

[Balochistan]

Before Muhammad Kamran Khan Mulakhail and Shaukat Ali Rakhshani, JJ

OSAMA and another---Petitioners

Versus

The STATE and another---Respondents

Criminal Appeal No. 326 and Criminal Revision Petition No. 15 of 2022, decided on 29th October, 2024.

(a) Criminal trial---

----Circumstantial evidence---Scope--- Circumstantial evidence is always not of the required standard and quality, rather it is dangerous to explicitly place reliance upon such evidence---Circumstantial evidence must be of such a nature, where different pieces of evidence must make a chain of events, where one end of it touches the dead body and the other end the neck of accused---If such link is found missing, the whole chain will break down and no conviction can be recorded on such circumstantial evidence.

Imran Alias Dullay v. The State 2015 SCMR 155; Azeem Khan v. Mujahid Khan 2016 SCMR 274 and Hashim Qasim v. The State 2017 SCMR 986 rel.

(b) Penal Code (XLV of 1860)---

----Ss. 302(b) & 201---Qatl-i-amd, causing evidence of an offence to disappear or giving false information---Appreciation of evidence---Last seen evidence---Scope---Accused were charged for committing murder of the brother of complainant---Complainant testified that on 22.09.2022 at 08:30 pm, while he was sitting along with his brothers and nephew in their shop, appellants and proclaimed offender came there and invited the deceased for dinner and promised to pay the loan of Rs.150,000/-, who went with them, but when he did not return home till morning and his phone number was also found switched off, they went to the Levies Station and reported the matter with nomination of the appellants---Appellant on his arrest disclosed the commission of murder and got recovered the dead body of deceased---Other two witnesses also reiterated and affirmed the testimony of the complainant---All the three witnesses were cross-examined, but the defence failed to extract any favorable reply from them, demonstrating that their statements had gone unshaken---Last seen was a weak type of evidence, but if such evidence was found in line with the other pieces of evidence, making a chain of events which led to the culprits, then not only it had relevance, but could be considered as a material evidence, having worth of credence---In the instant case, the prosecution had met the conditions and criteria of last seen evidence so furnished by complainant and other two witnesses, thus, last seen evidence was worthy of reliance because unbroken chain of circumstances from the stage of last seen till recovery of dead body of deceased and corroborated by other circumstantial evidence, led to the guilt of the appellants---Appeal against conviction filed by accused "O" was dismissed, in circumstances---Whereas, the appeal filed by appellant "L" was partially allowed and consequently his conviction and sentence recorded under S.302(b), P.P.C, was set aside and instead he was convicted and sentence under S.201, P.P.C to suffer seven year's imprisonment.

Binyamin alias Khari v. The State 2007 SCMR 778 and Muhammad Akhtar v. The State 2007 SCMR 876 rel.

(c) Penal Code (XLV of 1860)---

----Ss. 302(b) & 201---Qatl-i-amd, causing evidence of an offence to disappear or giving false information---Appreciation of evidence---Recovery of dead body and blood stained articles---Reliance---Accused were charged for committing murder of the brother of

complainant---Adverting to the recovery of dead body and blood stained articles on the pointation of appellant, the testimony of recovery witness was crucial---Said witness was witness to the recovery of dead body of deceased, which was lying in a ditch, and was recovered on the pointation of appellant in consequence of disclosure made on 23.09.2020 regarding committing murder of the deceased with a pistol, which was secured through recovery memo---According to said witness, after committing murder of the deceased accused along with co-culprit in order to dispose of the body, tied the hand of deceased with the chaddar and threw it into the ditch---Said witness further deposed that on the same day, Levies Officials secured blood stained soil, stone, an empty of T.T Pistol as well as a bullet lead coupled with chaddar stained with blood through recovery memo. from the crime scene---Recovery witness identified his signature on both the recovery memos---Despite questioning said witness from various angles, he remained firm and consistent to his deposition---Bloodstained articles were found to be of human blood, whereof positive Forensic Science Laboratory Report was produced---Appeal against conviction filed by accused "O" was dismissed, in circumstances---Whereas, the appeal filed by appellant "L" was partially allowed and consequently his conviction and sentence recorded under S.302(b), P.P.C, was set aside and instead he was convicted and sentenced under Section 201 P.P.C to suffer seven year's imprisonment.

