

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

**Murder Reference No.17 of 2022**  
**(The State Vs. Muhammad Imran alias Aamir)**

**Criminal Appeal No. 462 of 2022**  
**(Muhammad Imran alias Aamir Vs. The State and another.)**

**J U D G M E N T**

Date of hearing:	08.02.2023.
Appellant by:	Syed Aasim Ali Bukhari, Advocate.
State by:	Mr. Najeeb Ullah Jatoi, Deputy Prosecutor General.
Complainant by:	Mr. Muhammad Imran Khan Balouch, Advocate.

**SADIQ MAHMUD KHURRAM, J.**— Muhammad Imran alias Aamir son of Hazoor Bakhsh (convict) was tried by the learned Additional Sessions Judge, Bahawalpur in case F.I.R. No. 493 of 2020 dated 25.11.2020 registered at Police Station Uch Sharif, District Bahawalpur in respect of offences under sections 302,364 and 34 P.P.C. for committing the *Qatl-i-Amd* of Saima Bibi daughter of Muhammad Shafi (deceased). The learned trial court vide judgment dated 30.06.2022 convicted Muhammad Imran alias Aamir son of Hazoor Bakhsh (convict) and sentenced him as infra:

**Muhammad Imran alias Aamir son of Hazoor Bakhsh :-**

Death under section 302(b) P.P.C. as *Tazir* for committing *Qatl-i-Amd* of Saima Bibi daughter of Muhammad Shafi (deceased) and directed

to pay Rs.2,00,000/- as compensation under section 544-A, Cr.P.C. to the legal heirs of the deceased; in case of default of payment of compensation amount, the convict was further directed to undergo six months of simple imprisonment.

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

2. Feeling aggrieved, Muhammad Imran alias Aamir son of Hazoor Bakhsh (convict) lodged the Criminal appeal No.462 of 2022, assailing his conviction and sentence. The learned trial court submitted Murder Reference No.17 of 2022 under section 374 Cr.P.C. seeking confirmation or otherwise of the sentence of death awarded to the appellant namely Muhammad Imran alias Aamir son of Hazoor Bakhsh. We intend to dispose of the Criminal appeal No.462 of 2022 and the Murder Reference No.17 of 2022 through this single judgment.

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

"States that I am resident of Mouza Trend Busharat Uch Sharife. Previously, I contracted marriage with Muhammad Shafi s/o Khuda Bukhsh. Out of this wedlock, Saima Bibi was born. Muhammad Shafi had died. After the death of Muhammad Shafi, I contracted second marriage with Allah Ditta s/o Yar Muhammad caste Jam r/o Mouza Trend Busharat, Uch Sharif. I performed the marriage of my daughter namely Saima Bibi aged about 24/25 years with Imran alias Aamir s/o Hazoor Bukhsh caste Mochi r/o Basti Bhandra Mouza Sheni Miani Tehsil Jalalpur Peer Wala 09 years prior to this occurrence. Out of that wedlock, one daughter and one son namely Muhammad Adil were born. Daughter had died and son namely Muhammad Adil is alive. Four

months prior to this occurrence, one Muhammad Fiyyaz abducted my daughter Mst. Saima Bibi with the intention to commit zina with her. My daughter Saima Bibi ran away from the clutches of one Muhammad Fiyyaz after one month of her abduction. Saima Bibi got registered the criminal case against one Muhammad Fiyyaz in police station Dhor Kot. From the day of her return from the clutches of one Muhammad Fiyyaz, my son in law namely Muhammad Imran alias Aamir started teasing my daughter due to her abduction. Accused Imran alias Aamir misbehaved her that she went to Fiyyaz Ahmad with her consent due to illicit relations. I changed the residence of my daughter in the area of Trend Busharat due to fear of murder of my daughter from hands of her husband.

On 24.11.2020 at about 07:00 a.m. (morning) Muhammad Imran alias Aamir alongwith one unknown accused person came to my house on motorcycle and sought permission in presence of P.W.s namely Ghulam Sarwar and Muhammad Riaz that she send her daughter with Imran alias Aamir for pervi of case and hear of darbar Syed Jaini Ud Din. I forbidden my daughter to go with him but Imran alias Aamir sworn on oath that he shall return her daughter at my house Trend Bushrat at evening time safely. On the same day, at Maghrib vela, my son in law returned alone in my house in worried condition and told me that her daughter became missing from Darbar Syed Jalal Ud Din and I did not commit anything with her daughter. I searched my daughter with the help of witnesses but she was not found anywhere. I strongly suspected that Imran alias Aamir (present in the court) abducted my daughter with intention to murder her. I got drafted application/complaint Exh. P.A. on the next day which bears my thumb impression Exh.PA/1 as token of its correctness to police for registration of F.I.R. After registration of F.I.R., police came at my house Trend Busharat/place of occurrence and inspected the place of occurrence Police

called me telephonically at 11:00 p.m. that they arrested the accused Imran alias Aamir (present in the court). I alongwith P.W.S. reached at P.S. Uch Sharife where accused Imran alias Aamir (present in the court) disclosed in our presence that he committed the murder of my daughter Saima Bibi in the crop of sugarcane of Sami Sain Gilani . He took us and police party to the crop of sugarcane where dead body of my daughter was lying there. Her neck was cut off, a knife, motorcycle and two face masks were also lying there. Total eight numbers of articles were lying there. Thereafter, police sent the dead body of deceased to R.H.C. Uch Sharife. After post mortem examination, dead body of my daughter was handed over to me through receipt Exh. P.B. which bears my thumb impressions. The murder of my daughter was committed by Imran alias Aamir accused (present in the court)."

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 Muhammad Imran alias Aamir son of Hazoor Bakhsh was sent to face trial. The learned trial court framed the charge against the accused on 22.03.2021, to which the accused pleaded not guilty and claimed trial.

5. The prosecution in order to prove its case got recorded statements of **eleven** witnesses. Sakina Bibi (PW-1), the complainant of the case, gave the same evidence as has been reproduced in Paragraph 3 of the judgment. Muhammad Riaz (PW-2) also gave the same evidence as that of Sakina Bibi (PW-1). Shaista Iqbal 2426/L.C. (PW-3) stated that on 25.11.2020, she escorted the dead body of the deceased to the hospital and on 26.11.2020 received the last worn clothes of the deceased from the Medical Officer after the post mortem examination of the

dead body of the deceased. Mudassir Irshad, Incharge Crime Scene Unit, (PW-4) stated that on 25.11.2020, he went to the place where the dead body of the deceased had been discovered and collected relevant evidence which he handed over to Ali Sagheer 545/C (PW-5) and Muhammad Azam in the presence of Investigating Officer of the case. Zahoor Ahmad 1193/MHC (PW-6) stated that on 25.11.2020, the Investigating Officer of the case handed over to him eight sealed parcels and one sealed parcel said to contain blood stained earth , shoes and a motorcycle and on 26.11.2020, the Investigating Officer of the case handed over to him the last worn clothes of the deceased and on 02.12.2020, he handed over the sealed parcels and the envelopes to Mansoor ul Hassan, SI (PW-10) for their onward transmission to the office of the Punjab Forensic Science Agency, Lahore . Khawaja Kharat Hussain Siddiqui, Patwari (PW-9) prepared the scaled site plan of the place of occurrence (Exh.PM). Abdul Razzaq, SI (PW-11) investigated the case on 13.01.2022 and narrated the facts of the investigation as conducted by him in his statement before the learned trial court. Mansoor Ul Hassan, SI (PW-10) stated that on 25.11.2020 he recorded the formal F.I.R (Exh.PA/2) and also investigated the case from 25.11.2020 till 10.12.2020, arrested the appellant on 25.11.2020 and narrated the facts of investigation as conducted by him in his statement before the learned trial court.

