

SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Justice Jamal Khan Mandokhail
Justice Musarrat Hilali
Justice Shakeel Ahmad

Criminal Petitions No. 63-Q and 64-Q of 2024

(Against the judgment dated 29.10.2024 passed by the High Court of Balochistan, Quetta in Criminal Appeal No. 326/2022 and Cr. Revision No. 15 of 2022)

Osama (*in Cr.PLA No. 63-Q/2024*)

Abdul Hanan (*in Cr.PLA No. 64-Q/2024*)

... Petitioners

Versus

The State thr. Prosecutor General

Balochistan (*in Cr.PLA No. 63-Q/2024*)

...Respondent(s)

Osama & others (*in Cr.PLA No. 64-Q/2024*)

For the Petitioners(s) : Mr. Abdul Hadi Tareen, ASC
Mr. Abdul Rahim Mengal AOR
(*in Cr.PLA No. 63-Q/2024*)

Mr. Aman Ullah Khan, ASC
Syed Iqbal Shah, AOR
(*in Cr.PLA No. 64-Q/2024 and also for the respondent in Cr.PLA No. 63-Q/2024*)

For the State : Mr. Mushtaq Ahmad Qazi, Addl. PG

Date of hearing : 18.07.2025

JUDGMENT

Shakeel Ahmad, J.- Through the titled petitions under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners seek leave to appeal against the judgment dated 29.10.2024, passed by the High Court of Balochistan, Quetta (***the High Court***"), whereby the appeal filed by Osama (***the accused-petitioner***") and his co-accused Lalai against the judgment of the trial Court dated 08.06.2022, convicting and sentencing them to suffer imprisonment for life as *Ta'zir*, for committing murder of Abdul Jabbar, (***the deceased***") with compensation of Rs. 10,00,000/- each to be paid to the legal heirs of the deceased as per provisions of Section 544-A Cr.PC, in default thereof, to suffer further six months RI, with benefit of Section 382-B Cr.PC, in Crime No. 13 of 2020, dated 23.09.2020, registered under Sections 302/34 PPC at Levies Police Station Yaro District Pishin, to his extent was dismissed, and to the extent of co-accused Lalai, it was partially accepted, whereas, Criminal Revision Petition No. 15 of 2022, filed by the

complainant seeking enhancement of sentence of the accused-petitioner from life imprisonment to that of normal penalty of death, was dismissed through the same judgment.

2. The occurrence in the instant case took place on 23.09.2020 at 10.00 AM at a distance of three kilometres from Police Station Yaro Pishin towards North East. FIR Ex.P/11-A was recorded at 04.15 PM on 24.09.2020 by Muhammad Younas, Naib Risaldar (PW-11), on receipt of written application Ex.P/I-A of Abdul Hanan, (PW-1) (***“the complainant”***), who is brother of the deceased.

3. Briefly, the prosecution case as set out in the Crime report is that, on 22.09.2020 at about 08.30 PM, the complainant alongwith the deceased, his nephew Mohib Ullah (PW-2), and Abdullah (PW-3), were present in their shop at Pishin Bazar, in the meanwhile, the accused-petitioner Osama, Lalai, and Anees (absconding co-accused) came there on a motorcycle. The accused-petitioner Osama asked the deceased to accompany them to have dinner and that he would also pay his outstanding amount, i.e., Rs. 150,000/-, to him. Whereafter, co-accused Anees and Lalai on their motorcycle, and the accused-petitioner, and the deceased on the motorcycle of the deceased, left the shop. On 23.09.2020, the complainant received information from the home of the deceased that he is missing since last night, and his cell phone was also found off. On receipt of this information, he made a call on the cell phone of the deceased, but it was found not responding. In this respect, he lodged a written report at Police Station Yaro on 23.09.2020. In pursuance thereof, the accused-petitioner Osama and co-accused Lalai were arrested on the same day. Both of them admitted to have committed murder of the deceased, and on their disclosure and pointation dead body of the deceased was recovered by Muhammad Younas, Naib Risaldar (PW-11), in presence of Shams ud Din, Naib Risaldar (given up), and Muhammad Tayyab (PW-5). According to the complainant, both accused have committed murder of the deceased at midnight on 22.09.2020 and 23.09.2020 by making firing at his head, mercilessly. The accused-petitioner also took the investigating officer (PW-11) to the scene of the crime, pointing out the place where he committed murder of the deceased. Pursuant to the