(d) Penal Code (XLV of 1860)---

----Ss. 302(b) & 201---Qanun-e-Shahadat (10 of 1984), Arts. 39 & 40---Qatl-i-amd, causing evidence of an offense to disappear or giving false information ---Appreciation of evidence---Disclosure made by the accused---Scope---Recoveries made on pointation of accused---Accused were charged for committing murder of the brother of complainant---Admittedly, before disclosure and recovery of the dead body neither the private witnesses nor any Levies Personnel knew about the whereabouts of the deceased until his dead body was recovered on the disclosure and pointatione of appellant---Moreover, the place where the murder of deceased was committed was also not known to any one until the prosecution witnesses were led to the crime scene by appellant in consequence of his disclosure---Moreover, there was also no delay with regard to disclosure, recovery of dead body and crime articles secured through recovery memos respectively, giving no rise to any suspicion of manipulation---Disclosure and said recoveries in consequence thereof squared within the ambit of Art.40 of Qanun-e-Shahadat, 1984, making the recovery of dead body, recovery of crime articles and pointation of place of murder relevant and admissible, whereupon explicit reliance could be placed, holding the appellant guilty of the indictment---Appeal against conviction filed by accused "O" was dismissed, in circumstances---Whereas, the appeal filed by appellant "L" was partially allowed and consequently his conviction and sentence recorded under Section 302(b), P.P.C, was set aside and instead he was convicted and sentenced under S.201, P.P.C, to suffer seven year's imprisonment.

Nazir Shehzad v. The State 2009 SCMR 1440 rel.

(e) Penal Code (XLV of 1860)---

----Ss. 302(b) & 201---Qanun-e-Shahadat (10 of 1984), Art. 40---Qatl-i-amd, causing evidence of an offense to disappear or giving false information---Appreciation of evidence---Recovery of weapon of offence on the disclosure of accused---Reliance--- Accused were charged for committing murder of the brother of complainant---Appellant in consequence of the disclosure led the Levies Personnel to his house and got recovered the crime weapon i.e., T.T Pistol with a magazine having four live rounds and cash amount of Rs.175,000/- hidden between the blanket in his room, which was secured through recovery memo---Furthermore, on the same date other appellant in consequence of his disclosure led the police and got recovered pistol with a magazine having six live rounds from the trunk lying in the room of his house, which he had taken from the deceased after his murder---Such recoveries made in consequence of disclosures had successfully been proved, which were admissible and had relevance under Art.40 of Qanun-e-Shahadat, 1984---Appeal against conviction filed by accused "O" was dismissed, in circumstances---Whereas, the appeal filed by appellant "L" was partially allowed and consequently his conviction and sentence recorded under S.302(b), P.P.C was set aside and instead he was convicted and sentenced under Section 201 P.P.C to suffer seven year's imprisonment.

Askar Jan v. Muhammad Daud 2010 SCMR 1604 and Muhammad Abid v. State 2016
PCr.LJ 257 rel.

(f) Penal Code (XLV of 1860)---

---Ss. 302(b) & 201---Criminal Procedure Code (V of 1898), S. 164---Qatl-i-amd, causing evidence of an offense to disappear or giving false information---Appreciation of evidence---Confessional statement of the accused---Reliance---Scope---Accused were charged for committing murder of the brother of complainant---Appellant got recorded his inculpatory confessional statement before Judicial Magistrate, who testified to have complied with all codal formalities required for recording a voluntary and true confession---Judicial Magistrate produced sealed envelope, confessional statement of appellant and the relevant certificate---Testimony of Judicial Magistrate could not be discredited by the defence despite questioning him regarding the mode and procedure and the statement recorded due to undue pressure---Appellant confessed that he along with other appellant and his brother went to deceased---Accused further confessed that as he parked his motorcycle, other accused made fires at deceased on his head, whereby he died on the spot, upon which he asked other accused as to why he did so; whereon other accused aimed pistol at him and threatened him of dire consequence, thus, he kept mum, whereafter other accused took out money and pistol from the pocket of deceased and told him to help him in disposing of the dead body, whereafter accused tied the hands of deceased with a chaddar, and both of them dragged the dead body and threw it into the ditch---While confessing, accused also revealed that other accused gave him motorcycle of the deceased to sell, which he sold out for Rs. 20,000/- and returned back, whereafter he was arrested by the Levies Officials---In view of the statement recorded by Judicial Magistrate, the confessional statement seemed to have been recorded in accordance with law, which was not only voluntary, but true as well, which was evident from the fact that confessional statement coincided with the disclosure, recovery of the bloodstained articles, recovery of dead body and place of occurrence, substantially proving the guilt of the appellants---Confessional statement in hand not only incriminated appellant, but by all means involved other appellant under Art.43 of Qanun-e-Shahadat, 1984, as a circumstantial evidence---Appeal against conviction filed by accused "O" was dismissed, in circumstances---Whereas, the appeal filed by appellant "L" was partially allowed and consequently his conviction and sentence recorded under S.302(b), P.P.C was set aside and instead he was convicted and sentenced under S.201, P.P.C to suffer seven year's imprisonment.