6. The prosecution also got Dr.Qurat-ul-Ain (PW-7) examined, who on 26.11.2020 was posted as Woman Medical Officer at the R.H.C., Uch Sharif and on the same day conducted the postmortem examination of the dead body of Saima Bibi daughter of Muhammad Shafi (deceased). Dr.Qurat-ul-Ain (PW-7),

on examining the dead body of Saima Bibi daughter of Muhammad Shafi (deceased), observed as under:-

"EXAMINATION (sic) OF NECK

(Injury No. 1)

I examined neck thoroughly under good light, an incised wound on front of neck, measuring 19 x 7 cm. All neck muscles and main blood vessels cut. Vertebrae visible. Thyroid and parathyroid glands cut

DESCRIPTION OF INJURY (INCLUDING FINDING AND  
DISECTION)

(Injury No.2)

An abrasion on left knee measuring 3 x 1 cm, skin deep.

Injury No.3

A rough abrasion on right side of nose, measuring 3 x 3 cm, skin deep.

Injury No.4

(1) A wound on right eye brow, measuring 5 x 1.2 cm, skin deep, eye brow hairs alongwith skin were shaved.

(ii) A wound on left eye brow, measuring 6 x 2 cm, skin deep, eye brow hairs alongwith skin were shaved.

Injury No.5

A wound on right side of forehead measuring 2 x 1 cm, skin deep, above medial end of right eye brow at distance of 2 cm.

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VI-REMARKS BY MEDICAL OFFICER.

After complete external and internal post mortem examination of body, I have collected the already mention samples and sent to histopathologist and chemical examiner, (PFSA Lahore). Final opinion about cause of death will be given after receiving reports from concerned corners (PFSA Lahore).

Probable time that elapsed

(a) between injury and death. Within minutes.

(b) Between death and post mortem. Within 24 Hours.

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FINAL OPINION.

Keeping in view the complete autopsy findings and reports of toxicology and histopathological analysis by PFSA Lahore, I am of opinion that injury No.1 is sufficient to cause death of normal healthy person. I issued computerized post mortem report containing my final opinion Exh. P.L. to police."

The prosecution also got Dr. Khurram Mahmood (Radiologist) (PW-8) examined who stated that on 28.01.2021, he received skiagrams (P-12/1-2) related to the dead body of the deceased and gave his opinion (Exh.PM) that the deceased had not suffered a fracture of any bone .

7. On 31.03.2022, the learned Deputy District Public Prosecutor gave up the prosecution witnesses namely Ghulam Sarwar, Muhammad Javed 678/C and Muhammad Azam 1731/C as being unnecessary and closed the prosecution evidence after tendering the report of Punjab Forensic Science Agency, Lahore **(Exh. P.O.)**.

8. After the closure of prosecution evidence, the learned trial court examined appellant namely Muhammad Imran alias Aamir son of Hazoor Bakhsh 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 Muhammad Imran alias Aamir son of Hazoor Bakhsh opted not to get himself examined under section 340(2) Cr.P.C did not adduce any evidence in his defence.

9. On the conclusion of the trial, the learned Additional Sessions Judge, Bahawalpur, 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, learned Deputy Prosecutor General along with the learned counsel for the complainant, contended that the prosecution had proved its case beyond shadow of doubt by producing independent witnesses. The learned Deputy Prosecutor General and the learned counsel for the complainant further argued that the deceased was murdered by the appellant who had been last seen taking away the deceased. The learned Deputy Prosecutor General and the learned counsel for the complainant further argued that the recoveries from the appellant also corroborated the statements of the other witnesses. The learned Deputy Prosecutor General and the learned counsel for the complainant contended that there was no occasion for the prosecution witnesses, who were



related to the deceased, to substitute the real offender with the innocent in this case. Lastly, The learned Deputy Prosecutor General and the learned counsel for the complainant prayed for the rejection of 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 evidence of the recovery of the dead body of the deceased on the pointing of the appellant, the deceased being last seen alive in the company of the appellant, the recoveries of articles from the place of the recovery of the dead body and the report of Punjab Forensic Science Agency, Lahore (Exh. P.O.) regarding the D.N.A. analysis of the items submitted to the same and the recovery of the motorcycle (P-10) and the knife (P-6) .

14. Firstly, we shall deliberate upon the evidence of the prosecution that the dead body of the deceased was recovered at the pointing of the appellant. The learned Deputy Prosecutor General and the learned counsel for the complainant

have vehemently argued that as the appellant, after his arrest, pointed out the place from where the dead body was recovered, hence, there was sufficient evidence to prove that it was indeed the appellant who had killed the deceased. We have scrutinized the prosecution evidence and have noted that every prosecution witness who was examined with regard to the recovery of the dead body of the deceased had a different version to narrate of the said recovery. According to the prosecution witness namely Sakina Bibi (PW-1) , the complainant of the case, it was on **25.11.2020 at about 11.00 p.m** that she received a call from the Police Station telling her that the appellant had been arrested and after getting the said information she along with other witnesses went to the Police Station where the appellant was present in police custody and in the presence of the witnesses disclosed that he could lead to the place where the dead body of the deceased was present and subsequent to this statement, the appellant got recovered the dead body of the deceased from the land belonging to one Sami Gillani. The relevant portion of the statement of the prosecution witness namely Sakina Bibi (PW-1) reads as under:-

**"I got drafted application/complaint Exh. P.A. on the next day** which bears my thumb impression Exh.PA/1 as token of its correctness to police for registration of F.I.R. After registration of F.I.R., police came at my house Trend Busharat/place of occurrence and inspected the place of occurrence. **Police called me telephonically at 11:00 p.m.** that they arrested the accused Imran alias Aamir (present in the court). I alongwith P.W.S. reached at P.S. Uch Sharife where accused Imran alias Aamir (present in the court) disclosed in our presence that he committed the murder of my daughter Saima Bibi in the crop of sugarcane of Sami Sain Gilani . He took us and police party to the crop of sugarcane where dead body of my daughter was lying there. Her neck was cut

off, a knife, motorcycle and two face masks were also lying there" (emphasis supplied) .

