

IN THE ISLAMABAD HIGH COURT ISLAMABAD.

No. IHC/Jud. Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. 2140 127/16

W/A 133/16

W/A Rev 75/16

Titled. Mehmood Azam v/s State

a) Judgment approved for reporting

Yes/No ☒

b) Judgment any comment upon the conduct of the
Judicial officer for quality of the impugned judgment
Is desired to be made.

Yes/No ☒

(In case the answer is affirmative separate
confidential note may be sent to the Registrar
drawing his attention to the particular aspect).

Initial of the Judge.

NOTE.

1. If the slip is used, the Reader must attach on top of first
Page of the judgment.

2. Reader may ask the Judge writing the judgment whether the
judgment is to be approved for reporting or any comment is
to be made about the judicial officer / quality of judgment.

3. This slip is only to be used when some action is to be taken.

JUDGMENT SHEET.

ISLAMABAD HIGH COURT, ISLAMABAD JUDICIAL DEPARTMENT.

Criminal Appeal No.127/2016

Mehmood Azam	Versus	The State & another
Appellant by:		Raja Ikram Ameen Minhas & Mr. Muhammad Javaid Malik, Advocates.
Complainant by:		Mr. Qamar Inayat Raja, Advocate.
State By:		Mr. Yasir Barkat Ch. State Counsel.

Criminal Appeal No.133/2016

Ch. Usman Mehmood & another	Versus	The State
Appellants by:		Raja Ikram Ameen Minhas & Mr. Muhammad Javaid Malik, Advocates.
Complainant by:		Mr. Qamar Inayat Raja, Advocate.
State By:		Mr. Yasir Barkat Ch. State Counsel.

Criminal Revision No.75/2016

Muhammad Anar	Versus	Ch. Usman Mehmood & others
Petitioner by:		Mr. Qamar Inayat Raja, Advocate.
Respondents No.1 to 3 by:		Raja Ikram Ameen Minhas & Mr. Muhammad Javaid Malik, Advocates.
State By:		Mr. Yasir Barkat Ch. State Counsel.
Date of hearing:		26.04.2017

JUDGMENT

MOHSIN AKHTAR KAYANI, J. Through the Criminal Appeal No.127/2016 (appellant Mehmood Azam) and through Criminal Appeal No.133/2016 (appellants Chaudhry Usman Mehmood & Haider Mehmood [brothers]) have assailed the judgment dated 17.06.2016 passed by learned Additional Sessions Judge (VIII) West-Islamabad, whereby all the three appellants have been convicted in case FIR No.358, dated 22.08.2012, under sections 302/365/377/511/201/34 PPC, P.S. Aabpara, Islamabad and sentenced as under:-

- a) *U/s 302(b)/34 PPC to life imprisonment with fine of Rs.200,000/- each accused or in default of payment of the same, accused named above to further simple imprisonment for two (02) months.*

- b) U/s 365/34 PPC accused named above to three (03) years rigorous imprisonment with fine of Rs.30,000/- or in default of payment of the same, the accused named above to further simple imprisonment of three (03) months.
- c) U/s 201/34 PPC accused named above are sentenced to 03 years rigorous imprisonment with fine of Rs.200,000/- or in default of payment of the same, the accused named above to further simple imprisonment of one (02) months.

Benefit of section 382-B Cr.P.C. has also been extended to the appellants. All the sentences shall run concurrently.

Whereas, complainant Muhammad Anar, has filed the Criminal Revision No.75/2016 in the same case for enhancement of punishment to the appellants as well as claimed sentence of "attempt to sodomy", in which all three appellants have not been charged.

2. Brief facts of the instant case are that, complainant Muhammad Anar (PW.1/(PW.3) lodged criminal complaint Ex.PE with the following words:-

"شفیق احمد ولد دین محمد جو کہ ہمارے قریبی دوست ہیں عید ملنے کے لیے میرے گھر آئے ہوئے تھے جنکو بوقت 4/30 بجے دن آج مورخہ 22/8/12 کو الوداع کرنے کے لیے گھر سے باہر دروازے پر میں مع ظفر اقبال میرا بیٹا کاشف کھڑے تھے کہ اسی دوران (1) جمال خان ولد شاہ حسین (2) چوہدری عثمان ولد چوہدری تاج محمد (3) سیف اللہ ولد زمان (4) نعیم آفریدی ولد خبر گل (5) محمود خان جو کہ اسی سیکٹر کے رہائشی ہیں بھی آگئے اور میں اور میرا کزن ظفر اقبال و شفیق احمد کے ساتھ مصروف گفتگو تھے کہ وہ میرے بیٹے کو اپنے ساتھ لے گئے رات گئے تک میرا بیٹا جب گھر واپس نہ آیا تو مجھے تشویش ہوئی تو میں نے اپنے طور پر اپنے بیٹے کی تلاش شروع کر دی جو مندرجہ بالا افراد کے گھروں سے پتہ براری کی جو گھر پر موجود نہ پائے گئے مجھے قوی شہ ہے کہ میرے بیٹے کو مندرجہ بالا افراد نے اغواء کر لیا ہے دعویداروں کا قانون کاروائی کی جائے۔"