Khurram Malik v. The State PLD 2006 SC 354 rel.

(g) Penal Code (XLV of 1860)---

---Ss. 302(b) & 201---Qatl-i-amd, causing evidence of an offense to disappear or giving false information ---Appreciation of evidence---Sentence, quantum of---Accused were charged for committing murder of the brother of complainant---Evidence on record demonstrated that although appellant "L" had no direct intention or involvement in the murder of the deceased, but he had played an active role by removing and disposing of the dead body, selling the motorcycle of the deceased, causing disappearance of evidence of murder and intentionally omitting to give information of the murder to the law enforcement authority, which he was legally bound to do, thus, he was liable to be convicted and sentenced accordingly---Thus, the appeal filed by appellant "L" was partially allowed and consequently his conviction and sentence recorded under Section 302 (b) P.P.C was set aside and instead he was convicted and sentenced under Section 201 P.P.C to suffer seven year's imprisonment---Whereas, the appeal filed by accused "O" was dismissed.

Jahandad Kakar, Izharul Haq and Abdul Hadi Tareen for Appellant (in Criminal Appeal No. 326 of 2022).

Muhammad Yousaf, Additional Prosecutor General ("APG") for the State (in Criminal Appeal No. 326 of 2022).

Amanullah Kakar for the Complainant (in Criminal Appeal No. 326 of 2022).

Amanullah Kakar for the Petitioner (in Criminal Revision Petition No. 15 of 2022).

Jahandad Kakar, Izharul Haq and Abdul Hadi Tareen for Respondent No. 1 (in Criminal Revision Petition No. 15 of 2022).

Muhammad Yousaf, Additional Prosecutor General for the State (in Criminal Revision Petition No. 15 of 2022).

Date of hearing: 3rd October, 2024.

JUDGMENT

SHAUKAT ALI RAKHSHANI, J.---Through this consolidated judgment, we aim to dispose of the captioned Criminal Appeal and Crl. Revision Petition brought before us, emanating from the judgment dated 08.06.2022 ("impugned judgment") penned by learned Sessions Judge, Pishin ("Trial Court"), pursuant to FIR bearing No.13 of 2020 (Ex.P/11-A) registered with Levies Station Yaro, Pishin, whereby the appellants were convicted under section 302(b) of Pakistan Penal Code, 1860 ("P.P.C.") and sentenced to suffer R.I for Life as Tazeer, with a fine of Rs.1,000,000/- (ten Lakh) each payable to the legal heirs of the deceased as contemplated under section 544-A of the Criminal Procedure Code, 1898 ("Cr.P.C."), and in default thereof, to further undergo six (06) months S.I, with the benefit of section 382-B of Cr.P.C., whereas through Crl. Revision Petition No.15 of 2022, petitioner Abdul Hanan, brother of deceased seeks enhancement of the sentence from life imprisonment to that of capital punishment.

2. Unfurled facts of the instant case are that the complainant Abdul Hanan (PW-1) submitted an application (Ex.P/1-A), the contents whereof were incorporated in the FIR ibid, which reveals that on 22.09.2020 at about 8:30 p.m, he along with his brothers namely Abdul Jabbar (deceased), Abdullah Khan and nephew Mohibullah were present at their shop, situated at Yaro Bazar District Pishin and that in the meanwhile, the appellants along with co-accused Anees came there on a motorcycle. He also contended that accused Osama asked his brother Abdul Jabbar to join them to have a meal and would also pay the outstanding loan amount of Rs.150,000/- to him, whereafter accused Anees and Lalai went on a motorcycle, whilst accused Osama accompanied Abdul Jabbar on his motorcycle. It was also reported by complainant (PW-1) that on the next morning, the complainant came to know from housemates of Abdul Jabbar that he has not returned home, as such, complainant (PW-1) called Osama whose cell phone was found switched off, as such, the complainant informed the Levies Station Yaro, who arrested both appellants Osama and Lalai, who made disclosure of commission of murder of Abdul Jabbar and appellant Osama got recovered the dead body of Abdul Jabbar on his pointation.