Contrary to the above mentioned statement of the prosecution witness namely Sakina Bibi (PW-1) it was on **25.11.2020 at about 11.00 p.m** that she received a call from the Police Station telling her that the appellant had been arrested and after getting the said information she along with other witnesses went to the Police Station where the appellant was present in police custody and in the presence of the witnesses disclosed that he could lead to the place where the dead body of the deceased was present and subsequent to this statement, the appellant got recovered the dead body of the deceased from the land belonging to one Sami Gillani, the other prosecution witness namely Muhammad Riaz (PW-2) did not state that it was on 25.11.2020 that they proceeded to the Police Station , rather got recorded his statement that on 24.11.2020, the appellant had taken away the deceased at about 07.00 a.m, returned to the house of Sakina Bibi (PW-1) without the deceased at *Maghrib Waila* on 24.11.2020 and thereafter at 11.15 p.m. the police called the witnesses to the Police Station where the appellant was present in police custody and in the presence of the witnesses disclosed that he could lead to the place where the dead body of the deceased was present and subsequent to this statement, the appellant got recovered the dead body of the deceased. It would be advantageous to reproduce the relevant portion of the examination in-chief as recorded by the learned trial court of the prosecution witness namely Muhammad Riaz (PW-2). It was got recorded by Muhammad Riaz (PW-2) as under:-

"On 24.11.2020, at about 07:00 a.m. (morning) I alongwith Ghulam Sarwar were sitting in the house of Sakina Bibi. In the meanwhile, Imran alias Amir alongwith one unknown accused came there on motorcycle and sought permission from Sakina Bibi to send her daughter with Imran alias Aamir for pervi of case (registered at P.S. Dhor Kot against Fiyyaz Jarah etc) and hazri of darbar Syed Jalal Ud Din. Sakina Bibi forbidden her daughter to go with him. But Imran alias Aamir sworn on oath that he shall return her daughter at her house Trend Bushrat at evening time safely. **On the same day, at Maghrib vela,** I alongwith Ghulam Sarwar were present in the house of Sakina Bibi where Imran alias Aamir son in law of Sakina Bibi returned alone in her house in worried condition and told us that Saima Bibi became missing from Darbar Syed Jalal Ud Din and I did not commit anything with her. **Thereafter, we apprehended the accused Imran alias Aamir and started searching.** During search, Imran alias Aamir ran away, thereafter, Sakina Bibi submitted an application against Imran Aamir for the registration of F.I.R. **After registration of F.I.R., police came at the house of Sakina Bibi and inspected the place of occurrence. At about 11/11:15 p.m. police called us at police station where Imran** alias Aamir was in police custody, and he disclosed in our presence that he committed murder of Saima Bibi and is ready to get recover the dead body of Saima Bibi (deceased). I alongwith Sarwar, Sakina Bibi complainant and police Uch Sharife and Bahawalpur reached at crop of sugarcane, Imran alias Aamir pointed out the dead body of Saima bibi and we identified the dead body of Saima Bibi in the light of torch,"

The relevant portion of the examination in-chief as recorded by the learned trial court of the prosecution witness namely Muhammad Riaz (PW-2) reproduced above, also reflects that Muhammad Riaz (PW-2) never stated that it was on the next day that Sakina Bibi (PW-1) had submitted the application (Exh. P.A.) for the registration of the F.I.R rather stated that when the appellant succeeded to flee

away during the search, Sakina Bibi (PW-1) submitted the application for the registration of the F.I.R.. Despite our repeated queries, both the learned Deputy Prosecutor General and the learned counsel for the complainant are unable to refer to any part of the statement of the prosecution witness namely Muhammad Riaz (PW-2) wherein it had been stated that the dead body had been recovered on 25.11.2020 and not on 24.11.2020. In this manner, a fatal flaw has crept up in the statements of the prosecution witnesses namely Sakina Bibi (PW-1) and Muhammad Riaz (PW-2).

15. The scrutiny of the prosecution evidence also reveals that hugely contradictory statements were made by the prosecution witnesses regarding the *time when the dead body was recovered*. According to the prosecution witnesses namely Sakina Bibi (PW-1) and Muhammad Riaz (PW-2) they got the information from the Police Station regarding the arrest of the appellant at **11.00 p.m.** and it was subsequent to getting this information that they went to the Police Station. It was further stated by the prosecution witnesses namely Sakina Bibi (PW-1) and Muhammad Riaz (PW-2) that after their arrival at the Police Station, the appellant showed readiness to get the dead body of the deceased recovered. Sakina Bibi (PW-1) , during cross-examination , stated as under:-

**"We reached at the place of occurrence at 12:00 a.m. (night) on motorcycle.**

No person of locality was gathered there, thereafter police of uch sharif, police of Bahawalpur reached there." (emphasis supplied)

As mentioned above, though the prosecution witnesses namely Sakina Bibi (PW-1) and Muhammad Riaz (PW-2) remained at variance with regard to *the day* when the information was sent to them regarding the arrest of the appellant, however,

both stated in unison that it was at **11.00 p.m.** that they were informed about the arrest of the appellant and it was thereafter that the appellant got recovered the dead body of the deceased. Contrary to the statements of the prosecution witnesses namely Sakina Bibi (PW-1) and Muhammad Riaz (PW-2) that it was after **11.00 p.m.** that the dead body of the deceased was recovered, the prosecution witness namely Mudassir Irshad, Incharge Crime Scene Unit, (PW-4) stated that on 25.11.2020, he arrived the place where the dead body of the deceased had been discovered at **08.43 p.m** and left the place of the recovery of the dead body of the deceased at **11.27 p.m.** Mudassir Irshad, Incharge Crime Scene Unit, (PW-4), during cross-examination , stated as under:-

"We received the information about the occurrence at **07:16 p.m.** on 25.11.2020. We received information regarding murder in area of P.S. Uch Sharife. Mansoor Ul Hassan SI informed me about the occurrence.

.....

**We reached at the place of occurrence at about 08:43 p.m.** When we reached at the place of occurrence Mansoor Ul Hassan SI alongwith Muhammad Azam constable, Ali Saghir constable and one lady constable were present there. 40/50 persons of the locality were also gathered there. **We completed our proceedings at the spot till 11:27 p.m.**" (emphasis supplied) .

Mansoor ul Hassan, SI (PW-10), the Investigating Officer of the case, stated that he arrived at the place of recovery of the dead body, called the officials of Crime Scene Unit, Bahawalpur and they arrived at the place of recovery after 45 minutes of his call. Mansoor ul Hassan, SI (PW-10), the Investigating Officer of the case, during cross-examination , stated as under:-



"I do not remember the time of reaching in the sugarcane crop of Sami Ul Hassan Gilani. I immediately called Crime Scene Unit team when I reached there. **Team of Crime Scene Unit reached there within 45 minutes.**" (emphasis supplied).

In this manner, according to Mansoor ul Hassan, SI (PW-10) , the Investigating Officer of the case, the officials of Crime Scene Unit, Bahawalpur arrived at the place of recovery after 45 minutes of his call and according to the statement of namely Mudassir Irshad, Incharge Crime Scene Unit, (PW-4), he had already received the information regarding the presence of the dead body on **25.11.2020 at 07.16 p.m** and he arrived the place where the dead body of the deceased had been discovered at **08.43 p.m**. Similarly, contradicting the prosecution witnesses namely Sakina Bibi (PW-1) and Muhammad Riaz (PW-2) , the prosecution witness namely Ali Sagheer 545/C (PW-5) stated that it was at about **07.00/07.15 p.m.**, when they arrived at the place of the recovery of the dead body. Ali Sagheer 545/C (PW-5) during cross-examination , stated as under:-

"I do not remember the time of our arrival at the place of occurrence. Volunteered that it was after Maghrib and Isha time. **It was just after Isha. The time of Isha in November December is about 07/7:15 pm**" (emphasis supplied)

Therefore, it is proved that the dead body was recovered even before the information had been given to the prosecution witnesses namely Sakina Bibi (PW-1) and Muhammad Riaz (PW-2), regarding the **arrest of the appellant**, which information they had received at about **11.00 p.m** and even before the arrival of the prosecution witnesses namely Sakina Bibi (PW-1) and Muhammad Riaz (PW-2) at the Police Station after which the appellant had allegedly got recovered the dead body .The above reproduced portions of the statements of