The above referred complaint has been converted into FIR No.358/2012, dated 22.08.2012, under sections 365/34, 377/511, 201/302 PPC, P.S. Aabpara, Islamabad, wherein offences under sections 377/511, 201/302 have been incorporated after the investigation, whereas initial complaint was only to the extent of offence under sections 365/34 PPC as the complainant PW-1 Muhammad Anar only leveled allegation for abduction of his son Kashif Anar (deceased) against Jamal Khan, Chaudhry Usman, Saif Ullah, Naeem Afridi and Mehmood Khan.

3. The dead body of deceased Kashif Anar was recovered on the information of Muhammad Ijaz Abbasi PW-10 following the day of incident, i.e. 23.08.2012, when he was on duty and his Naib Qasid told him that there is a dead body lying next to Bazar No.08, Gali No.57, Sector G-6/4, Islamabad. On his call to Rescue 15, police reached at

spot and recovered dead body, which was identified vide memo of identification of dead body Ex.PC by the father of deceased Muhammad Anar (PW-1).

4. The above referred incident was confirmed through one of the nominated accused in the instant case, Jamal Khan PW-14, who narrated the entire story in his own complaint in Police Station Bani Gala, where another FIR No.64/2012, dated 23.08.2012 under sections 324, 148, 149, PPC, P.S. Bani Gala, Islamabad was registered and referred as Ex.PX, which is reproduced as under:-

"میں اپنے والدین کے ہمراہ بتا ہوں آج مورخہ 22/8/12 کو میں اپنے گھر موجود تھا کہ بوقت 4 بجے دن نعیم آفریدی، سیف اللہ، محمود خان، چوہدری عثمان، چوہدری احمد میرے گھر آئے اور کہا کہ عید کی وجہ سے سیر و تفریح کے لیے چلتے ہیں۔ میں انکے ہمراہ کاشف ولد محمد انار کے گھر مکان نمبر 44A، گلی نمبر 71، سیکٹر G-6/1 گیا تو انہوں نے کاشف کو بھی بلا لیا ہم تمام پہلے سے ایک دوسرے کو جانتے ہیں چوہدری عثمان اور حیدر نے کہا کہ پہلے ہمارے مکان پر چلتے ہیں کھانے پینے کی چیزیں لے کر پھر جائیں گے تو میں اور کاشف ان تمام کے ہمراہ چوہدری عثمان کے کوارٹر نمبر 140A، گلی نمبر 61، سیکٹر G-6/1-2 چلے گئے وہاں انکے کوارٹر میں بیٹھ کر گپ شپ لگاتے رہیں اسی دوران شام ہوئی کہ اچانک نعیم آفریدی اور چوہدری عثمان، چوہدری حیدر نے پٹسل نکال لیے مجھے اور کاشف کو کہا کہ اپنی پتلون اتار دیں ہم نے انکار کیا سیف اللہ اور محمود خان نے ہمیں پکڑ لیا کہ اسی دوران نعیم آفریدی اور چوہدری عثمان نے فائر کئے جو ایک گولی کاشف کو چھاتی پر لگی اور وہ شدید مضروب ہو کر گر پڑا مجھے انہوں نے پکڑ کر دوسرے کمرے میں بند کر دیا اور کہا کہ شور مچایا تو آپ کا یہی حشر ہو گا تقریباً 3، 4 گھنٹے کے بعد چوہدری عثمان، چوہدری حیدر، نعیم آفریدی، سیف اللہ، محمود خان آئے اور مجھے اسلحہ کی نوک پر ایک گاڑی میں بٹھایا اور تقریباً 11:30 بجے رات راول ڈیم سے آگے جنگل ایریا میں لے جا کر مجھ پر دو فائر پٹسل نعیم آفریدی، چوہدری عثمان نے کئے جو فائر سیدھے ان دونوں نے مجھے پر کیئے جو مجھے چھاتی اور بازو پر لگے میں شدید مضروب ہو کر گر پڑا اور موقع سے فرار ہو گیا۔ میں نے زخمی حالت میں روڈ پر آکر شور کیا تو ایک گاڑی والے نے خداترسی کرتے ہوئے مجھے تھانہ کے باہر چھوڑ دیا ان لوگوں نے مجھے اور کاشف کو قتل کرنے کی نیت سے فائر کر کے زخمی کیا ہے۔ ان کے خلاف قانونی کارروائی کی جائے۔"

