

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD.
(JUDICIAL DEPARTMENT)

Criminal Appeal No. 216 of 2019

Muhammad Usman Haider
Vs
The State and another

Appellant By: M/s Raja Ghaneem Aabir Khan and
Muhammad Ilyas Khan, Advocates
Complainant By: Raja Muhammad Farooq, Advocate
State by: Mr. Zohaib Hassan Gondal, State Counsel
alongwith Saqib Mehmood, Assistant Sub-
Inspector

Date of hearing: 18.12.2020

Ghulam Azam Qambrani, J:- Through this consolidated judgment, I intend to decide Criminal Appeal No.216/2019 and Criminal Revision No.73/ 2019, arising out of the judgment dated 01.06.2019, passed by the learned Additional Sessions Judge-V, Islamabad-East, whereby the appellant was convicted under Section 302 (b) P.P.C and sentenced to undergo imprisonment for life as Tazir alongwith compensation of Rs.5,00,000/- (five hundred thousand) to the legal heirs of deceased as provided under Section 544-A (2) of Cr.P.C. In default of payment of compensation, he shall further undergo six months simple imprisonment. The appellant was extended the benefit of Section 382-b Cr.P.C.

2. Succinct facts of the case as gleaned from the F.I.R (Ex.PL), based on the Murasila (Ex-PD) recorded by Assistant Sub-Inspector said Muhammad Asif (PW-11), at the instance of Raja Liaqat Ali (PW-3), the complainant are that on 22.11.2017 at about 09:00 p.m., his son namely Shawal had proceeded from his shop towards home leaving behind Usman Haider, by informing him that he was going for bringing LCD. After lapse of considerable time, he was not in contact and has further alleged

that at about 11:00 p.m. he received a call from Usman that Shawal had met with an accident. On receiving such information, he reached there, but the police had already brought him to the hospital and when he reached at the hospital, he came to know that his deceased son had received bullet injuries and had further stated that his son had been murdered by some unknown accused persons and prayed for taking action.

3. After registration of F.I.R, investigation was carried out by Inspector, Shoukat Hussain Thabal (PW-15), who inspected the place of occurrence, prepared un-scaled site map (Ex-PT), taken into possession a vehicle bearing registration No. ICT TRS-254 through recovery memo (Ex-PH) from the place of occurrence. During search of the said vehicle, on the front passenger seat secured blood through cotton vide recovery memo (Ex-PK/1) and prepared a parcel. He secured two empty shells of 30-bore pistol through recovery memo (Ex-PJ/1) and prepared parcel. Moreover, some belongings of the deceased were also secured. The last worn clothes of the deceased were taken into possession through recovery memo (Ex-PG). Farad Shinakhat of the deceased was prepared and after conducting of post-mortem, the deceased was handed over to the legal heirs through recovery memo and receipt (Ex.PG & PF). On 24.11.2017, a scaled map (Ex-PM/1) of the place of occurrence was prepared. Recorded the statements of prosecution witnesses. On 27.11.2017, statements of some witnesses were recorded and the complainant also made a supplementary statement. On 29.11.2017, one Raja Atta Ullah Khan Satti involved the appellant in the case through his statement recorded under Section 161 Cr.P.C and the appellant was arrested in the case. During investigation, on disclosure of appellant and on his pointation 30-bore pistol/ crime weapon (Ex.PFF) was recovered and thereafter, the empty shells, pistol and blood stained cotton were sent to Forensic Science Laboratory. On 06.12.2017, after completion of investigation, appellant was sent to judicial custody and on 20.12.2017,

incomplete challan under Section 173 Cr.P.C. was submitted before the learned trial Court. After fulfilling codal formalities, charge was framed against the appellant/ convict, to which he pleaded not guilty and claimed trial. In order to prove the guilt against the appellant, prosecution examined as many as fifteen (15) witnesses.