Mudassir Irshad, Incharge Crime Scene Unit, (PW-4), Ali Sagheer 545/C (PW-5) and Mansoor ul Hassan, SI (PW-10) are themselves sufficient to denude the false claim of the prosecution witnesses namely Sakina Bibi (PW-1) and Muhammad Riaz (PW-2) that they had received the information regarding the arrest of the appellant at **11.00 p.m** , arrived at the Police Station subsequently and thereafter the dead body was discovered on the pointing of the place of occurrence by the appellant for the simple fact that according to Mudassir Irshad, Incharge Crime Scene Unit, (PW-4) he and the other witnesses had already received the information regarding the presence of the dead body on **25.11.2020 at 07.16 p.m** and Mudassir Irshad, Incharge Crime Scene Unit, (PW-4) and Ali Sagheer 545/C (PW-5) arrived at the place where the dead body of the deceased had been discovered **much before 11.00 p.m**. These statements of Mudassir Irshad, Incharge Crime Scene Unit, (PW-4), Ali Sagheer 545/C (PW-5) and Mansoor ul Hassan, SI (PW-10), regarding the time of their arrival at the place of recovery of the dead body of the deceased completely shatter the prosecution case that it was the appellant who had got recovered the dead body subsequent to his arrest.

16. We have also noted that Mudassir Irshad, Incharge Crime Scene Unit, (PW-4) stated that on **25.11.2020**, he went to the place where the dead body of the deceased had been discovered and collected relevant evidence which he handed over to Ali Sagheer 545/C (PW-5) and Muhammad Azam in the presence of Investigating Officer of the case, however, he never stated that it was the appellant who had got recovered the said dead body or even if the appellant was

even present at the said place. Mudassir Irshad, Incharge Crime Scene Unit, (PW-4) in his statement before the learned trial court , stated as under:-

"On 25.11.2020, I was posted as Incharge Crime Scene Unit PFSA Bahawalpur. On the same day, I alongwith my team after receiving telephonic call went to place of occurrence Mouza Uch Gilani Uch Sharif in sugar cane crop where Muhammad Azam, Ali Saghir police officials alongwith Mansoor Ul Hassan SI were present. I alongwith my team inspected the place where the dead body of deceased lady was lying on ground in the field of sugar cane. I collected the relevant evidence and sealed them into parcels containing eight parcels knife P6, blue colour face mask blood stained P7, black colour shoe P8, blue colour face mask P9, suspected hairs having roots, two right hand finger nails swabs, two left hands fingers, two buccal swabs were handed over to Saghir and Muhammad Azam in the presence of Mansoor Ul Hassan SI through Exhibit sheet. Mansoor Ul Hassan Si recorded my statement u/s 161 Cr. P.C. in this regard."

We have already reproduced the portion of the cross-examination of Mudassir Irshad, Incharge Crime Scene Unit, (PW-4) in which too he never spoke about the presence of the appellant at the place of the recovery of the dead body. The statement of Mudassir Irshad, Incharge Crime Scene Unit, (PW-4) is conspicuous by the non-mentioning of the presence of the appellant at the place of the presence of the dead body of the deceased.

17. We have also noted Khawaja Kharat Hussain Siddiqui, Patwari (PW-9) , who prepared the scaled site plan of the place of occurrence (Exh.PM), also admitted during cross-examination that he had not mentioned in the site plan (Exh.PM) that it was the appellant who had pointed out the place of the recovery

of the dead body of the deceased. Khawaja Kharat Hussain Siddiqui, Patwari (PW-9), during cross-examination , admitted as under:-

"In the scale site plan of the place of recovery of dead body **I have not mentioned that the said site plan has been prepared on the pointation of accused or accused has got recovered the dead body of Mst. Saima Bibi.** It is correct that in the scale site plan it is not mentioned that accused has pointed out the said place." (emphasis supplied) .

Similarly, Abdul Razzaq, SI (PW-11), another Investigating Officer of the case , during cross-examination , stated as under:-

"It is also not written in the scaled site plan that on whom pointation dead body was recovered."

The prosecution witness namely Muhammad Riaz (PW-2) though had claimed that it was in his presence that the appellant had agreed to get the dead body recovered and subsequently also got recovered the same , however, it was proved during cross-examination that Muhammad Riaz (PW-2) had blatantly and dishonestly improved his previous statement wherein no such facts had been recorded. Muhammad Riaz (PW-2) was duly confronted during the cross-examination and the learned trial court observed as under:-

"Police also recorded my supplementary statement regarding the recovery of dead body. I also recorded before the police that at about 11/11:15 p.m. police called us at police station where Imran alias Amir was in police custody. **Confronted with Exh. D.B. where it is not so recorded.** I further recorded before the police that accused Imran alias Amir disclosed in our presence that he committed the murder of Mst. Saima bibi and he is ready to get recover the dead body of Saima Bibi (deceased). **Confronted with Exh. D.B. where it is**

**not so recorded. I did not get record before the police that I alongwith Sakina Bibi, Ghulam Sarwar, police Uch Sharif and Bahawalpur police reached at the sugar cane crop of Sami Sain Gilani on the disclosure of accused."** (emphasis supplied)

Article 151 of the Qanun-e-Shahadat Order 1984 provides as under:-

*"151. Impeaching credit of witness. The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him:*

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

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

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

By improving his previous statement, Muhammad Riaz (PW-2) impeached his own credit. The august Supreme Court of Pakistan in the cases of "Muhammad Ashraf Vs. State" (2012 SCMR 419), "Muhammad Mansha Vs. The State" (2018 SCMR 772) and "Muhammad Arif Vs. The State" (2019 SCMR 631) took a serious notice of the improvements introduced by witnesses and rejected their evidence. Furthermore , Mansoor ul Hassan, SI (PW-10) , the Investigating Officer of the case, admitted during cross-examination that Muhammad Riaz (PW-2) had never stated that the appellant had got recovered the dead body of the deceased and stated as under:-

**"It is correct that PWs Muhammad Riaz and Ghulam Sarwar did not depose before me in their supplementary statements u/s 161 Cr. P.C. that accused Imran alias Amir got recovered the dead body of Mst. Saima Bibi after**

**pointation.** It is correct that during whole investigation, they also did not depose before me in their statements u/s 161 Cr. P.C. regarding confession of accused before them." (emphasis supplied)

All these circumstances prove conclusively that the prosecution failed miserably to prove that the appellant had got recovered the dead body of the deceased.