pointation of the accused-petitioner, blood-stained earth, stone, one crime empty of TT pistol, one spent bullet of TT pistol, and a blood-stained sheet were recovered by the investigating officer and sealed into parcel in presence of marginal witnesses Syed Abdul Hakeem Khasadar (PW-7) and Muhammad Tayyab (PW-5). The investigating officer also recovered crime weapon along with four live bullets and Rs. 175,000/- snatched from the deceased from the house of the accused-petitioner at his pointation vide recovery memo Ex.P/7-D in the presence of marginal witnesses, namely Abdul Hakeem and Najeeb Ullah, and sealed the same into a parcel. The investigating officer also seized the motorcycle of the deceased at the pointation of the co-accused Lalai in presence of marginal witnesses of the seizure memo Ex.P/7-H. The postmortem examination of the deceased was conducted by Dr. Ali Mardan (PW-8), who deposed that the deceased was done to death by means of firearms. In the course of investigation, the investigating officer/ Muhammad Younas, Naib Risaldar (PW-11) prepared site plan (Ex.P/11-B), inquest report (Ex.P/11-C), site plan of recovery of crime pistol and alleged snatched amount of Rs. 175000/- from the house of the accused-petitioner (Ex.P/11-D), site plan of recovery of pistol of co-accused Lalai Ex.P/11-E, site plan of recovery of motorcycle (Ex.P/11-F). The investigating officer sent the blood-stained earth and stone, pistol, alongwith crime empty to the FSL, and its reports were produced as (Ex.P/11-H) and (Ex.P/11-J). The confessional statement of the co-accused Lalai was recorded by Muhammad Asad, Judicial Magistrate (PW-10), and it was tendered in evidence as (Ex.P/10-B). Mohib Ullah (PW-2) and Abdullah Khan (PW-3) are the witnesses who deposed that the deceased left the shop in the company of the accused-petitioner and co-accused Lalai, besides the complainant, on the motorcycle. The motive, as set out in the crime report, is that the accused-petitioner had to pay an outstanding amount of Rs. 150,000/- to the deceased.

4. The prosecution in support of its case examined as many as 11 witnesses. After the closure of prosecution evidence, statement of the accused-petitioner was recorded under Section 342 Cr.PC, however, he did not produce defence. On a thorough and careful appreciation of the evidence adduced before it, the

trial Court adjudged the accused-petitioner and his co-accused guilty of the offence and thus, convicted and sentenced them, as mentioned in Para No.1 of this judgment.

5. Aggrieved by their conviction and sentence, the accused-petitioner and his co-accused filed appeal before the High Court. The High Court, through the impugned judgment, dismissed the appeal to the extent of the accused-petitioner, maintaining the conviction and sentence awarded by the trial Court, and to the extent of co-accused Lalai, it was partially allowed by setting aside his conviction and sentence awarded under Section 302(b) PPC, instead he was convicted under Section 201 PPC and sentenced to seven years rigorous imprisonment with a fine of Rs. 100,000/- and in default to further undergo six months simple imprisonment. He was also convicted and sentenced under Section 202 PPC to suffer six months. The High Court, through the same judgment, declined the prayer of the complainant for enhancement of sentence from life imprisonment to normal penalty of death. Unhappy with the impugned judgment of the High Court, both the parties have filed these petitions.

6. Heard and record perused.

7. We may, at the threshold, say that this Court does not normally and ordinarily embark upon a re-appraisal of the evidence where the Courts below have concurrently taken a view on facts on one way or the other. In a long line, this Court has held that a Criminal Petition for leave to appeal is not a regular appeal, and this Court would not re-appreciate evidence except to find out whether there has been any illegality, material irregularity, or miscarriage of justice. Merely because a different view is possible on the evidence adduced at the trial is no ground for the Court to upset the findings of the Courts below, so long as the same is a reasonable possible view. Perversity in the findings, illegality or irregularity in the trial, causing injustice, or failure to take into consideration an important piece of evidence have been identified as some of the situations in which this Court would re-appraise the evidence adduced at the trial, not otherwise.

8. It is our task now to examine whether the judgment impugned herein suffers from any one or more of the above

infirmities, having regard to the quality of the evidence adduced during the trial. Admittedly, it is an unwitnessed crime, the prosecution case as set forth in the crime report is based on circumstantial evidence in the form of last seen evidence, corroborated by the recovery of dead body, crime pistol, snatched amount of Rs. 175,000/-, recovery of blood-stained earth, stone, one crime empty of TT Pistol, blood-stained sheet from the crime scene, at the pointation of the accused-petitioner, and matching report of crime weapon with the firearm empty.