The Investigation Officers, Munawar Ahmed, Inspector PW-11, Ch. Javed S.I/I.O. PW-23, and Bashir, Inspector PW-24 carried out the investigation in different intervals of time and submitted the final *Challan* under section 173 Cr.P.C. by declaring Mehmood Azam, Haider Mehmood, Chaudhry Usman, Naeem Afridi and Saif Ullah as accused in this case, whereby Naeem Afridi and Saif Ullah remain absconders and declared P.O. by the Court and they have not been arrested till date. Learned Trial Court after recording of entire evidence of 24 PWs and 08 DWs, convicted the appellants with above mentioned sentence.

5. Being aggrieved, the appellants have assailed the said judgment before this Court, whereas complainant Muhammad Anar filed the Criminal Revision No.75/2016 in the same case for enhancement of punishment to the appellants as well as claimed sentence of "attempt to sodomy", in which all three appellants have not been charged.

6. Learned counsel for appellants mainly argued that the entire incident is based upon the testimony of Jamal Khan who claims to be an injured witness in connected FIR No.64/2012, dated 23.08.2012, under sections 324, 148, 149 PPC, P.S. Bani Gala, Islamabad but his medical testimony has not been brought on record nor even the Doctor, who examined the said witness has been produced; that, place of occurrence has not been proved by the prosecution, even there is no evidence on record to establish that the incident of murder took place at Quarter No.140-A, Gali No.61, G-6/1-2, Islamabad as no blood stained earth has been recovered from the said quarter, even there is no other direct evidence to prove that deceased Kashif Anar was murdered in the said place; that, recovery of pistol P-15 and fire empties have no significance, when alleged weapon of offence has not been sent to Forensic Science Laboratory and there is no evidence on record that the said pistol has been used in 02 different incidents; that the prosecution in order to strengthen their case, involved Haider Mehmood in the alleged incident, although he was not nominated at the initial stage by complainant Muhammad Anar; that the PWs have made different improvements and contradictions to the entire evidence and there is no iota of evidence against Haider Mehmood; that, the entire case hinges on the ocular account of solitary witness Jamal Khan PW-14, which is not corroborated from any independent piece of evidence due to the fact that his own case has not been proved till date and his presence is doubtful; that the element of sodomy as alleged by PW-14 has not been substantiated from any source. It has further been contended that, element of Section 365 PPC did not attract in the present case as from the testimony of complainant and other witnesses, who have only claimed to be the last seen witness, does not allege any element of abduction. Lastly, learned counsel for appellants argued that the Investigating Officer has converted PW-14 accused in the instant case as witness, which otherwise weakens the prosecution case, furthermore, no blood was detected on the piece of carpet which was taken into possession vide recovery memo Ex.PHH, and the same has been confirmed through Forensic Science Laboratory report.

7. Conversely, learned counsel for complainant as well as learned State Counsel argued that the prosecution has successfully proved the entire case beyond any reasonable doubt; that PW-14 Jamal Khan is the most natural witness, who is an injured and eyewitness of the entire occurrence, that he also lodged his own criminal case

FIR No.64/2012, in P.S. Bani Gala, Islamabad, where he narrated the entire alleged incident and the FIR was exhibited by the prosecution as Ex.PX, therefore, there is no requirement to prove any other thing. Learned counsel for complainant further argued that PW-14 has not been discredited by any discrepancy in his evidence as the details submitted by him have duly been corroborated by evidence of last seen witness as well as witness of "Wajtakar"; that the pistol P-15 was recovered from accused Ch. Usman Mehmood and even two fire empties, Sikka (Slug) and piece of carpet (P-5, P-6 & P-7) have been recovered from the place of incident and corroborated through independent evidence of Nasar Ullah, Head Constable and Khawar Zaman Constable in Ex.PJ. Learned counsel for complainant further argued that learned trial Court has not appreciated the evidence of Section 377/511 PPC without any reason although the testimony of PW-14 Jamal Khan is clear in this regard, who stated before the Court that two accused aimed pistols at him and deceased Kashif Anar, and asked others to commit sodomy, whereas other two accused referred in the FIR have got hold of Jamal Khan and deceased Kashif Anar, which is sufficient to prove the offence under sections 377/511 PPC; that all the appellants are held jointly liable for the murder of Kashif Anar and the same has been proved beyond any reasonable doubt but the learned trial Court has only awarded life imprisonment instead of death sentence.