18. The learned Deputy Prosecutor General and the learned counsel for the complainant have also stated that the deceased was last seen in the company of the appellant and this fact also prove the guilt of the appellant. In order to prove the said fact, the prosecution examined prosecution witnesses namely Sakina Bibi (PW-1) and Muhammad Riaz (PW-2) who stated that on 24.11.2020 at about 07.00 a.m, the appellant had taken away the deceased whereafter the deceased was never seen alive. We have scrutinized the statements of prosecution witnesses namely Sakina Bibi (PW-1) and Muhammad Riaz (PW-2) and find that they remained unable to prove that it was indeed the appellant who on 24.11.2020 at about 07.00 a.m had taken away the deceased with him. It was admitted by the prosecution witnesses namely Sakina Bibi (PW-1) and Muhammad Riaz (PW-2) that the prosecution witness namely Muhammad Riaz (PW-2) had a separate residence which was at a distance from the house of Sakina Bibi (PW-1), the house where the deceased was residing on 24.11.2020. The prosecution witness namely Sakina Bibi (PW-1) also admitted that there was no reason for Muhammad Riaz (PW-2) to had been present at her house on 24.11.2020 and that Muhammad Riaz (PW-2) used to work at Faisalabad. The prosecution witness namely Sakina Bibi (PW-1), during cross-examination, stated as under:-

"Houses of Riaz and Ghulam Sarwar are situated at the distance of 03 beghas from my house. Riaz is living at Faisalabad and working in a mill for last 05 years. Ghulam Sarwar PW sells grocery items on his motorcycle. I cannot tell the distance between Faisalabad and Mouza Trend Busharat. There was no function on the day of occurrence at my house. **PW Riaz and Ghulam Sarwar came there by chance.**" (emphasis supplied).

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

“ Sakina Bibi is my real sister.

.....

My house is separate from the house of Sakina Bibi. The distance between my house and house of Sakina bibi is about 4 begha. I and my brother Ghulam Sarwar are residing together in the same house. I am working in textile mill namely West Fiber Faisalabad for the last fourteen years. 6/7 hours are consumed in reaching Faisalabad on bus from Trend Busharat. There was no function at the house of Sakina Bibi. **On 24.11.2020, I by chance present her house.**" (emphasis supplied).

In this manner, when both prosecution witnesses namely Sakina Bibi (PW-1) and Muhammad Riaz (PW-2) admitted that there was no reason for the presence of Muhammad Riaz (PW-2) at the house of Sakina Bibi (PW-1), then in what circumstances and for what reason Muhammad Riaz (PW-2) remained present at the house of Sakina Bibi (PW-1) from 07.00 a.m to *Maghrib Waila*, needed to be proved , however, no effort was made by the prosecution witnesses namely Sakina Bibi (PW-1) and Muhammad Riaz (PW-2) to prove the said circumstances due to which prosecution witness namely Muhammad Riaz (PW-2) remained

present for such an extended period at the house of Sakina Bibi (PW-1), enabling him to witness the departure of the deceased with the appellant and the return of the appellant alone. It was obviously a false claim of the prosecution witnesses namely Sakina Bibi (PW-1) and Muhammad Riaz (PW-2) that Muhammad Riaz (PW-2) had remained at the house of Sakina Bibi (PW-1) from 07.00 a.m to *Maghrib Waila*. It was also admitted by prosecution witnesses namely Sakina Bibi (PW-1) and Muhammad Riaz (PW-2) that the house of Sakina Bibi (PW-1) was situated in a well populated area, however, no person of the locality ever appeared before the Investigating Officer of the case or the learned trial court to state that they had seen the appellant visiting the house of Sakina Bibi (PW-1) on 24.11.2020. Sakina Bibi (PW-1) , during cross-examination , admitted as under:-

"Trend Busharat is a big populated Basti having approximately five hundreds houses. No persons of Basti Trend Busharat were associated by me during course of investigation as witness who saw accused Imran while coming to my house and took Mst. Saima Bibi with him on 24.11.2020. During whole investigation of this case, I did not produce any witness of locality who saw Imran alias Amir coming to my house at evening time on 24.11.2020."

Muhammad Riaz (PW-2) , during cross-examination , admitted as under:-

"Basti Trend Busharat is a thickly populated area and consists upon 4/5 thousands houses I did not produce any person of Basti Trend Busharat before the police who saw the accused Imran alias Amir while coming and taking away Mst. Saima Bibi from the house of Sakina Bibi on 24.11.2020."

We have also noted that the prosecution witness namely Sakina Bibi (PW-1) admitted that she did not report the matter of the missing of the deceased on 24.11.2020, despite her claim that the appellant had come back to her house



without the deceased at *Maghrib Waila*. It was also the claim of the prosecution witness namely Sakina Bibi (PW-1) that she started the search for the deceased on 24.11.2020, however, she admitted that she did not produce any witness whom she had come across during her search of the deceased. The prosecution witness namely Sakina Bibi (PW-1) , during cross-examination , stated as under:-

"On next day of the abduction. I reported the matter to police station at maghrib time. I did not produce any person of places where I searched my daughter before the police during investigation"

19. Pre-requisites for believing the last seen evidence are the proximity of time and nearness of the place of occurrence. Interpreting these two principles, it is required that deceased shall be seen in the company of the accused by the witnesses some short time before happening of the incident and the place of murder may not be far away from the place of lastly seeing the deceased in the company of the accused by the prosecution witnesses. The last seen theory comes into play where the time gap between the point of time when the accused and deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. According to the prosecution witnesses namely Sakina Bibi (PW-1) and Muhammad Riaz (PW-2) they had seen the appellant taking the deceased on **24.11.2020 at about 07.00 a.m.** The dead body of the deceased was discovered on **25.11.2020**. The dead body of the deceased was brought to the hospital on **26.11.2020 at about 01.20 a.m.** Dr.Qurat-ul-Ain (PW-7) conducted the postmortem examination of the dead body of Saima Bibi daughter of Muhammad Shafi (deceased) on **26.11.2020 at about 08.00 a.m.** Dr.Qurat-ul-Ain (PW-7), after conducting the postmortem

examination of the dead body of Saima Bibi daughter of Muhammad Shafi (deceased) opined that the time between death and post mortem examination was **within twenty four hours**. The opinion of Dr.Qurat-ul-Ain (PW-7) regarding the death of the deceased having taken place twenty four hours prior to the post mortem examination creates a gaping hole in the prosecution case as there exists a huge gap between the time when the deceased was last seen in the company of the appellant i.e on **24.11.2020 at 07.00 a.m** and the time when the deceased was murdered determined to be as being subsequent to **08.00 a.m. on 25.11.2020**. In this manner, it is proved that the prosecution failed to establish that the deceased was seen lastly in the company of the appellant. Even otherwise ,last seen together is a weak type of circumstantial evidence, which cannot be readily believed unless it was corroborated through unimpeachable source, and it should be close to the time and place of murder to exclude the possibility of innocence. As mentioned above, the last seen theory comes into play where the time gap between the point of time when the accused and deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. In this case, the element of the proximity of the time of last seeing the deceased and the time of her death **is missing**. It is settled law that the last seen evidence can have legal worth only if the deceased is seen in the company of the accused quite close to the time of his death so as to exclude any possibility of the deceased coming in contact with anybody else before his death. But it is also settled law that the only circumstance of **last seen** will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded. Reliance is placed on the case of Sadi Ahmad and another

Vs. The State (2019 SCMR 1220) wherein the august Supreme Court of Pakistan has held as under:-

*"We are not much impressed by the evidence of last seen for being outside the bounds of proximity in terms of time and space, besides otherwise being far from confidence inspiring".*

Reliance is also placed on the case of Muhammad Abid Vs. The State and another (P L D 2018 Supreme Court 813) wherein the august Supreme Court of Pakistan has enunciated the following principle:-

*"The theory of last seen together is one where two persons are 'seen together' alive and after an interval of time, one of them is found alive and the other dead. If the period between the two is short, presumption can be drawn that the person alive is the author of the other's death. Time gap between the sighting and the occurrence should be such as to rule out possibility of somebody else committing the crime. The circumstance of the deceased being last seen in the company of the accused is not by itself sufficient to sustain the charge of murder. There must be evidence to link the accused with the murder of his companion, such as incriminating facts as recovery, strong motive and the proximate time when they were last seen together and the time when the deceased was killed. Last seen evidence as circumstantial evidence must be incompatible with the innocence of the accused and should be accepted with great caution. It must be scrutinized minutely so that no plausible conclusion should be drawn therefrom except guilt of the accused.*

*6. The foundation of the "last seen together" theory is based on principles of probability and cause and connection and requires 1. cogent reasons that the deceased in normal and ordinary course was supposed to accompany the accused. 2. proximity of the crime scene. 3. small time gap between the sighting and crime 4. no possibility of third person interference 5. motive. 6. time of death of victim. The circumstance of last seen together does not by itself necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime."*

Hence, in view of the above discussion, the last seen evidence furnished by the prosecution witnesses is not confidence inspiring, therefore, the same cannot be relied upon.