4. After closure of the prosecution evidence, statement of the appellant under Section 342 Cr.P.C was recorded wherein all the incriminating evidence recorded in his presence was put to him, he claimed innocence, however, he neither opted to record statement on oath as per Section 340 (2) Cr.P.C nor produce evidence in his defence.

5. After recording evidence and hearing arguments of the learned counsel for the parties, the learned Additional Sessions Judge-V, Islamabad-East, passed impugned judgment dated 01.06.2019, whereby the accused was convicted and sentenced as mentioned above. Being aggrieved thereby, the convict filed instant appeal for his acquittal, whereas the complainant has preferred the criminal revision for enhancement of sentence awarded to the appellant.

6. Learned counsel for the appellant/ convict contended that initially F.I.R was registered on the basis of Murasila (Ex.PD1/1) against unknown accused persons and later on, in the supplementary statement of complainant, appellant was involved in the case and his name was added subsequently in the said Murasila (Ex-PD1/1); that the source/ knowledge for involving the appellant was the statements of Muhammad Idrees and Raja Touqeer, who are allegedly witnesses of the last scene evidence; that there is extra-judicial confession of the appellant before Raja Atta Ullah Khan Satti, (PW-9), which is not admissible in evidence and the above said Raja Atta Ullah Khan Satti is not the witness of Wajtakkar; that dead body was recovered from a vehicle and owner of the vehicle was not made a witness; that PWs 6 & 7 are

planted witnesses and their statements are of a weak type of evidence; that the statements of these witnesses were recorded with delay of one month and seven days, which proves the malafide on the part of prosecution; that no recovery of pistol was effected on the pointation of appellant; that after the arrest of appellant, the allegedly recovered empty shells were sent to the Forensic Science Laboratory; that the positive report of Forensic Science Laboratory was not helpful to the prosecution in the circumstances; that the case of prosecution is highly doubtful; that the impugned judgment is against the law as well as facts and circumstances of the case; that the impugned judgment has been passed in a hasty manner. Further the learned trial Court has not appreciated the evidence in its proper perspective, resulting into grave miscarriage of justice. Lastly, prayed for setting aside of the impugned judgment and acquittal of the appellant.

7. On the other hand, learned counsel for the complainant assisted by the learned State Counsel controverted the contentions raised by the learned counsel for appellant by contending that there are witnesses of the last scene; that the deceased was seen with the appellant; that the dead body was recovered from inside the car owned by the appellant; that there was motive for commission of the offence by the appellant as the deceased was not happy with the marriage of appellant with his sister; that the deceased was brutally murdered by the appellant; that the appellant confessed the guilt and after his arrest, on his pointation, the crime weapon pistol was recovered, which matched with the crime empties recovered from inside the car; that mobile data collected by the Investigation Officer connects the appellant with the commission of offence; that prosecution has successfully proved its case against the appellant beyond any shadow of doubt and lastly, prayed for enhancement of the sentence from imprisonment of life to that of death penalty and that the appeal filed by the appellant may be dismissed.

8. I have given my anxious consideration to the contentions raised by the learned counsel for the parties and perused the record. It is better and appropriate to given an outline of role of PWs and to reproduce important facts in chronological order to resolve the controversy between the parties.

- I. PWs-1 & 2, are the witnesses of recovery memo of photograph (Ex.PA), recovery memo of CDR (Ex.PB), recovery memo of personal belongings of appellant (Ex.PC), recovery memo of marriage card (Ex.P6/1),
- II. PW-3, Raja Liaqat Ali is the complainant of the case, who initially lodged the F.I.R. against the unknown accused persons.
- III. PW-4 is the witness of recovery of pistol.
- IV. PWs- 6 & 7 are the witnesses of last scene evidence, who in their statements under Section 161 Cr.P.C stated that on the fateful day, the deceased alongwith appellant went together in the car and the appellant after an hour came back alone. On the strength of statements made by the above witnesses the complainant PW-3 involved the appellant in the case.
- V. PW-9, Raja Atta Ullah Khan Satti is the witness before whom the appellant confessed the commission of the murder of the deceased.
- VI. PW-13, Dr. Irshad Hussain, MLO/ Assistant Director Emergency, PIMS Hospital, Islamabad, conducted post-mortem and

produced report (Ex-PQ) alongwith pictorial
skiagram.