3. During Course of investigation, co-accused Anees stayed away from law, thus, he was declared absconder.

4. Muhammad Younas Naib Risaldar, Investigation Officer ("IO") (PW-11) was entrusted with the investigation. He secured dead body of deceased Abdul Jabbar vide recovery memo. (Ex.P/5- A) on the pointation of appellant Osama. He went to crime scene along with appellant Osama and prepared site inspection plan (Ex.P/11-B). He recorded statements of witnesses under section 161 of Cr.P.C. He also produced FIR (Ex.P/11-A), took into possession blood stained soil, stone, empty shells, bullet led and bloodstained chaddar vide recovery memo. (Ex.P/5-B). He prepared inquest report of deceased Abdul Jabbar (Ex.P/11-C), site memo. of place of recovery (Ex.P/11-D), map of recovery of pistol (Ex.P/11-E), and produced FSL report regarding blood (Ex.P/11-H) and FSL report regarding crime weapon (Ex.P/11-J). He also produced supplementary challan (Ex.P/11-K) and bloodstained cloths of deceased secured vide recovery memo. as (Ex.P/6-A).

On 05.10.2020 Appellants Osama and Lalai made disclosures (Ex.P/7-A) and (Ex.P/7-B) and in consequence thereof got recovered the crime weapon i.e., T.T Pistols separately which were secured vide recovery memos. (Ex.P/7-D) and (Ex.P/7-F). I.O (PW-11) also got recovered Rs.175,000/- from appellant Osama vide recovery memo. (Ex.P/7-E) and also secured motorcycles bearing registration No.KIE-8306 and 7319 vide recovery memos. (Ex.P/7-G) (Ex.P/7-H), respectively.

The appellant failed to produce any valid license, therefore, a separate FIRs Nos. 15 and 16 of 2020 were registered against the appellants under section 13(e) of the Arms Ordinance, 1965, which have been tried separately.

On 06.10.2020, appellant Lalai got recorded his confessional statement before Muhammad Asad Judicial Magistrate-IV, ("JM"), Pishin (PW-10). He produced sealed envelope as (Ex.P10-A), confessional statement of appellant Lalai as (Ex.P/10-B) and certificate as (Ex.P/10-C).

5. After conclusion of the investigation, the appellants were sent up to the Trial Court to face the deeds of his crimes, where the appellants entered the plea of denial, thus, the prosecution in order to bring home the charge produced as many as eleven (11) witnesses. After close of the prosecution side, the appellants were examined under section 342 of Cr.P.C, who neither recorded his statement on oath nor produced any defence, henceforth, the Trial Court vide impugned judgment dated 08.06.2022 convicted and sentenced the appellants in the terms mentioned in para supra.

6. Messrs Abdul Hadi Tareen, Jahandad Kakar and Izharul Haq Advocates inter alia contended that there is no eye-witnesses of the occurrence and the entire case is based upon the circumstantial evidence, which have no linkage, thus, no reliance can be placed upon the such evidence, but the Trial Court while misreading the evidence has recorded the conviction and awarded life sentence on the weakest evidence having no corroboration. Maintained that the testimony of Complainant (PW-1) does not coincide with the disclosure and confessional statement and that the pointation of the dead body and crime scene have no evidentiary value. According to them, the Trial Court has misread the evidence which has made the impugned judgment liable to be set-aside, thus, requested for acceptance of appeal and acquittal of the convict-appellants of the indictment.

Conversely, Mr. Muhammad Yousaf APG as well as Mr. Amanullah Kakar Advocate, representing the complainant vigorously opposed the appeal and repudiated the assertion made by the learned counsel for the appellants. It was argued that the prosecution has successfully discharged the burden of proving the indictment through confidence inspiring and truthful evidence, commencing from the last seen, recovery of dead body, place of occurrence and an inculpatory confessional statement got recorded by appellant Lalai involving himself as well as appellant Osama in the murder and burying dead body of deceased Abdul Jabbar in order to hid their crime and screen of the evidence. They also argued that the Trial Court has well attended the evidence on record, which suffers from no error of law and facts, thus, the appeal requires to be dismissed.

7. Mr. Amanullah Kakar Advocate, representing the complainant, while arguing Revision Petition No. 15 of 2022 for enhancement of sentence submitted that the Trial Court though passed a well reason judgment, but has erred by not considering the fact that there was no mitigating circumstance, persuading the Trial Court for awarding life imprisonment instead of capital punishment, thus, requested for enhancement of sentence by accepting the Revision Petition in the above terms. Mr. Muhammad Yousaf APG while arguing the captioned revision petition argued that the sentence awarded to the appellants has served the purpose, thus, did no concur with the arguments advanced by learned counsel for the petitioner-complainant for enhancement of sentence.

