Road, Gali School Wali, Sialkot, has been relied upon by the prosecution to show that Wajahat Anwar (PW-11) and Muhammad Shahid (PW-12) were eye-witnesses of the murder of Faisal Ali. After the murder of Faisal Ali by them on 22.01.2019 at 11:00 p.m., the accused persons- appellants Abaid-ur-Rehman and Bilal, took the dead body of Faisal Ali (deceased) and went away by car, and the accused-appellant Abaid-ur-Rehman detained them. Wajahat Ali (PW-11) deposed during examination-in-chief that, **(On resistance of Faisal Ali (deceased), accused persons gave butt blows at his head. Later on, accused Abaid ur Rehman made two fire shots with his pistol which hit on left side of waist of Faisal Ali (deceased). Accused Rehman also made fire shot with his pistol which also hit at the right side of waist of Faisal Ali (deceased) who died there. At about 11.00 PM, accused Abaid-ur-Rehman and Bilal took the dead body of deceased Faisal Ali and went away by a car.)**

Similarly, Muhammad Shahid (PW-12) deposed during his testimony. Muhammad Shahid (PW-12) deposed during cross-examination that, **(The rented house of accused Abai ur Rehman is at a distance of 1/2 K.M from Khadim Ali Road. The vehicle cannot reach at the gate of above said house. The shops are situated on both the sides of said street and this street is busy one. The said shops are of surgical instruments and there is also factory of manufacturing surgical instruments. The said house is situated in the Abadi**

**and same is double storey. The ground floor and first floor are rented.”**

Contrary to the deposition of Muhammad Shahid (PW-12), Wajahat Ali (PW-11) deposed during cross-examination that, **“The said street is not such a busy public place. There is no shop of surgical instruments in the said street.”**

The witnesses examined by the prosecution tried to prove that Faisal Ali (deceased) was murdered at the rented premises of Abaid-ur-Rehman situated at Khadim Ali Road, Gali School Wali, Sialkot. After that, his dead body was shifted into the car, and after that, the dead body was thrown into Upper Chanab, Pull Nehar Malkhanwala Canal. During cross-examination, Wajahat Ali (PW-11) said, “**The house is double storey building. On ground floor of said house, some other tenant lives. Accused Abaid ur Rehman resides at first floor of said house. No other tenant lives on the first floor besides accused Abaid ur Rehman.**” Muhammad Arif Inspector (PW-14)-the investigating Officer deposed during cross-examination that, **“The place of murder i.e. rented house is a double story building. I do not know that owner of above mentioned house resides with his family at ground floor. First floor of above mentioned house is divided into two portions, in one portion, family of accused Abaid ur Rehman was residing and in other portion, another other family on rent was residing. I did not try to ascertain that who was actual owner of said house as well as tenant of other portion of upper storey of said house. I did not associate any neighbour or Mohallah Dar of place of murder.”** Muhammad Arif Inspector (PW-14)-the investigating Officer also admitted during cross-examination that, **“I did not verify the occurrence of murder from owner of said house as well as the tenant and neighbours of said place, during my whole investigation.”** Muhammad Arif Inspector (PW-14)-the investigating Officer further deposed during cross-examination that, **“I have not collected the proof of ownership of house of murder. I also did not collect any rent deed of said house. I did not record any statement of any person of the locality to establish this fact that accused Abai ur Rehman was tenant of said house.”** The prosecution could not establish that Abaid-ur-Rehman, the accused, resided at the rented premises at Khadim Ali Road, Gali School Wali, Sialkot. There is no proof that he owned the premises on rent.

17. Regarding the alleged recovery of black colored Toyota Corolla bearing registration No.LEB-13-3917 taken on rent by the appellant-accused Abaid-ur-Rehman on 22.01.2019 at 08:00 p.m. from Sultan Zaman (PW-4), owner of Al-Karam rent-a-car is concerned, Sultan Zaman (PW-4) deposed during examination-in-chief that, **"On 22.01.2019, at 8.00 PM, my Mohallah Dar namely Abaid ur Rehman accused (present in court) alongwith my friend PW Shafique ul Imran as guarantor came at my said shop for obtaining car on rent by stating that accused Abaid ur Rehman and his friends had to attend a marriage ceremony within city Sialkot and rent was settled to the tune of Rs.2000/-.** I received an amount of Rs.1000/- in advance and remaining amount Rs.1000/- would be treated as arrear.-----  
-----**On 23.01.2019, PW Shafique ul Imran, guarantor returned the said car to me alongwith outstanding amount of Rs.1000/-."** Contrary to the deposition of Sultan Zaman (PW-4), Shafique-ul-Imran (PW-5) deposed during examination-in-chief that, **"Prior to this, I often used to arrange car on rent for him. I settled rent of car for Rs.3000/-, with accused Abaid ur Rehman. I paid Rs.2000/- to PW sultan Zaman and kept Rs.1000/- with me as commission. I took black coloured Toyota Corolla car bearing registration No. LEB-13-3917 from Sultan Zaman and handed over to accused Abaid ur Rehman (present in court)."** Wajahat Anwar (PW-11) and Muhammad Shahid (PW-12) deposed that on 22.01.2019, they reached the rented house of Abaid-ur-Rehman at 05:30 p.m., saw and met with Faisal Ali, the appellants killed Faisal Ali and the dead body was taken away at 11:00 p.m. on the same day. Muhammad Arif Inspector (PW-14)-the Investigating Officer had not traced blood stains from the car. Besides, medical evidence reveals that Faisal Ali died between 1:40 p.m. and 3:40 p.m. on 23.01.2019. The prosecution failed to establish the link of the vehicle with the occurrence of abduction and shifting of the dead body of Faisal Ali. So, the recovery is of no avail to the prosecution case.