VII. PW-15 is the Investigation Officer, who
submitted challan before the learned trial
Court.

9. Perusal of the Murasila (Ex.PD1/1) reveals that the complainant received a telephone call at 11:00 pm from the appellant that deceased met with an accident. The informer's phone number was not mentioned therein even the place of occurrence was not stated by the informer then how the complainant reached at the spot. Further, during the investigation, no report with regard to call was brought on record. There is no evidence regarding the person, who shifted the deceased from place of occurrence to hospital and this fact is shrouded in mystery. There is no eye-witness of the alleged occurrence, however, at a subsequent stage, two persons PW-6 & 7, who allegedly were workers at the shop of deceased and appellant, surfaced on the scene and deposed that on the fateful night, they saw the appellant alongwith the deceased in the same vehicle. As per statements of above witnesses, on 27.11.2017 they went to the house of complainant for condolence and disclosed before the complainant that at the last moment, both deceased and appellant were together in car and before departing, informed them to take care of the shop. During cross-examination, PW-6 stated that his statement under Section 161 Cr.P.C was recorded on 27.11.2017, when their statements (Ex.DA & Ex.DB) were confronted, same were found to be recorded on 27.12.2017. In the statement of PW-6, date has been clearly mentioned, while in the statement of PW-7, same is not visible. Meaning thereby that their statements were recorded after a delay of one month. Perusal of record confirms that the Superintendent of Police, Rural Zones, Islamabad, vide letter (Ex.DD) bearing No.7735 dated 28.11.2017 has instructed as under:-

مقتول کے موبائل کا سی ڈی آر ریکارڈ حاصل کر کے نا معلوم ملزمان کو ٹریس کرنے کا تحرک کیا جائے۔

From the above letter of the Superintendent of Police, it is confirmed that till 28.11.2017, there was no information that the appellant was seen in the company of deceased. The presence of PW- 6 & 7 at the workplace at the time of departure of appellant and deceased also requires consideration. This fact also raises questions that if both the PWs were the employees of the deceased, then why they went for condolence after lapse of five (05) days. During cross-examination, PW-6 has stated that he participated in Janaza prayer where he also met with the appellant, but even then, the witnesses did not disclose the fact to the complainant and kept mum for a long time, therefore, their statements required corroboration. There is delay in recording statements of the above witnesses under Section 161 Cr.P.C. The unexplained delay in recording the statements of witnesses is fatal to the prosecution case and testimony of such witnesses cannot be safely relied upon. The Investigation Officer PW-15, during cross-examination, admitted that he did not collect any evidence regarding the employment of Raja Toqeer Ahmed and Muhammad Idrees on Crispy Cottage. He further deposed that the witnesses did not tell him any reason of delay in recording their statements and not informing the complainant about the fact of last seen evidence, whereas, last seen evidence is a circumstantial evidence and is a weak type of evidence. In this regard reliance is placed upon the case reported as "Akbar Ali V. The State" (2007 SCMR 486), where it has been held as under:-

"It is also settled law that last seen evidence is a circumstantial evidence and is a weak type of evidence."

It was also held in the said judgment that:-

"It is also settled law that it is the duty and obligation of the prosecution to prove the case against the accused beyond any shadow of doubt even if accused failed to furnish explanation for disappearance of deceased, who had been seen along with the accused before his death in such

circumstances in the case in hand where the CW-1 did not disclose this fact for 4 months after the incident as mentioned above."