9. The ocular account of the last seen evidence is that the accused-petitioner and his co-accused, namely Lalai was seen by the complainant (PW-1), Mohib Ullah (PW-2), and Abdullah (PW-3) at their shop with the deceased at 08.30 PM on 22.09.2020, while leaving the shop in the company of the accused-petitioner and his co-accused on the motorcycles on the pretext of paying his outstanding amount and to have dinner with them.

10. The tests applicable to the cases based on circumstantial evidence are fairly well-known. The decisions of the trial Court recognizing and applying those tests to varied facts and situations are legion. In the case of *Sharad Birdhichand Sarda*¹, the Supreme Court of India has held that the cases based on circumstantial evidence must satisfy the following tests:

1. *The circumstances from which the conclusion of guilt is to be drawn should be fully established.*
2. *The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis, except that the accused is guilty.*
3. *The circumstances should be of a conclusive nature and tendency.*
4. *They should exclude every possible hypothesis except one to be proved, and.*
5. *There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused, and must show that, in all human*

¹ *Sharad Birdichand Sarda v. the State of Maharashtra* (AIR 1984 Supreme Court 1622)

probability, the act must have been done by the accused.

11. In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established. Each fact must be proved individually, and only thereafter, the Court should consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt. If the combined effect of all the facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts, by itself/ themselves, is/ are not decisive. The circumstances proved should be such as to exclude every hypothesis except the one sought to be proved. But it does not mean that before the prosecution case succeeds in a case of circumstantial evidence, alone, it must exclude each and every hypothesis suggested by the accused, howsoever, extravagant and fanciful it might be.

What, therefore, needs to be seen is, whether the prosecution has established the incriminating circumstances upon which it placed reliance and whether those circumstances constitute a chain so complete as not to leave any reasonable ground for the accused to be found innocent. Both the Courts below have, as seen earlier, keeping in view the evidence adduced in the case, enumerated the circumstances that have been, according to them, established by the prosecution. Having been taken through the evidence adduced at the trial to which we have referred in some detail in the earlier part of this judgment, we are of the considered opinion that the prosecution has failed to satisfactorily and firmly establish the guilt of the accused-petitioner while supporting the impugned judgments of the Courts below, the learned counsel representing the complainant heavily relied upon the following circumstances on the basis of evidence adduced during the trial:

- i. That at 08.30 PM on 22nd September, 2020, the deceased alongwith his brother Abdul Hanan (PW-1), Mohib Ullah (PW-2) and Abdullah (PW-3) were present in their shop at Yaro Bazar Tehsil and District Pishin, in the meanwhile, accused-petitioner Osama, co-accused Anees and Lalai came there on their*

motorcycle and asked his brother Abdul Jabbar (now deceased) to go with them to have a dinner and that he will also pay his outstanding amount. The accused Anees and Lalai, on their motorcycle, while the accused-petitioner Osama and deceased Abdul Jabbar, on the motorcycle of the deceased, made departure from the shop.

- ii. That On 23.09.2020, the complainant received a telephonic call from the home of the deceased that he had not returned home since last night and his cell phone was also off. On this, he also made a telephonic call from his cell phone but the cell phone of the deceased was found off. He lodged a report at the Levies Police Station Yaro, whereafter, the accused-petitioner and co-accused Lalai were arrested, who admitted that they have committed murder of his brother, and on their disclosure and pointation, the dead body of the deceased was recovered. According to the complainant, the accused-petitioner has committed murder of his brother between 22.09.2020 to 23.09.2020 at midnight. The written report was made on 23.09.2020.
- iii. The pointation memo (Ex.P/7-C), prepared on 23.09.2020 was witnessed by Muhammad Tayyab (PW-5) and Abdul Hakeem (PW-7).
- iv. Disclosure/ Fard-e-Inkishaf (Ex.P/7-A) of the accused-petitioner, in pursuance whereof, the dead body of the deceased was recovered was prepared on 05.10.2020. It was witnessed by Shams ud Din and Syed Abdul Hakeem (PW-7), whereas pointation memo of the accused Lalai (Ex.P/7-C) was prepared on 23.09.2020. It was witnessed by Muhammad Tayyab (PW-5) and Syed Abdul Hakeem (PW-7). In pursuance thereof, the dead body of the deceased and blood-stained earth/ stone and one empty of TT Pistol and one spent bullet were recovered.
- v. That the motorcycle of the deceased was recovered from Zai Bazar, Tehsil Gulestan District Qilla Abdullah on 05.10.2020. According to the prosecution, it had been sold by the accused-petitioner after commission of the offence. The recovery memo (Ex.P/7-H) was prepared in presence of Shams ud Din and Said Abdul Hakeem (PW-7).
- vi. That the crime weapon TT pistol was recovered from the house of the accused-