8. Heard. Record perused. The case set up by the prosecution is that on 22.09.2020, while complainant Abdul Hanan (PW-1) was sitting along with his brothers Abdul Jabbar (deceased), Abdullah Khan (PW-3) and Nephew Mohibullah (PW-2), the appellants along with co-accused Anees came there, who were accompanied by deceased Abdul Jabbar and later got missing; however, since the deceased was lastly seen with the appellants and one proclaimed offender Anees, therefore, the appellants were arrested; amongst whom appellant Osama subsequently in consequence of disclosure got recovered the dead body of deceased Abdul Jabbar and also made pointation of the crime scene. Appellant Lalai got recorded his inculpatory confession statement before J.M (PW-10) involving himself with role of murder to appellant Osama.

On the other hand the appellants have not pleaded any defence except denial of their involvement in the death of deceased Abdul Jabbar.

9. Admittedly, the murder of deceased Abdul Jabbar has gone unwitnessed and the case rests upon the circumstantial evidence. We are conscious that where the case depends upon circumstantial evidence, extraordinary care and caution is required, therefore, while re-appraisal of the evidence on record, we have taken utmost possible precaution so to avoid and rule out any wrong conclusion because there is always fabrication of circumstantial evidence. As held by the apex Court that the circumstantial evidence is always not of a standard and quality, rather it is dangerous to explicitly place reliance upon such evidence. The circumstantial evidence must be of such a nature, where different pieces of evidence must make a chain of events, where one end of it touches the dead body and the other end the neck of accused and if such link is found missing, the whole chain breaks down and no conviction can be recorded on such circumstantial evidence. In this regard we are fortified with the view expounded in the case of "Imran Alias Dullay v. The State" (2015 SCMR 155), "Azeem Khan v. Mujahid Khan" (2016 SCMR 274) and "Hashim Qasim v. The State" (2017 SCMR 986).

10. The entire edifice of the prosecution case is pillared upon the following pieces of evidence;

- (i) Last Seen.
- (ii) Recovery of dead body (Ex.P/5-A) and blood stained articles (Ex.P/5-B) on the pointation of appellant Osama in consequence of disclosure.
- (iii) Pointation of crime scene by appellant Osama in consequence of the disclosure (Ex.P/11-B).
- (iv) Recovery of the crime weapon i.e., Pistol (Ex.P/7-D) and cash amount of Rs.175,000/- ((Ex.P/7-E) on the pointation of appellant Osama from his house on disclosure (Ex.P/7-A).
- (v) Recovery of licensed pistol (Ex.P/7-F) and motorcycle of deceased Abdul Jabbar (Ex.P/7-H) on the pointation of appellant Lalai in consequence of disclosure (Ex.P/7-B).
- (vi) Confessional Statement of appellant Lalai (Ex.P/10-B).
- (vii) Medical Evidence (Ex.P/8-A).

11. The apex court in the case of "Jafar Ali v. The State" (PLJ 1999 SC 901) held that although last seen evidence is not sufficient for establishing the crime where it requires making conjectures to connect the accused person with the crime or where there are reasonable possibilities that someone else has committed the offence, but if the chain of the facts is such that no reasonable inference can be drawn except, that the accused has committed the offence after the victim has been last seen in his company, then in the absence of a reasonable explanation from the accused, this evidence can be relied upon for convicting him for the offence.

The apex court in the case of "Fayyaz Ahmad v. The State" formulated certain conditions and criteria for placing reliance upon last seen evidence, which follows as under;

- "(i) There must be cogent reasons that the deceased in normal and ordinary course was supposed to accompany the accused and those reasons must be palpable and *prima facie* furnished by the prosecution.
- (ii) The proximity of the crime scene played a vital role because if within a short distance the deceased was done to death then, ordinarily the inference would be that he did not part ways or separate from the accused and onus in such regard would shift to the accused to furnish those circumstances under which, the deceased left him and parted ways in the course of transit.
- (iii) The timing when the deceased was last seen with the accused and subsequently his murder, must be reasonably close to each other to exclude any possibility of the deceased getting away from the accused or the accused getting away from him.
- (iv) There must be some reasons and objects on account of which the deceased accompanied the accused towards a particular destination, otherwise deceased being

in the company of the accused would become a question mark.