20. The learned Deputy Prosecutor General and the learned counsel for the complainant have also laid much stress upon the report of the Punjab Forensic

Science Agency, Lahore (Exh. P.O.), wherein it had been determined that the D.N.A. profile obtained from the swabs taken from the face mask and the D.N.A. profile obtained from the hair recovered from the face mask and the D.N.A. profile obtained from the shoe, which all articles were recovered from the place of occurrence, were a mixture of at least two individuals and the appellant could not be excluded as being a contributor to the D.N.A. obtained from the swabs taken from the face mask, the hair recovered from the face mask and the shoe. In Chapter 17 'Examination of Biological Stains and Hair', from page 430 to page 440 of Rai Bahadur Jaising P. Modi's *A Textbook of Medical Jurisprudence and Toxicology* (26th Edition 2018) it has been discoursed as under:-

#### "DNA PROFILING (DEOXYRIBONUCLEIC ACID TYPING)

##### General-

Life on earth is based on cells; Cell is the basic unit of life. There are around trillions of cells in a human blood. Every cell has a nucleus (except the RBCs); Inside the nucleus which is considered to be the central processing unit of the cell, 23 pairs of chromosomes are present. Twenty-two pairs of autosomal chromosomes and one pair of sex chromosomes (XX in females and X.Y. in males). Chromosomes carry linearly arranged genetic units, which are materially referred as Deoxyribonucleic Acid (D.N.A.). There are about 3 billion nucleotides in human D.N.A. Human D.N.A. is approximately 2 metres long if it is placed end to end from 46 chromosomes of a single cell. D.N.A. is present in coiled and super coiled form in the cell. The super coiled structures are known as the chromosomes. This D.N.A. contains genetic information which decides the phenotypic character (height, skin colour, eye colour, hair colour, etc) of an individual. The D.N.A. carries the genetic information from parents to offspring, being half of the D.N.A. from mother and the other half from father. The D.N.A. carries all the information to make proteins (hormones, antibodies, enzymes and structural proteins like actin, myosin, keratin, tubulin) for proper functioning of the body. Another class of D.N.A. present in human cell is the mitochondrial D.N.A. which is present in the cell organelle mitochondria. Unlike nuclear D.N.A. mitochondrial D.N.A. is maternally inherited because the mitochondria of sperm are present in the tail and the tail is digested by hyaluronic acid present around the egg cell at the time of fertilization. The D.N.A. is the genetic material that makes every individual different, except for genetically identical twins. A pattern of chemical signals i.e., genetic code, has been discovered within the D.N.A. molecule, which is very unique to each individual, just like their actual fingerprint. Thus, the

D.N.A. profiling, unique to each individual, is colloquially referred to as 'D.N.A. Fingerprinting' and it is also known as D.N.A. typing. The companies who offer the D.N.A. profiling claim that a D.N.A. match of two individuals is as unlikely as 1 in 30 billion. One more estimation puts it at 1 in 800, 000, 000 The chemical D.N.A. was first discovered in 1869, but its role in genetic inheritance was not demonstrated until 1943. In 1944, Oswald Avery made the breakthrough discovery that D.N.A. is the basic genetic material. A few years later, in 1953, James Watson and Francis Crick determined that the structure of D.N.A. is a double-helix polymer, a spiral consisting of two D.N.A. strands wound around each other. The technique of D.N.A. Fingerprinting was first developed in 1984 by Dr Alec Jeffreys from Britain. Since then, increasing attention has been paid around the world to the use of D.N.A. profiling for individualization purposes in criminal and allied cases. Paternity testing is another important use through D.N.A. since 1988. The use of Restriction Fragment Length Polymorphism (RFLP) analysis of minisatellites or Variable Number of Tandem Repeat (VNTR) loci scattered along the chromosomes has spread interest among the medico legal professionals. The use of microsatellites or Short Tandem Repeats (S.T.R.s) also gained momentum with the passing years. These are consecutive repeats that are abundantly found in D.N.A. In contrast to 100-200 bps length of RFLPS and VNTRs, the STRS are of a smaller length of 2-10 bps. The short size of STRS is particularly useful if the sample is degraded or with Low Copy Number (L.C.N.) D.N.A. Such degraded or fragmented D.N.A. is encountered in samples that have been exposed to hostile external environment conditions like sunlight, heat, excessive salt etc. The traditional techniques like RFLP and VNTRS are not very helpful in such cases. The variants of STRS including Autosomal STR, MINI-STR, Y-STR and X-STR have immensely contributed to the forensic field. Three types of results are possible after comparing the question sample (Q) and the known sample (K) in cases of autosomal, Y and X STR markers analysis. These are-(1) Exclusion This result is produced when the STR haplotypes are different and could not have originated from the same source. (2) Inclusion (or failure to exclude)- This result is produced when STR haplotypes that result from Q-K comparison are the same and could have originated from the same source. (3) Inconclusive:-The result is inconclusive when the data are insufficient to render an interpretation or in other words ,ambiguous results are obtained.

**The Autosomal STR markers:** are commonly used to establish identity and settle paternity disputes. They are studied on all the 22 pairs of autosomes to avoid linkage issues within the markers.

.....

**Samples required for D.N.A. profiling.** Any biological material such as a drop of blood, saliva, semen, and any body part such as bones, tissue, skull, teeth, and hair with the root found at the scene of crime may serve as a sample for D.N.A. profiling. The CDFD gives the following guidelines about collecting samples:

- (i) Maternity/paternity/parentage: Blood samples of mother, disputed child and alleged father are required. The blood samples (2 - 3ml) can be collected in the sterile blood collection material (EDTA vials) sent

by the laboratory, in the presence of Court authorities. These samples should be sent in ice in a thermos flask either by a messenger or through courier, so as to reach the laboratory within 72 hours after collection. (ii) Identity of the deceased: Any body part of the deceased found at the scene of crime along with the blood samples of the blood relatives of the suspected individuals (viz., parents, and children) should be sent.  
(iii) Identity of rape/rapist: Blood / semen stained clothes, garments, swabs, and slides of the victim and the accused is forwarded to the laboratory.

.....  
**Problems linked with D.N.A. profiling.** One of the lasting effects of the OJ Simpson case will likely be greater scrutiny by defence lawyers of the prosecution's forensic D.N.A. presented in criminal cases. In the Simpson case, the defence, in essence, put the crime evidence laboratory on trial. There is no substantial dispute about the underlying scientific principles in D.N.A. profiling, however, the adequacy of laboratory procedures and the competence of the experts who testify should remain open to inquiry.