Reliance in this regard is also placed upon the case reported as "Muhammad Asif V. The State" (2017 SCMR 486) wherein it has been held as under:-

"Again there is another doubtful aspect of the case because Nazar Hussain (PW-9), the father of the deceased who according to the FIR was stated to be guarding the dead body, on arrival of the local police to the spot, however, in the very examination in chief at page/20 of the paper book he has squarely stated that he joined the investigation after one month and one day after the occurrence. There is a long line of authorities/precedents of this court and the High Courts that even one or two days unexplained delay in recording the statement of eye-witnesses would be fatal and testimony of such witnesses cannot be safely relied upon."

The delay in recording the statements of the witnesses is hit by *ratio decidendi* given by august Supreme Court of Pakistan laid down in the case of "Abdul Khalig Versus The State" (1996 SCMR 1553), wherein it was held as under:-

"It is a settled position of law that late recording of 161, Cr.P.C. statement of a prosecution witness reduces its value to nil unless there is plausible explanation for such delay."

10. There is no direct evidence of the murder of deceased in the case in hand. The prosecution has relied upon last seen evidence, extra-judicial confession allegedly made by the appellant before Raja Attaullah Khan Satti (PW-9), recovery of weapon and positive report of Forensic Science Laboratory.

11. As per Forensic Science Laboratory report, the crime weapon pistol allegedly got recovered at the instance of the appellant matched with the crime empties recovered from the inside the car, being a corroborative piece of evidence, is insufficient to convict the appellant with the commission of the alleged offence in the absence of any other substantive piece of evidence because the corroborative and ocular testimony are to be read together and not in isolation. In this regard reliance is

placed upon the case reported as "Zeeshan @ Shani V. The State" (2012 SCMR 428), wherein it has been held as under:-

"The other piece of evidence connecting the appellant with the crime is the report of the Ballistic Expert according to which the empties recovered from the spot matched with the pistol recovered from his possession. This report, at its best, can be taken as corroborative and not evidence of the charge. This, per se, cannot prove the guilt of the appellant where his identification has not been established beyond doubt. Nor recovery of the empties has been established by above the board evidence. Their recovery from the spot has no doubt been alleged but their ejection outside the car is highly doubtful when according to the complainant the assailant did not stretch his arm outside the window of the car to fire at the deceased. The report of the Ballistic Expert, therefore, would also do little to advance the case of the prosecution."

In the case, "Noor Muhammad Versus The State and another" (2010 SCMR 97), it has been held as under:-

13. As regards the recoveries, the prosecution alleged that crime-empty was secured from the place of incident in presence of the complainant and another co-Masheer. The rifle was also secured in presence of the complainant and another Masheer. The prosecution examined the complainant and S.H.O. in the case who supported the prosecution case. The case of the appellant is that on 22-9-1995 his licensed rifle was secured from his house in his absence and the police manipulated the empty bullet, which was sent to Forensic Laboratory for examination. In this background and particularly when the complainant is all-rounder witness of all the aspects of the case, as discussed above, his evidence is required to be scrutinized very carefully. The prosecution was required to produce articles before the Court but the crime-empty was never produced before the Court for examination or identification through the complainant or investigation Officer. This is a fatal blow to the prosecution case in the light of the surrounding circumstances of the case as discussed above. Even otherwise the recovery of crime empty or rifle with matching report of F.S.L. is a corroborated piece of evidence, which by itself is not sufficient to convict the accused in the absence of substantive evidence. Reference is invited to Ijaz Ahmed v. State 1997 SCMR 1279. It was held in the case of Asadullah Muhammad Ali PLD 1971 SC 541, that corroborative evidence is meant to test the veracity of ocular evidence. Both corroborative and ocular testimony is to be read together and not in isolation. In the case of Saifullah v. The State 1985 SCMR 410, it was held that when there is no eye-witness to be relied upon, then there is nothing which can be

corroborated by the recovery. In the present case, we have already discarded the ocular testimony as such there is no substantive piece of evidence which requires to be corroborated through the recoveries: Thus, the recoveries in the present circumstances of the case have no weight.