(v) There must be some motive on the part of the accused to kill the deceased otherwise the prosecution had to furnish evidence that it was during the transit that something abnormal or unpleasant happened which motivated the accused to kill the deceased.

(vi) Quick reporting of the matter without any undue delay was essential, otherwise the prosecution story would become doubtful for the reason that the last seen evidence was tailored or designed falsely to involve the accused person.

(vii) Last seen evidence must be corroborated by independent evidence, coming from an unimpeachable source because uncorroborated last seen evidence was a weak type of evidence in cases involving capital punishment.

(viii) The recovery of the crime weapon from the accused and the opinion of the expert must be carried out in a transparent and fair manner to exclude all possible doubts.

(ix) If the murder was not a pre-planned and calculated, the court had to consider whether the deceased had any contributory role in the cause of his death."

Complainant Abdul Hanan (PW-1) testified that on 22.09.2022 at 08:30 p.m, while he was sitting along with his brothers Abdul Jabbar, Abdullah Khan (PW-3) and nephew Mohibullah (PW-2) in their shop, appellants Osama, Lalai and proclaimed offender Anees came there and invited the deceased Abdul Jabbar for dinner and promised to pay the loan of Rs.150,000/-, who went with them, but when he did not return home till morning and his phone number was also found switched off, they went to the Levies Station and reported the matter with nomination of the appellants. The appellants Osama on his arrest disclosed the commission of murder and got recovered the dead body of deceased Abdul Jabbar. Syed Mohibullah (PW-2) and Abdullah Khan (PW-3) also reiterated and affirmed the testimony of the Complainant (PW-1). All of three witnesses were cross-examined, but the defence has failed to extract any favorable reply from them, demonstrating that their statements have gone unshaken. We are mindful of the fact that last seen is a weak type of evidence, but if such evidence is found in line with the other pieces of evidence, making a chain of events which leads to the culprits, then not only it has relevance, but can be considered as a material evidence, having worth of credence.

In the instant case, the prosecution has met with conditions and criteria of last seen evidence so furnished by complainant Abdul Hanan (PW-1), Mohibullah (PW-2) and Abdullah Khan (PW-3), thus, last seen evidence is worthy of reliance because unbroken chain of circumstances from the stage of last seen till recovery of dead body of deceased and corroborated by other circumstantial evidence, leads to the guilt of the appellants. SEE; ['Binyamin alias Khari v. The State' (2007 SCMR 778) and 'Muhammad Akhtar v. The State' (2007 SCMR 876)].

12. Adverting to the recovery of dead body (Ex.P/5-A) and blood stained articles (Ex.P/5-B) on the pointation of appellant Osama, the testimony of Muhammad Tayyab LC (PW-5) is crucial. He is witness to the recovery of dead body of deceased Abdul Jabbar, which was lying in a ditch in the backside of an area known as Tor Khel Syedan, so recovered on the pointation of appellant Osama in consequence of disclosure made on 23.09.2020 regarding committing murder of the deceased with the pistol, which was secured through recovery memo. (Ex.P/5-A). According to him, after committing murder of the deceased Abdul Jabbar he along with co-culprit in order to dispose of the body, tied the hand of deceased with the chaddar and threw it into the ditch. He further deposed that on the same day, Levies officials secured blood stained soil, stone, an empty of T.T Pistol as well as a bullet lead coupled with chaddar stained with blood through recovery memo. (Ex.P/5-B) from the crime scene. He identified his signature on both the recovery memos. Despite questioning him from various angles, he remained firmed and consistent to his deposition. The bloodstained article were found to be of human blood, whereof positive FSL report (Ex.P/11-A) was produced. Admittedly, before disclosure and recovery of the dead body neither the private witnesses nor any levies personal knew about the whereabouts of the deceased Abdul Jabbar until his dead body was recovered on the disclosure and pointation of appellant Osama. Moreover, the place where the murder of deceased was committed was also not known to any one until the

prosecution witnesses were led to the crime scene by appellant Osama in consequence of his disclosure. There is also no delay with regard to disclosure, recovery of dead body and crime articles secured through recovery memos. (Ex.P/7-A) (Ex.P/5-A) and (Ex.P/5-B) respectively, giving no rise to any suspicion of manipulation. The disclosure and said recoveries in consequence thereof squares within the ambit of Article 40 of Qanun-e-Shahadat, 1984 ("QSO, 1984), making the recovery of dead body, recovery of crime articles and pointation of place of murder relevant and admissible, whereupon explicit reliance can be placed, holding the appellant Osama guilty of the indictment. In this regard, we would like to refer to the case of "Nazir Shehzad v. The State" (2009 SCMR 1440)].