18. So far as the positive report of Forensic DNA and Serology Analysis report (Ex. PV/1-2) regarding the pieces of mattress, pieces of cloth, and bed sheet is concerned, during the investigation, Muhammad Arif Inspector

(PW-14)-the investigating Officer secured 08 sealed parcels prepared and collected by crime scene unit Gujranwala of Forensic Science Agency from the crime scene situated at the rented premises of Abaid-ur-Rehman situated at Khadim Ali Road, Gali School Wali, Sialkot. The prosecution evidence is silent about when, where, and by whom eight sealed parcels were handed over to Muhammad Arif Inspector (PW-14)-the Investigating Officer, in the presence of Wajahat Anwar (PW-11) and Muhammad Shahid (PW-12). Wajahat Anwar (PW-11) deposed during examination-in-chief that, **The member of crime scene also visited the spot and took into possession the different articles and made six parcels, which I.O took into possession vide recovery memo Ex.PL, which was attested by me and PW Muhammad Shahid.**” Similarly, Muhammad Shahid (PW-12) deposed during examination-in-chief. The contents of the recovery memo (Ex. PL) reveal that eight sealed parcels were handed over to Muhammad Arif Inspector (PW-14)-the Investigating Officer by the crime scene unit Gujranwala of Forensic Science Agency and same were deposited by him on 30.01.2019 with the Punjab Forensic Science Agency for analysis. There is a contradiction in the statements of Wajahat Anwar (PW-11) and Muhammad Shahid (PW-12) and between the contents of the recovery memo (Ex. PL), deposition of Rizwan Mehmood (PW-7) and Muhammad Arif Inspector (PW-14)-the Investigating Officer. Muhammad Arif Inspector (PW-14)-the Investigating Officer prepared a recovery memo of secured 08 sealed parcels prepared and collected by crime scene unit Gujranwala of Forensic Science Agency from the crime scene situated at the rented premises of Abaid-ur-Rehman on 23.01.2019 whereas same was handed over by him to Gulzar Ahmad 1667/HC (PW-6)-the moharrar malkhana, on 24.01.2019. to Gulzar Ahmad 1667/HC (PW-6)-the moharrar malkhana admitted during cross-examination that, **The aforementioned parcels were handed over to me by the said I.O, on 24.01.2019, at 12.15 AM (night). I entered rapt regarding receipt of said parcels in the daily register on the said date. I did not get mentioned the said rapt in my statement u/s 161 Cr.P.C, before the I.O.**” Rizwan Mehmood (PW-7), Junior Forensic Scientist, has not deposed about the details of the evidence collected by crime scene unit Gujranwala of the Forensic Science Agency from the crime scene. Rizwan Mehmood (PW-7), Junior Forensic

Scientist, has not deposed about the details of the evidence collected by the crime scene unit Gujranwala of the Forensic Science Agency, nor did he state that he handed over the same to Muhammad Arif Inspector (PW-14)-the Investigating Officer. It is admitted fact that the mattress was not secured by Muhammad Arif Inspector (PW-14)-the investigating Officer from the spot rather members of the Forensic Science Agency from the crime scene, including Rizwan Mehmood (PW-7) Junior Forensic Scientist, collected evidence from the alleged rented house of Abaid-ur-Rehman (the appellant) and handed over to Muhammad Arif Inspector (PW-14)-the Investigating Officer. Muhammad Arif Inspector (PW-14)-the investigating Officer admitted during cross-examination that he had not shown any articles lying in the room where the murder of Faisal Ali (the deceased) took place. In this regard, Muhammad Arif Inspector (PW-14)-the investigating Officer, admitted during cross-examination that "**I have not shown any household article in rough site plan Ex.PP.**" Similarly, draftsman, Mirza Tahir Tasleem (PW-3), admitted that he had not shown the household articles in the site plan (Ex. PD and Ex, PD/1). In the un-scaled site plan (Ex. PP) prepared by Muhammad Arif Inspector (PW-14)-the Investigating Officer, and the scaled site plan (Ex. PD and Ex, PD/1) prepared by Mirza Tahir Tasleem (PW-3)-draftsman the points where household articles, i.e., mattress, bed sheets were present. In this background, a positive report of Forensic DNA and Serology Analysis Report (Ex. PV/1-2) is of no consequence and could not be based for conviction.