The next limb of the prosecution case rests upon extra-judicial confession of the appellant, allegedly made before PW-9, Raja Atta Ullah Khan Satti. Reliance on extra-judicial confession needs utmost care and caution. A three fold proof is required to make extra-judicial confession, the basis of conviction:-

- i. That, infact it was made.
- ii. That, it was voluntary made.
- iii. That, it was truly made.

In the case in hand, PW-9 appeared before the Court and deposed that on 29.11.2017, appellant went to his house and while weeping caught his feet and disclosed about the commission of murder of deceased, requesting him to get pardoned from the complainant. It is to be understood as to what had compelled the appellant to approach the above said PW and make extra-judicial confession of murder before him, particularly, when the said witness was not in a position to help him in the murder case. Extra-judicial confession is a weak type of evidence. The statement of above mentioned PW does not disclose the details of time, place and manner of the extra-judicial confession with regard to commission of offence by the appellant. The extra-judicial confession does not find corroboration from any independent source that as to how and where deceased was murdered, was not pointed out by the appellant. In the absence of any corroboratory evidence, in my view, it was not safe for the learned trial Court to rely on the evidence of extra-judicial confession, which is a weak type of evidence, which can easily be procured when there is no direct evidence of the crime, therefore, the Courts have given much importance while placing reliance on such type of evidence, the use of utmost care and caution. Reliance is placed upon the judgment reported as **(PLD 2019 SC**

64) wherein it has been held by the Hon'ble Supreme Court of Pakistan as under:-

"In this regard it is to be noted that this Court has repeatedly held that evidence of extra-judicial confession is a fragile piece of evidence and utmost care and caution has to be exercised in placing reliance on such a confession. It is always looked at with doubt and suspicion due to the ease with which it may be concocted. The legal worth of the extra judicial confession is almost equal to naught, keeping in view the natural course of events, human behaviour, conduct and probabilities, in ordinary course. It could be taken as corroborative of the charge if it, in the first instance, rings true and then finds support from other evidence of unimpeachable character. If the other evidence lacks such attribute, it has to be excluded from consideration. Reliance in this behalf may be made to the cases of Nasir Javaid v. State (2016 SCMR 1144), Azeem Khan and another v. Mujahid Khan and others (2016 SCMR 274), Imran alias Dully v. The State (2015 SCMR 155), Hamid Nadeem v. The State (2011 SCMR 1233), Muhammad Aslam v. Sabir Hussain (2009 SCMR 985), Sajid Mumtaz and others v. Basharat and others (2006 SCMR 231), Ziaul Rehman v. The State (2000 SCMR 528) and Sarfraz Khan v. The State and 2 others (1996 SCMR 188).

43. Furthermore, as per Article 37 of the Qanun-e-Shahadat Order, 1984, "A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court that it has been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him".

It has been further held in the said judgment that:-

"It is a well settled principle of law that one who makes an assertion has to prove it. Thus, the onus rests on the prosecution to prove guilt of the accused beyond reasonable doubt throughout the trial. Presumption of innocence remains throughout the case until such time the prosecution on the evidence satisfies the Court beyond reasonable doubt that the accused is guilty of the offence alleged against him. There cannot be a fair trial, which is itself the primary purpose of criminal jurisprudence, if the judges have not been able to clearly elucidate the rudimentary concept of standard of proof that prosecution must meet in order to obtain a conviction. Two concepts i.e., "proof beyond reasonable doubt" and "presumption of innocence" are so