13. In order to establish the disclosure of appellant Osama (Ex.P/7-A), disclosure of appellant Lalai (Ex.P/7-B) and recovery of pistols made in consequence thereof, the prosecution relies upon the testimony of Abdul Hakeem LC (PW-7). According to him, on 05.10.2020 the appellant Osama during interrogation made disclosure regarding commission of murder of deceased by him with a pistol and volunteered to get recover the said pistol from his house. He further disclosed that after killing Abdul Jabbar he took out Rs.175,000/- from his pocket and kept his pistol with him, whereof memo. of disclosure (Ex.P/7-D) was prepared. He also made disclosure that he told the appellant Lalai to sell out the motorcycle. Abdul Hakeem (PW-7) further testified that thereafter during interrogation appellant Lalai made disclosure of the murder committed by appellant Osama, however, stated that he only helped appellant Osama by dragging the dead body and threw it into the ditch and also selling out the motorbike of the deceased Abdul Jabbar for Rs.20,000/- (twenty thousand) and nothing else.

Appellant Osama in presence of Abdul Hakeem, Khasadar Levies (PW-7) and one Najeeb Ullah, Khasadar Levies in consequence of the above disclosure led the Levies personal to his house and got recovered the crime weapon i.e., T.T Pistol with a magazine having four live rounds and cash amount Rs.175,000/- hid in between the blanket from his room, which was secured through recovery memo. (EX.P/7-D) and (EX.P/7-E). Furthermore, on the same date appellant Lalai in consequence of his disclosure vide memo. (Ex.P/7-B). led the police and got recovered Pistol with a magazine having six live rounds from the trunk lying in the room of his house, which he had taken from the deceased Abdul Jabbar after his murder, whereof memo. of recovery (Ex.P/7-F) was prepared. Yasir Arafat LH (PW-9) testified that complainant Abdul Hanan, brother of deceased Abdul Jabbar handed over him photocopy of license of the pistol as well as document of motorcycle bearing registration No.7319 registered in the name of deceased Abdul Jabbar, which were secured through recovery memo. (Ex.P/9-A). He produced the same as Articles P/A and P/B, respectively. The above recoveries made in consequence of disclosures have successfully been proved, which are admissible and have relevance under Article 40 of QSO, 1984. In this regard our view finds support from the judgment reported as 'Askar Jan v. Muhammad Daud' (2010 SCMR 1604) and 'Muhammad Abid v. State' (2016 PCr.LJ 257).

The prosecution has also obtained the positive FSL report of FSL (Ex.P/11-J) whereby the appellant Osama had committed murder, which report cannot be considered for the reason that both the pistol and empties were sent together, offending the dictum expounded by the apex court in the cases of "Mushtaq v. The State" (PLD 2008 SC 1) and "Ali Sher v. The State" (2008 SCMR 707).

14. Appellant Lalai got recorded his inculpatory confessional statement before Muhammad Asad J.M (PW-10), who testified to have complied with all codal formalities required for recording a voluntary and true confession. J.M (PW-10) produced sealed envelope as (Ex.P10-A), confessional statement of appellant Lalai as (Ex.P/10-B) and certificate as (Ex.P/10-C). His testimony could not be discredited by the defence despite questioning him regarding the mode and procedure and the statement being recorded due to undue pressure. The defence on one hand suggested that when appellant Lalai was produced, no question was asked regarding torture upon him, but simultaneously, JM (PW-10) was suggested that he was never produced before the court, which stance is contradictory. Appellant Lalai confessed that he along with Osama and his brother went to Jabbar Agha and came with Jabbar Agha (deceased), however, the brother of Osama did not accompany further, whereas he went home and that in the evening before Isha Prayer, he was called by Osama and when he went to them, it was Osama and Abdul Jabbar (deceased) were standing there. He further confessed that as he parked his motorcycle, Osama made fired at Abdul

Jabbar in his head, whereby he died on the spot, upon which he asked Osama as to why he did so; whereon Osama aimed pistol at him and threatened him of dire consequence, thus, he kept mum, whereafter Osama took out money and pistol from the pocket of deceased and told him to help him in disposing of the dead body, whereafter Osama tied the hand of deceased Abdul Jabbar with the Chaddar, and both of them dragged the dead body and threw it into the ditch. While confessing, he also revealed that Osama gave him motorcycle of the deceased to sell, which he sold out in Gulistan for Rs. 20,000/- and returned back, whereafter he was arrested by the levies officials.