petitioner at his pointation on 05.10.2020. The pointation memo (Ex.P/7-D) was witnessed by Syed Abdul Hakeem (PW-7) and Najeeb Ullah, and matching report of the of Crime pistol and empty recovered from the spot is Ex.P/11-J.

- vii. The post mortem report (Ex.P/8-A) prepared by Dr. Ali Mardan (PW-8) confirms that the deceased was done to death by means of firearms.*
- viii. The confession statement (Ex.P/10-B) of co-accused Lalai recorded by Muhammad Asad, Judicial Magistrate (PW-10), fully established the guilt of the accused.*

12. The above circumstances, in our opinion, neither establish guilt of the accused-petitioner nor do they form a complete chain, leaving room for doubt that the crime with which the accused-petitioner stood charged was committed by him. It is by now settled that evidence of last seen 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, a presumption can be drawn that the person alive is the person who committed the murder. The time gap between the sighting and occurrence should be such as to rule out the possibility of somebody else committing the offence. The circumstance of the deceased being last seen in the company of the accused is not by itself sufficient to hold him guilty of the murder. There must be some evidence to link the accused with the murder of his companion, such as incriminating facts as recovery, strong motive, and the time between when they were last seen together and the time when the deceased was done to death. 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 examined minutely so that no plausible conclusion should be drawn therefrom except the guilt of the accused².

13. The foundation of the "last seen" theory is based on the principles of probability, cause and connection, which requires- (i) cogent reasons that deceased in normal and ordinary course was supposed to accompany the accused (ii) proximity of the crime scene (iii) short time between the sighting and crime

² *Sh. Muhammad Amjad v. The State (PLD 2003 Supreme Court 704)*

(iv) no possibility of third person interference (v) motive and (vi) time of death of victim as per *Fayyaz Ahmad*³.

14. In the case in hand, we noted that as per statements of the complainant (PW-1), Muhib Ullah (PW-2), and Abdullah (PW-3), the deceased Abdul Jabbar left the shop in the company of the accused-petitioner and co-accused Lalai, and Anees (absconding co-accused), at 08.30 PM on 22.09.2020 on motorcycles. The post-mortem of the deceased was conducted by Dr. Ali Mardan (PW-8) on 23.09.2020 at 06.30 PM. As per the postmortem report, the time between injury and death is immediate, and the time between death and postmortem is within twenty-four (24) hours. The exact time of death is not certain, rather, it remained shrouded in mystery. We find that there is a long gap between death and last sighting of the deceased in the company of the petitioner. The dead body of the deceased was recovered from a ditch on 23.09.2020, on the joint disclosure and pointation of both the accused as per contents of the Crime report and statements of PWs 1, 2 & 3. Contrary to that, the disclosure report Ex.P/7-A reflects that the disclosure memo was prepared on 05.10.2020. The autopsy was conducted on 23.09.2020 at 06.30 PM, which described that the deceased had sustained only one firearm injury on his forehead having exit wound on the back of the head. It further revealed that besides a single firearm injury, the walls, ribs, cartilages, mouth, pharynx, and oesophagus of the deceased were injured due to torture by means of blunt weapon. The Doctor also observed that the deceased had graze on the abdomen due to torture and the use of blunt weapon, as is reflected from the postmortem report Ex.P/7-A. However, the inquest report Ex.P/11-C does not reflect the said injuries except a single firearm injury. According to the postmortem report, the body was at initial stage of putrefaction. The stomach and its contents, small and large intestines, were full of gases. According to the postmortem report, the time between injury and death is immediate while the time between death and postmortem is within 24 hours. According to the prosecution, his death was committed between 22.09.2020 to 23.09.2020 at midnight. This timeframe does not conclusively narrow the window of death to a point immediately

³ *Fayyaz Ahmad v. The State* (2017 SCMR 2026)

after the deceased was last seen with the accused-petitioner and co-accused. Moreso, twelve days in preparing the disclosure report showing recovery of dead body on the joint pointation of the accused significantly weakens the evidentiary value of such recovery under Article 40 of the Qanun-e-Shahadat Order, 1984. In this behalf, reliance can be placed on the cases of *Muhammad Riaz*⁴ and *Muhammad Mushtaq*⁵, wherein recovery on joint pointation of accused persons was held to be inadmissible in evidence. No explanation, what to speak of a satisfactory explanation, has been provided for this delay in preparation of disclosure report, which casts serious doubt on the authenticity and spontaneity of the accused's alleged disclosure. It clearly shows that at first the dead body was recovered on 23.09.2020, then its recovery at the joint pointation of the accused was planted on both the accused.