19. So far as recovery of the weapon of offence, i.e., pistol 30-bore (P-6) alongwith three live bullets (P-7/1-3), from the possession of the appellant-Abaid-ur-Rehman and positive report of Punjab Forensic Science Agency (Ex.PW/1-2), are concerned, as per the prosecution case, on 23.01.2019, the accused-Abaid-ur-Rehman was arrested from Greenwood Street, Sialkot and upon his disclosure, pistol 30-bore (P-6) and three live bullets (P-7/1-3) were recovered on 06.02.2019 and prepared recovery memo (Ex. PN). Muhammad Arif Inspector (PW-14)-the investigating officer stated that on 23.01.2019, he secured 03 crime empties of pistol 30-bore (P-5/1-3) through recovery memo (Ex. PK), which were handed over to the Moharrar Malkhana 24.01.2019.

Muhammad Arif Inspector (PW-14)-the investigating Officer deposed during his deposition before the recovery of the dead body at 05:00/5:30 p.m. on 23.01.2019 the crime scene unit collected evidence and sealed in eight parcels, and after that, he collected 03 empties (P-5/1-3) of pistol .30 bore from the spot. Thereafter, the accused, Abaid-ur-Rehman, led to recover the dead body of Faisal Ali from Pull Nehar Malkhan Wala. Whereas, one of the members of the crime scene unit, Rizwan Mehmood (PW-7) Junior Forensic Scientist, deposed during cross-examination that, "**We reached the Crime Scene at 9.18 PM, on that day**", which negates the deposition of Muhammad Arif Inspector (PW-14)-the Investigating Officer that he reached the place of occurrence before 05:00 p.m. on 23.01.2019 and completed the proceedings at the place where Faisal Ali was murdered and secured 03 empties (P-5/1-3) of pistol .30 bore from the spot. The sequence of events deposed by Muhammad Arif Inspector (PW-14)-the Investigating Officer has not gotten support from the documentary evidence placed on the record as well as the deposition of prosecution witnesses. In the un-scaled site plan (Ex. PP) prepared by Muhammad Arif Inspector (PW-14)-the investigating Officer, and the scaled site plan (Ex. PD and Ex, PD/1) prepared by Mirza Tahir Tasleem (PW-3)-draftsman, the points where from the investigating officer secured crime empties have not been shown. Practically, the prosecution took upon itself the risk of losing the case. In our opinion, the inconsistencies above and the contradictions considered cumulatively lead to an irresistible inference that the prosecution has not been able to prove safe custody of the recovered substance through material and convincing evidence. In these circumstances, the Firearms & Toolmarks Examination Report (Ex. PW/1-2) is of no consequence.

20. From the detailed discussion above, we are convinced that the prosecution has failed to establish its case. The truth was seen buried under the debris, and a different story was structured perhaps to lug the appellants into trial under the serious offense. It is often said "that Fouler the crime higher the decree of proof." we have gone through the process of keen examination of the entire material and found compelling reasons, as stated above, to disgrace with the conclusion recorded by the learned Judge Anti-Terrorism Court-II,

Gujralwala and also found that the prosecution has miserably failed to prove the guilt of the accused-appellants beyond reasonable doubt. Per the dictates of law, the benefit of every doubt will be extended in favor of the accused. In the case of **"Muhammad Akram v. The State"** (2009 SCMR 230), it is held as under: -

*"Benefit of doubt....Principles----For giving the benefit of doubt, it is not necessary that there should be many circumstances creating doubts---Single circumstance creating reasonable doubt in a prudent mind about the guilt of the accused makes him entitled to its benefit, not as a matter of grace and concession, but as a matter of right".*

21. We, therefore, **accept** in toto Criminal Appeal No.76964-J of 2019 filed by the appellants-Abaid-ur-Rehman, Rehman Siddique and Muhammad Bilal; as a result, whereof conviction and sentence recorded by the trial Court vide judgment dated 22.08.2019 is **set-aside**, and the appellants are **acquitted** of the charge in case F.I.R. No.21/2019 dated 23.01.2019, offences under Sections 302, 365-A, 201, 34 P.P.C. registered at Police Station Kotwali, District Sialkot. They (the appellants) are directed to be released forthwith, if not required in any other case.

22. So far as **Criminal Revision No.59543 of 2019** filed by the complainant, Mst. Naz Parveen for enhancement of sentence of the respondents No.1 to 3 awarded by the trial court is concerned, for the reasons afore-stated, the same is devoid of any legal force, which is accordingly **dismissed**.

**(Muhammad Waheed Khan)**  
**Judge**

**(Aalia Neelum)**  
**Judge**

**Approved for reporting**

**Judge**

**Judge**

*This judgment was dictated,  
pronounced on 29.11.2023,  
and signed after its  
completion on 15.12.2023.*

*Ikram\**