In view of the statement recorded by Muhammad Asad J.M (PW-10), the confessional statement seems to have been recorded in accordance to law, which is not only voluntary, but true as well, which is evident from the fact that confessional statement coincide with the disclosure, recovery of the bloodstained articles, recovery of dead body and place of occurrence, substantially proving the guilt of the appellants. The confessional statement in hand not only incriminates appellant Lalai, but by all means involves appellant Osama under Article 43 of QSO, 1984 as a circumstantial evidence. For ease of reference Article 43 of QSO, 1984 is as infra;

"43. Consideration of proved confession affecting person making it and others jointly under trial for same offence.

When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons is proved.

(a) such confession shall be proof against the person, making it: and

(b) the Court may take into consideration such confession as circumstantial evidence against such other person.

Explanation: "Offence"" as used in this Article, includes the abetment of or attempt to commit the offence."

15. The apex Court in the case of "Khurram Malik v. the State" (PLD 2006 SC 354) held that when more persons are tried jointly for the same offence and confession made by one of such persons is provided, the court may take into consideration such confession as circumstantial evidence against such other person. Relevant Para No.11 of Khurram Malik's case supra is reproduced herein below;

"11. It is to be noted that voluntariness of a confessional statement under section 164, Cr.P.C. of an accused can be adjudged if it is recorded without unexplained delay after his arrest. In instant case, convict got recorded his statement on the following day of his arrest but in court proceedings had denied recording of confession in statement A under section 342, Cr.P.C. along with recovery of incriminating articles but as it has been stated herein that the recovery of incriminating evidence has been duly established against him and as far confessional statement is concerned, it also gets strong corroboration from the same. Therefore, without any hesitation it can be used against the accused. It may be noted that Mst. Nazia and Ameeran in their confessional statements had also not denied the happening of the incident therefore, their statements can also be considered as circumstance against the convict in terms of Article 43 of the Qanun-e-Shahadat, 1984 which envisages that when more persons than one are being tried jointly for the same offence and confession made by one of such persons is proved, the court may take into consideration the such confession as circumstantial evidence against such other person."

16. Dr. Ali Mardan Police Surgeon (PW-8) conducted the post-mortem of the deceased and affirmed the cause of death. According to him, the dead body of deceased Abdul Jabbar was brought on 23.09.2020 at causality department Bolan Medical Complex Hospital, Quetta at about 06:30 p.m, who had died due to firearm injury on his head and damage of brain and that before his death he was physically tortured. The post-mortem report (Ex.P/8-A) issued by Dr. Ali Mardan (PW-8) confirms the unnatural death of the deceased caused by firearm, which is further substantiated by the disclosures coupled with the confessional statement and recovery of bloodstained articles.

17. After scrutiny of the impugned judgment, in light of the evidence discussed herein

above, we have irresistibly come to the conclusion that the prosecution has successfully proved the indictment, which need not to be meddled with except the conviction and sentenced awarded to the appellant Lalai.

The evidence on record demonstrates that albeit directly appellant Lalai had no intention or involvement in the murder of the deceased, but he had played an active role by removing and disposing of the dead body, selling of motorcycle bearing No.7319 of the deceased, causing disappearance of evidence of murder and intentionally omitting to give information of the murder to the law enforcement authority, whereof he was legally bound to do so, thus, he is liable to be convicted and sentenced accordingly.

18. For the foregoing reasons, the appeal filed by appellant Osama is dismissed and as such his conviction and sentenced awarded by the Trial Court vide impugned judgment is maintained.

However, the appeal filed by appellant Lalai is partially allowed and consequently his conviction and sentenced recorded under section 302(b), P.P.C. is set aside and instead he is convicted and sentenced under section 201 P.P.C. to suffer seven years R.I with a fine of Rs.100,000/- (One Lakh) and in default thereof, to further undergo six (06) months S.I as were as under section 202, P.P.C. to suffer six months (06). Both the sentences awarded to appellant Lalai shall run concurrently with the premium of section 382-B of Cr.P.C.

19. As the appeals have been imparted with in the above terms, while attending the question relating to sentence raised by learned counsel for the adversarial parties extensively, therefore, the instant revision petition for enhancement being devoid of merits and having been opposed by learned APG is dismissed as a natural corollary.

JK/143/Bal.

Order accordingly.