Although, there is a common consensus within the scientific community that D.N.A. profiling can yield results with a very high probability, the complex procedure of D.N.A. profiling is not without problems. At every phase of the seven-step procedure just described, mistakes **and improper handling of the DNA-probe can produce false results** which in some cases can lead to a life sentence or even death-penalty judgement. Therefore, the adequacy of laboratory procedures and the competence of the experts who testify should remain open to inquiry.

Furthermore, the D.N.A. samples can be mixed up by the police or the laboratory personnel (this actually took place in one case) or the amount of D.N.A. can be insufficient. The various contaminants include microbes, fibres, concrete, soil, vegetable matter, other body fluids besides foreign D.N.A. from field agents and laboratory workers. It can be avoided by handling the forensic evidence at a place that is segregated from the , where amplification of the sample is to be conducted. If the sample is accidentally mixed with foreign D.N.A. before amplification, the contaminant will also get amplified resulting in mixed profiles at the time of STR analysis. Secondly, a significant 'source of error' is the incomplete digestion of the D.N.A. by the restriction enzymes. The other extreme can be an over-digestion also called 'star activity'. Thirdly, a 'band shift' can occur, meaning that the D.N.A. fragments which are put in several lanes next to each other can influence each other's mobility, thus causing wrong results of the gel electrophoresis. In connection with the problem of 'band shift', the gel electrophoresis itself may not be conducted properly, i.e., the voltage can be too low or too high or the concentration of the gel can be incorrect. Finally, the expert who determines a match can be biased".

In our legal framework D.N.A. evidence is evaluated on the strength of Articles 59 and 164 of the Qanun-e-Shahadat, 1984 (QSO). The former provision states that expert opinion on matters such as science and art falls within the ambit of 'relevant evidence'. On the other hand, the latter provision

provides that the Court may allow the reception of any evidence that may become available because of modern devices and techniques. Under this regime, the technician who conducts experiment to scrutinize D.N.A. evidence is regarded as an expert whose opinion is admissible in Court. Subsection (3) of Section 9 of the Punjab Forensic Science Agency Act, 2007, reaffirms this legal position when it enacts that "*a person appointed in the Agency as an expert shall be deemed as an expert appointed under Section 510 of the Code of Criminal Procedure, 1898] and a person specially skilled in a forensic material under Article 59 of the Qanun-e-Shahadat, 1984 (P.O. X of 1984).*" A combined reading of all these provisions shows that the report of the Punjab Forensic Science Agency regarding D.N.A. analysis is per se admissible in evidence under Section 510, Cr.P.C. Since D.N.A. analysis report is reckoned as a form of expert evidence in criminal cases, it cannot be treated as primary evidence and can be relied upon only for purposes of corroboration. This implies that no case can be decided exclusively on its basis. Credibility of the D.N.A. test inter alia depends on the standards employed for the collection and transmission of samples to the laboratory. It is essential that any item being sent to the Punjab Forensic Science Agency, Lahore for D.N.A. analysis is not contaminated or compromised or manipulated or subverted at any stage. Proper standing operating procedures have to be followed for securing and carefully putting into the parcel the suspected materials to co-relate with the samples of the accused. Similarly, cross contamination of the samples must be prevented because if the samples come in contact with each other then, it will give false positive result. The august Supreme Court of Pakistan has observed in the case

of Azeem Khan and another Vs. Mujahid Hussain and others (P.L.J. **2016 SC 123**)

has held as under:-

*"In the recent past many scandals in U.S.A., U.K. and other countries have surfaced where desired D.N.A. test reports were procured by the investigative by contaminating the samples. Such contamination has also been reported in some cases while the samples remained in the laboratories. Many inquiries were held on this issue and stringent law has been made by many States to prevent the contamination of samples outside and inside the laboratories. Proper procedure has been laid down for securing and carefully putting into parcel the suspected materials to co-relate with the samples of the parents to establish paternity or maternity. Similarly, stringent check and procedure has been provided to avoid and prevent cross contamination of the two samples because if both come in contact with each others then, it will give false positive appearance and the expert is thus misled. It has also been discovered that credentials of many experts, claiming possessed of higher qualification in this particular field, were found fake and they were thus, removed from service. The D.N.A. Wikipedia on web is an unrebutted testimony to these facts.*

*28. In any case, it is an expert opinion and even if it is admitted into the evidence and relied upon, would in no manner be sufficient to connect the necks of the appellants with the commission of the crime when the bulk of other evidence has been held by us unbelievable thus, no reliance can be placed on it to award a capital sentence. Moreover, to ensure fair-play and transparency, the samples in the laboratories from the parents should have been taken in the presence of some independent authority like a Magistrate and also the recovered samples from the crime scene in the same way to dispel the chances of fabrication of evidence through corrupt practices and the transition of the samples to the laboratory should have also been made in a safe and secure manner. But all these safeguards were kept aside."*

In the present case we have been shocked to notice that according to the report of the Punjab Forensic Science Agency, Lahore (Exh. P.O.) , the items sent to it were ***neither sent in sealed parcels nor in sealed envelopes*** rather the items were received at the Punjab Forensic Science Agency, Lahore without being secured in sealed parcels or sealed envelopes. Moreover, though the appellant had been arrested on 25.11.2020, however, Mansoor ul Hassan, SI (PW-10) , the Investigating Officer of the case, took the appellant as well as the articles to the Punjab Forensic Science Agency, Lahore on the same day, opening up the clear and present likelihood of the contamination of the articles being sent to the Punjab Forensic Science Agency, Lahore for D.N.A. analysis . According to



the prosecution evidence, Mansoor ul Hassan, SI (PW-10) , the Investigating Officer of the case, not only took with him the appellant but also the various items and in that scenario, cross contamination could not be ruled out. The prosecution miserably failed to prove that the articles which had been sent to the Punjab Forensic Science Agency, Lahore had not come into contact with the appellant during their journey from the Police Station to the Punjab Forensic Science Agency, Lahore. In this manner, the prosecution failed to prove that items which were sent to the Punjab Forensic Science Agency, Lahore for D.N.A. analysis were not contaminated or compromised or manipulated or subverted at any stage and in absence of that evidence no reliance can be place on the report of Punjab Forensic Science Agency, Lahore (Exh. P.O.). We have queried the learned Deputy Prosecutor General to clarify that when according to the report of the Punjab Forensic Science Agency, Lahore (Exh. P.O.) the items sent to it for D.N.A. analysis were received in the Punjab Forensic Science Agency, Lahore *neither in sealed parcels nor in sealed envelopes* then how can the said report be relied upon but, after going through the record of this case from cover to cover, the learned Deputy Prosecutor General remained unable to explain as to why the articles sent to the Punjab Forensic Science Agency, Lahore were not sent in sealed parcels or sealed envelopes.. We have also noted that according to the Punjab Forensic Science Agency, Lahore (Exh.PO) , it had retained the items sent to it for DNA analysis with a direction to recover the items within 15 days of the issuance of the report however the prosecution did not lead any evidence that who had brought back the face mask (P-7), the other face mask (P-9) and the shoe (P-8) from the Punjab Forensic Science Agency, Lahore so as for them to be produced and exhibited before the learned trial court. All these facts by

themselves create sufficient cause for not placing any reliance upon the report of the Punjab Forensic Science Agency, Lahore (Exh. P.O.)