closely linked together that the same must be presented as one unit. If the presumption of innocence is a golden thread to criminal jurisprudence, then proof beyond reasonable doubt is silver, and these two threads are forever intertwined in the fabric of criminal justice system. As such, the expression "proof beyond reasonable doubt" is of fundamental importance to the criminal justice: it is one of the principles which seeks to ensure that no innocent person is convicted. Where there is any doubt in the prosecution story, benefit should be given to the accused, which is quite consistent with the safe administration of criminal justice. Further, suspicion howsoever grave or strong can never be a proper substitute for the standard of proof required in a criminal case, i.e. beyond reasonable doubt. In the presence of enmity between the accused and the complainant/witnesses, usually a strict standard of proof is applied for determining the innocence or guilt of the accused. If the PWs are found inimical towards the accused, she deserves acquittal on the principle of the benefit of the doubt. Keeping in mind the evidence produced by the prosecution against the alleged blasphemy committed by the appellant, the prosecution has categorically failed to prove its case beyond reasonable doubt. Reliance in this behalf may be made to the cases reported as Muhammad Ashraf v. The State (2016 SCMR 1617), Muhammad Jamshaid v. The State (2016 SCMR 1019), Muhammad Asghar alias Nannah v. The State (2010 SCMR 1706), Noor Muhammad alias Noora v. The State (1992 SCMR 2079) and Ayub Masih v. The State (PLD 2002 SC 1048)."

12. The next reliance of the prosecution case is upon recovery of crime weapon (pistol). It has come on record through PW-4 that on 05.12.2017, the appellant disclosed that he could get the pistol 30-bore recovered and led the police to Lilly Market, Kathana Arcade, Crispy Cottage, Swan Garden, where at the 4th floor, on the roof of bathroom, the appellant took out pistol 30-bore and produced it to the Investigation Officer. On the other hand, PW-15 Investigation Officer, in his statement before the Court has deposed that ***"On 04.12.2017 I also took parcel of empties and pistol from Muharrir and handed over to Muhammad Farooq constable alongwith road certificate No.353 for onward transmission to Laboratory at Islamabad."*** This statement of PW-15 is contradictory to the statement of PW-4 and makes the recovery of crime weapon highly doubtful. The alleged place of recovery i.e. bathroom was not found locked and it was admitted by PW-15 that

the said bathroom was accessible to the public. Guidance in this regard has been solicited from the judgment of the Hon'ble Supreme Court of Pakistan titled as "Muhammad Boota and another versus the State and another" (1984 SCMR 560) wherein it has been held as under:-

"It is unsafe to convict a man for murder merely because a blood-stained dagger or bayonet was recovered at his instance when the evidence is that other people had also access to the place of recovery i.e. the sugarcane field."

In the case reported as "Muhammad Asif Versus The State" (2017 SCMR 486), it has been held as under:-

It is, normal practice and conduct of culprits that when they select night time for commission of such crime, their first anxiety is to conceal their identity so that they may go scot-free unidentified and in that course they try their level best to conceal or destroy each piece of evidence incriminating in nature which, might be used against them in the future thus, human faculty of prudence would not accept the present story rather, after committing crime with the dagger, the appellant could throw it away anywhere in any field, water canals, well or other place and no circumstances would have chosen to preserve it in his own shop if believed so because that was susceptible to recovery by the police.

It is also important to mention that no disclosure memo was prepared and placed on record of the learned trial Court to believe that the appellant had infact made a disclosure of the commission of offence, enabling the police to proceed to a place from where the crime weapon was recovered. Even any confession before the police is not admissible in evidence. The contradictory statements of the above witnesses have made the recovery of crime weapon highly doubtful. It is a settled law, when ocular evidence is disbelieved in a criminal case then the recovery of an incriminating article in the nature of weapon of offence does not by itself prove the prosecution case. In the case in hand, the empties were secured on the very day of the occurrence and at that time, appellant was not arrested and the same empties were not sent to the expert till the alleged recovery of weapon of offence, which exercise also makes the case of prosecution highly doubtful. Reliance is placed upon the reported judgment titled as

"Muhammad Amin Versus The State and another" (2019 SCMR 2057), wherein it was held as under:-

"Interestingly, two empty cartridges (P-4/1-2) were secured from the place of occurrence by the investigating officer Akhtar Ali, SI (PW12) on the night of 11.10.2012, but the same were sent to the office of Punjab Forensic Science Agency on 23.01.2013 i.e. after arrest of the appellant in this case. In these circumstances, the positive report of FSL is of no avail to prosecution and is inconsequential.