15. The Indian Supreme Court in *Nizam's* case⁶ held that in the case of circumstantial evidence based on the last seen theory, the time gap between the point of last seen and discovery of the dead body must be so small that the possibility of any other person being the author of the crime becomes impossible. In the absence of this, the theory of last seen alone is insufficient for conviction. In the present case, the last seen theory remains uncorroborated by other circumstances. The time of death is not conclusively fixed to the period immediately after the deceased was last seen with the accused. The delay in disclosure and absence of direct evidence connecting the accused to the murder further weaken the prosecution's case. As such, benefit of doubt must go to the accused.

16. We have also taken serious notice of the fact that the crime pistol and snatched money were recovered at the pointation of the accused on 05.10.2020. There is nothing in the statement of the investigating officer that he had taken physical custody of the accused-petitioner after his arrest on 23.09.2020 till 05.10.2020, this delayed recovery of the alleged crime pistol and snatched money could not be believed, firstly, for the reason that as per prosecution version the dead body of the deceased was recovered at the pointation of the accused on 23.09.2020,

⁴ *Muhammad Riaz v. State* (2024 SCMR 1839)

⁵ *Muhammad Mushtaq v. Mustansar Hussain* (2016 SCMR 2123)

⁶ *Nizam v. State of Rajasthan* (2016) 1 SCC 550

the alleged crime pistol and snatched money could have also been recovered at his pointation within a day or two from the date of his arrest. This aspect of the case makes the whole process of recovery doubtful. In his statement, Syed Abdul Hakeem (PW-7), who is one of the witnesses of pointation memo of the recovery of dead body, did not utter even a single word regarding the recovery of dead body of the deceased in his presence on 23.09.2020, rather he stated that disclosure of murder of the deceased was made by the accused-petitioner on 05.10.2020, which negates the version of the prosecution that the dead body of the deceased was recovered on the disclosure of both the accused and their pointation on 23.09.2020.

17. So far as recovery of the crime pistol and its matching report with the empty recovered from the crime scene is concerned, we observe that the crime empty was recovered on 23.09.2020 and the pistol was recovered on 05.10.2020, it was received in the FSL on 04.11.2020, and till recovery of the pistol, the empty was not sent to the FSL to ascertain that it was fired from which weapon, moreso, the empty and pistol both remained together in the *malkhana* till 05.10.2020, and, thereafter, sent to the FSL. Under these circumstances, the Courts below rightly disbelieved the FSL report in view of *Ali Sher's* case⁷. Even otherwise, recovery being a corroborative piece of evidence is not sufficient for conviction. It is settled law that one tainted piece of evidence cannot corroborate another tainted piece of evidence.

18. Now turning to the recovery of motorcycle of the deceased Abdul Jabbar at the pointation of co-accused Lalai, which was allegedly sold at Abdul Rehman Bazar, Qilla Abdullah. We noted with great pain that the investigating officer did not bother to record statement of the person who had purchased the said motorcycle, thus, failed to prove the recovery of the motorcycle of the deceased at the pointation of the co-accused Lalai.

19. As far as the confessional statement of the co-accused Lalai, recorded by the Judicial Magistrate (PW-10), is concerned, it was admitted by PW-10 that his confessional statement was recorded by him on the 14th day of his arrest. The questionnaire filled by the Magistrate also reflects that he was in

⁷ *Ali Sher v. The State* (2008 SCMR 707)

the custody of the police for the last 14/15 days. We noted and observed that while answering question No.8, the co-accused Lalai replied that he is making confession for the reason that the accused-petitioner Osama had named him as an accused, therefore, he wants to narrate the real story. The same was also found by us to be exculpatory and retracted. It is a recognized principle of the administration of criminal justice that the confession of a co-accused cannot be treated as substantive evidence and can be pressed into service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible from the said evidence. In criminal trials, there is no scope for applying principle of moral conviction on grave suspicion, where the other evidence adduced against the accused person is wholly unsatisfactory and the prosecution seeks to rely on confession of the co-accused, the presumption of innocence which is the basis of criminal jurisprudence assists the accused and compels the Court to render the verdict that the charge is not proved against him, and so, he is entitled to the benefit of doubt, as held in *Hari Charan Kurmi's case*⁸.