21. The learned Deputy Prosecutor General and the learned counsel for the complainant have also relied upon the recovery of the motorcycle (P-10) and have submitted that it was the same motorcycle which was used by the appellant to take away the deceased from the house of Sakina Bibi (PW-1). We have noticed that the prosecution witnesses namely Sakina Bibi (PW-1) and Muhammad Riaz (PW-2), in their statements before the learned trial court, did not state either the make or the colour or the registration number or the model number of the motorcycle upon which the appellant had allegedly taken away the deceased from the house of Sakina Bibi (PW-1) , therefore, the recovered motorcycle (P-10) cannot be said to be the same which had been used by the appellant on 24.11.2020 for taking away the deceased from the house of Sakina Bibi (PW-1).

22. The learned Deputy Prosecutor General and the learned counsel for the complainant have also relied upon the recovery of the knife (P-6) and stated that it was the knife which was used by the appellant during the occurrence .We have already discussed that the various prosecution witnesses made mutually destructive and contradictory statements with regard to the recovery of the knife (P-6) and therefore it cannot be said with any certainty that it was the appellant who had got recovered the knife (P-6) from the place of occurrence. Moreover, we have also noted that though the said knife (P-6) was sent to the Punjab Forensic Science Agency, Lahore for analysis , however, according to the report of the Punjab Forensic Science Agency, Lahore (Exh. P.O.) no D.N.A. of the

appellant was found either on the handle or the blade of the knife (P-6) . When an individual touches an object, epithelial cells are left behind. Touch D.N.A. is also known as epithelial D.N.A. The same traditional D.N.A. 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 D.N.A. This is evidence with "no visible staining that would likely contain D.N.A. resulting from the transfer of epithelial cells from the skin to an object. Due to development, lower amounts of human D.N.A. can be detected and, possibly, a full or partial STR profile can be generated. D.N.A. evidence has emerged as a powerful tool to identify perpetrators of unspeakable crimes and to exonerate innocent individuals accused of similarly heinous actions. The technology has advanced to Polymerase Chain Reaction (PCR) based short tandem repeat (STR) testing. This system multiplies a single copy of a D.N.A. segment to allow for the analysis of the genetic makeup of a small sample. Current analysis makes it possible to determine whether a biological tissue matches a suspect with near certainty. D.N.A. is comprised of "coding" and "non-coding regions. The loci examined are found on "junk D.N.A.," which are segments of the D.N.A. not known to code for any specific trait, but known to be different between individuals. "Junk D.N.A." are the non-coding regions which contain valuable information about identity, but do not contain information regarding coding for other genetic traits. This allows the development of a D.N.A. profile without an examination into other genetic markers. The report of the Punjab Forensic Science Agency, Lahore (Exh. P.O.) supports the claim of the appellant that he was innocent for the reason that had the appellant handled the knife (P-6) then his D.N.A. profile must had been

obtained from the said item because had he touched the knife (P-6) , then the epithelial cells from the skin of the appellant must have been left behind on the knife (P-6) handled by him and subsequently the presence of D.N.A. profile of the appellant would have been identified on the knife (P-6) handled by him by the Punjab Forensic Science Agency, Lahore . The absence of any D.N.A. profile of the appellant on the knife (P-6) sent to the Punjab Forensic Science Agency, Lahore for D.N.A. analysis creates further doubt regarding the involvement of the appellant in the occurrence .

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 ocular account. The motive of the occurrence as stated by prosecution witnesses namely Sakina Bibi (PW-1) and Muhammad Riaz (PW-2) was that four months before the occurrence, the deceased was abducted by one Muhammad Fayyaz, however, upon the return of the deceased , the appellant became doubtful over the character of the deceased and subsequently murdered her . We have perused the statements of the prosecution witnesses namely Sakina Bibi (PW-1) and Muhammad Riaz (PW-2) and find that they failed to prove the motive of the occurrence as stated by them. It was stated by the prosecution witnesses namely Sakina Bibi (PW-1) and Muhammad Riaz (PW-2), that they did not report the matter of abduction of the deceased to the police, rather, it was the deceased herself who reported the said occurrence of her abduction. Sakina Bibi (PW-1) , during her cross-examination , stated as under:-

"Saima Bibi was abducted by Muhammad Fiyaz etc four months prior to the occurrence in the area of Mouza Trend Busharat as she was living in my house.

She came back one month prior to this occurrence. I myself did not get lodged the F.I.R. regarding the abduction of Mst. Saima Bibi against Fiyaz etc during three months of her abduction."

The prosecution also did not produce any copy of the F.I.R which was got registered by the deceased in relation to her abduction by one Muhammad Fayyaz. The Investigating Officer of the case also did not collect any evidence in support of the allegation that upon the return of the deceased after being abducted, the appellant became doubtful over the character of the deceased and subsequently murdered her. There is no evidence on record that Saima Bibi daughter of Muhammad Shafique (deceased) was facing any threat to her life at the hands of the appellant prior to the occurrence. The prosecution witnesses failed to provide evidence enabling us to determine the truthfulness of the motive alleged and the fact that the said motive was so compelling that it could have led the 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."*

24. The only other piece of evidence left to be considered by us is the medical evidence with regard to the injuries observed on the dead body of the deceased by Dr.Qurat-ul-Ain (PW-7) but the same is of no assistance in this case as

medical evidence by its nature and character, cannot recognize a culprit in case of an unobserved incidence. As all the other pieces of evidence relied upon by the prosecution in this case have been disbelieved and discarded by us, therefore, the appellant's conviction cannot be upheld on the basis of medical evidence alone. The august Supreme Court of Pakistan in its binding judgment titled "Hashim Qasim and another Vs. The State" (2017 SCMR 986) has enunciated the following principle of law:

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

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

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

25. Considering all the above circumstances, we entertain serious doubt in our minds regarding the involvement of the appellant namely Muhammad Imran alias Aamir son of Hazoor Bakhsh in the present case. It is a settled principle of law that for giving benefit of the doubt it is not necessary that there should be so many circumstances rather, if only a single circumstance creating reasonable doubt in the mind of a prudent person is available, then the 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 Akram v. The State (2009 SCMR 230) and Muhammad Zaman v. The State (2014 SCMR 749)."*

Reliance is also placed on the judgment of the august Supreme Court of Pakistan "Najaf Ali Shah Vs. the State" (2021 S C M R 736) in which it has been 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 go 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.462 of 2022 lodged by Muhammad Imran alias Aamir son of Hazoor Bakhsh (appellant) is **allowed** and the conviction and sentence of the appellant awarded by the learned trial court through the impugned judgment dated 30.06.2022 are hereby set-aside. Muhammad Imran alias Aamir son of Hazoor Bakhsh (appellant) is ordered to be acquitted by extending him the benefit of doubt. Muhammad Imran alias Aamir son of Hazoor Bakhsh is in custody and he is directed to be released forthwith if not required in any other case.

25. **Murder Reference No.17 of 2022** is answered in **Negative** and the sentence of death awarded to Muhammad Imran alias Aamir son of Hazoor Bakhsh is **Not Confirmed**.

(MUHAMMAD AMJAD RAFIQ)  
JUDGE

(SADIQ MAHMUD KHURRAM)  
JUDGE

*Raheel*

**APPROVED FOR REPORTING**

**JUDGE**