Perusal of postmortem report (Ex-PQ) produced by PW-13, Dr.Irshad Hussain, shows the following injuries on the person of deceased:-

- i. Entry wound of fire arm 3 x 4 cm, inverted, blackening and blood stained margin on left lumber region.
- ii. Exit fire arm wound 2 x 1 cm everted and blood stained margins on right upper part of hip just below the middle of iliac crust.
- iii. Entry fire arm wound 3 x 2 cm inverted, blackening and blood stained margin on right lumber region.
- iv. Exit fire arm wound 1 x 1 cm everted and blood stained margin on left lumber.
- v. Entry exit fire arm wound on right upper one third of index finger with fracture of bone.

Perusal of the above-mentioned fire arm injuries shows that there are entry wounds from left and right sides on the person of deceased. As per statements of the witnesses, the front passenger seat was stained with blood meaning thereby that the deceased was seated on the said seat. Keeping in view the sitting position of the deceased and appellant, it is difficult of understanding that how a man sitting on the driving seat can hit the deceased on both sides. The prosecution failed to produce any witness, who reached at the place of occurrence and brought the deceased from the place of occurrence to the hospital. Thus escorting of deceased from place of occurrence to the hospital is still shrouded in mystery and the prosecution has failed to unfold

the same during course of investigation or trial. The place of occurrence was stated to be in front of a petrol pump, then how it was impossible that the incident was unseen. The case of prosecution was that the vehicle, in which the deceased was murdered, was belonged to the appellant. In this regard, no evidence was produced to prove the fact that the car was belonging to the appellant. Admittedly, another person obtained the said vehicle on Superdari, but surprisingly, neither the said superdar was interrogated nor he was made a witness for the prosecution, which makes the prosecution case highly doubtful. It is settled principle of law that different pieces of such evidence have to make one chain, an unbroken one where one end of it touches the dead body and the other the neck of the accused whereas, in case of any missing link in the chain, the whole chain is broken and no conviction can be recorded in crimes entailing capital punishment. This principle is fully attracted to the facts and circumstances of the present case as it is unseen occurrence; the appellant has been involved on the basis of supplementary statement, the owner of the vehicle or the person, who got the vehicle on Superdari have not been produced before the learned trial Court to strengthen the prosecution case, the statements of the PW-5 & 6 were recorded after an inordinate delay, as such, on the basis of such type of evidence, the conviction of the appellant cannot be allowed to hold the field.

13. Perusal of Ex.PH, recovery memo of the vehicle, shows nothing about any belongings of the appellant, but the learned trial Court has come to a wrong conclusion that personal belongings of the appellant were recovered from the said vehicle, whereas the above mentioned recovery memo (Ex.PH) was prepared on the very next day of the alleged occurrence. All the above-mentioned facts make the case of prosecution highly doubtful whereas, it is settled principle of law that in criminal cases, the burden to prove the guilt of the accused rests heavily upon the prosecution, which has to prove its case beyond any shadow of doubt. Guidance in

this regard is solicited from the judgment passed by Hon'ble Supreme Court of Pakistan reported as "Muhammad Karim Vs. The State" (2009 SCMR 230) wherein, it has been held:-

"In case of doubt, the benefit thereof must be given to convict as a matter of right and not as a matter of grace, for giving the benefit of doubt it is not necessary that there should be many circumstances creating doubts, single circumstance creating reasonable doubt in a prudent mind about the guilt of convict makes him entitled to benefit, not as matter of grace and concessions, but as matter of right."