20. In our view, the above facts do not form a chain of uninterrupted events connecting the accused-petitioner with the alleged crime. Last seen evidence and its constituents, i.e., probability, cause, and connection, seem to be missing in this case, therefore, the accused-petitioner is entitled to the benefit of doubt. We, therefore, while setting aside the impugned judgments of the Courts below, convert Criminal Petition No. 63-Q of 2024 into an appeal, and allow the same. Consequently, the accused-appellant is acquitted of the charge. He shall be set at liberty if not required to be detained in any other case.

21. In view of the acceptance of Criminal Petition No. 63-Q of 2024, Criminal Petition No. 64-Q of 2024 has become infructuous and is dismissed accordingly.

These are the detailed reasons for our short order of even date, reproduced below:

*"For the reasons to be recorded separately,
by majority of two to one (Musarrat Hilali, J.*

⁸ *Hari Charan Kurmi & others v. State of Bihar (AIR 1964 SC 1184)*

dissenting), Criminal Petition No. 63-Q/2024 is converted into an appeal and is allowed. The judgments dated 29.10.2024 and 08.06.2022 passed by the High Court and the Trial Court, respectively, are set aside. The appellant be set at liberty, if not required to be detained in any other case.

2. *As Criminal Appeal No. 63-Q/2024 has been accepted, therefore, Criminal Appeal No. 64-Q/2024 is dismissed."*

Judge

(My dissenting note is attached herewith)

Judge

Judge

Quetta
18.07.2025
APPROVED FOR REPORTING
Zia/*

Musarrat Hilali, J.-While I have had the privilege of reading the opinion of my learned brothers, who have seen fit to allow the petition numbering **CrI.PLA 63-Q of 2024**, converted it into appeal and set aside the conviction of the petitioner (*accused Osama son of Abdullah*) and have subsequently dismissed the petition numbering **CrI.PLA 64-Q of 2024** filed by the complainant Abdul Hanan son of Syed Ghulam Nabi wherein, enhancement of sentence of the accused has been sought, I find myself in respectful disagreement. The case at hand though resting entirely on circumstantial evidence, in my view presents an unbroken chain of events which firmly connects the petitioner with the commission of the offence. Since the evidence adduced by the prosecution and defence has been elaborately considered by both the Trial and High Court, a reconsideration of the same is not warranted here. The record of this case establishes the following cardinal points.

- i. The doctrine of last seen is squarely applicable, as the deceased was last seen in the company of the accused petitioner immediately before his disappearance.
- ii. Subsequently, the dead body of deceased along with several incriminating articles were discovered at the location specifically pointed out by the petitioner and co-accused.
- iii. These recoveries were effected promptly and in substantial compliance with the Article 40 of the Qanoon-e-Shahadat Order, 1984, thereby lending them credibility.

2. Furthermore, the case is fortified by the voluntary confessional statement of the co-accused Lalai, recorded under section 164 Cr.P.C. This statement which meets the requisite legal standards for voluntariness and reliability, not only constitutes a clear admission of his own guilt but also unequivocally implicates the petitioners in the commission of the offence. I am not unmindful of certain flaws and irregularities that have marred the Police investigation. However, it is settled principal of law that such shortcomings unless demonstrated to have caused a failure

of justice or materially prejudiced the defence of the accused, cannot per se form a sound basis for acquittal. The benefit of doubt is a benefit afforded on the merits of the evidence, not a windfall granted due to the ineptitude of investigating agency. To hold otherwise would be to risk absolving a guilty person based solely on procedural infirmities, irrespective of the weight of the otherwise reliable and corroborative evidence.

3. In the instant case, the testimonies of the prosecution witnesses including the complainant and the family members of the deceased, have remained consistent, credible and withstood the test of cross-examination. The inadequacies of the investigating agency do not detract from the core strength of the prosecution case. I am not persuaded that these defects are of such a magnitude as to break the chain of circumstances establishing the petitioners' guilt.

4. For these reasons, I find no merit in these petitions, therefore, the same are dismissed and conviction and sentence as imposed by the Courts below is affirmed.

Judge