Further reliance in this regard is also placed upon the judgments of the Hon'ble Supreme Court of Pakistan reported as "Nadeem Ramzan v. the State" (2018 SCMR 149), "S. Mahmood Aslam Shah v. the State" (PLD 1987 SC 250) and "State v. Rab Nawaz and another" (PLD 1974 SC 87).

14. Further the complainant in his cross-examination has admitted that the dead body of the deceased was recovered from a vehicle but there is nothing on record to show that said vehicle is owned by the appellant. In the instant case, the appellant-convict is entitled to the benefit of doubt. In this regard, reliance is also placed upon the case reported as "Wajeeh-Ul-Hassan Versus The State" (2019 SCMR 1994), it has been held as under:-

"A criminal charge is to be essentially settled on positive proof alone and not on perceptual or optical paradigms; the same is required in the present case, nonetheless, hopelessly out of sight. It would be grievously unsafe to maintain the conviction without potential risk of error, therefore, by extending benefit of the doubt, Criminal Appeal is allowed; the impugned judgment is set aside; appellant is acquitted of the charges and shall be released forthwith, if not required in any other case."

15. It is settled principle of law and justice that no one should be considered as an accused merely on the basis of presumption in the absence of any other solid piece of evidence and legally admissible as held by the Hon'ble Supreme Court of Pakistan in the case reported as Azeem Khan and another Versus Mujahid Khan and others (2016 SCMR 274) in the following manner:-

"32. It is also a well embedded principle of law and justice that no one should be construed into a crime on the basis of presumption in the absence of strong evidence of unimpeachable character and legally admissible one. Similarly, mere heinous or gruesome nature of crime shall not detract the Court of law in any manner from the due course to judge and make the appraisal of evidence in a laid down manner and to extend the benefit of reasonable doubt to an accused person being indefeasible and inalienable right of an accused. In getting influence from the nature of the crime and other extraneous consideration might lead the Judges to a patently wrong conclusion. In that event the justice would be casualty.

In cases of circumstantial evidence, the Courts are to take extraordinary care and caution before relying on the same. Circumstantial evidence, even if supported by defective or inadequate evidence, cannot be made basis for conviction on a capital charge. More particularly, when there are indications of design in the preparation of a case or introducing any piece of fabricated evidence, the Court should always be mindful to take extraordinary precautions, so that the possibility of it being deliberately misled into false inference and patently wrong conclusion is to be ruled out, therefore hard and fast rules should be applied for carefully and narrowly examining circumstantial evidence in such cases because chances of fabricating such evidence are always there. To justify the inference of guilt of an accused person, the circumstantial evidence must be of a quality to be incompatible with the innocence of the accused. If such circumstantial evidence is not of that standard and quality, it would be highly dangerous to rely upon the same by awarding capital punishment. The better and safe course would be not to rely upon it in securing the ends of justice."

16. In the case in hand, the learned trial Court while passing the impugned judgment, has not taken care of the guidelines and the above-said leading principles universally accepted and has relied on highly cryptic, infirm and incredible evidence, resulting into miscarriage of justice.

17. For the foregoing reasons, this Court hardly finds any reliable and confidence inspiring evidence to connect the appellant with the commission of the alleged offence therefore, by giving benefit of doubt to the appellant, Criminal Appeal No.216/2019 is allowed and sentence awarded to the appellant vide impugned judgment dated 01.06.2019 passed by the learned

Additional Sessions Judge-V, Islamabad-East, is hereby set aside. The appellant (Muhammad Usman Haider) is acquitted of the charges framed against him. He is behind the bar and is ordered to be released forthwith, if not required in any other case. Accordingly, the Criminal Revision No.73 of 2019 having no force is dismissed.

**(GHULAM AZAM QAMBRANI)
JUDGE**

Announced in open court, on this 31st day of December, 2020.

JUDGE

"Rana.M. Ift."

"Approved for reporting"