8. Arguments heard, record perused.

9. From the perusal of record, it has been observed that complainant Muhammad Anar PW-1 lodged FIR No.358, dated 22.08.2012, under section 365 PPC, P.S. Aabpara, Islamabad, for the abduction of his son Kashif Anar, who was allegedly gone with Jamal Khan, Chaudhry Usman, Saif Ullah, Naeem Afridi and Mehmood Khan on the day of Eid. PW-1 Muhammad Anar being father of deceased Kashif Anar stated before the Court that all five accused, including present appellants, came to his house, when he was talking with his cousins Zafar Iqbal and Shafiq Ahmed (guests) outside his house, all five accused persons asked his son Kashif Anar to accompany them.

10. PW-1 further stated that on the same day, when his son did not turn up, he contacted all the present appellants and two absconded accused, but they were not present in their houses and due to said suspicion, he lodged the instant criminal case. Complainant Muhammad Anar was cross examined at length, he stated before the Court

that he submitted his complaint Ex.PE and on his complaint FIR Ex.PE/1 has been lodged, he was called by P.S. Aabpara, when the dead body of his son was recovered from area of street No.57, Sector G-6/4. The dead body of his son was wrapped in bedding (bistarband), he identified the dead body through memo of identification Ex.PC and later on recorded his supplementary statement to Shakil Ahmad ASI, he himself relied upon the statement of Jamal Khan PW-14, who got lodged FIR No.64/2012 registered at P.S. Bani Gala, Islamabad, in which he alleged that Ch. Usman Mehmood and Naeem Afridi murdered his son by firing through .30 bore pistol where Saif Ullah, Mehmood Khan and Haider Mehmood were also present, the complainant PW-1 Muhammad Anar further alleged in his testimony that all the accused persons wanted to commit sexual intercourse with his son and on refusal, Ch. Usman Mehmood and Naeem Afridi murdered him through firing and later on, dead body was wrapped in a bedding (bistarband) and thrown in Jungle area of Sector G-6/4 through a vehicle.

11. The dead body was sent to Federal Government Polyclinic Hospital for the purpose of autopsy, where Doctor Tanveer Afsar Malik, C.M.O. PW-22 completed the autopsy and submitted autopsy report Ex-P22. Doctor Tanveer Afsar Malik stated before the Court that he conducted the postmortem of Kashif Anar son of Muhammad Anar, aged about 16 years, male, R/o House No.440/A, St. No.71, Sector G-6-1/1 Islamabad, which was brought by Muhammad Younis S.I. Police Station, Aabpara and during the course of his examination, he observed the following:-

“EXTERNAL APPEARANCE.

A young boy wearing shirt blue color, T-Shirt printed sticker, white bunyan, mustered color underwear, trouser black color, closed eyes and mouth, froth coming out from the mouth. Rigor mortis was fully developed and there is postmortem lividity underneath chest and buttocks;

ON EXTERNAL POSTMOERTEM EXAMINATION

Injury No.1 firearm entry wound on the front of the left side of the chest 3.cm lateral of sternum and is in the fourth left intercostals space and with charring marks, wound is 7 cm, super medial to the left nipple. Wound measuring 1/1 cm.

Injury No.2. Fire arm exact wound on the back of the left side of the chest, 1 cm lettral to 7 thoracic vertebra measuring 0.5 cm into 0.5 cm.

Both wounds are correspondence with holes in the shirt, bunyan and T-Shirt.

Cranium and Spinal Cord

Scalp and vertebra membranes, brain spinal cord, were found healthy.

THORAX

Walls, ribs and cartilages, ruptured ribs and cartilages were found healthy.

PLEURA

Left ruptured and contains 1.5 litter of plotted and unplotated blood, right pleurae healthy, left lung ruptured blood vessel ruptured. Larynx and trachea, right lung pericardium and head were found healthy.

Abdomen

Walls, peritoneum, mouth pharynx, esophagus, diaphragm, pancreas, liver, spleen, kidneys were found healthy. Stomach and its contents gestec contents present semi digested otherwise healthy, small intestine and their contents semi digest otherwise healthy, large intestine and their contents contains fecal metter of yellowish color, bladder empty and healthy, organs of generation external and internal were found healthy three anal swab taken for reduction of semen if any.

Missal, bones and joined, were found healthy.

Opinion:

Deceased sustained fire arm injury over the left side of the chest through and through causing ruptured of left lung and main blood vessel of the lung leading to hemorrhagic shock causing death of the deceased. All the injuries are ante mortem a nature and are sufficient to cause death in ordinary course of life.

Probable time between injury and death;

3 to 7 minutes

Probable time death and postmortem

15 to 16 hours

Postmortem report including pictorial diagram is in my hand writing and signed by me as Ex.P22, and my signature on the Postmortem report including pictorial diagram is Ex.P22/1.

PW-22 also treated Ch. Usman (accused/appellants) with history of road side accident as he suffered with injury (deformity right knee) on 23.08.2012, the medical report of appellant Ch. Usman has been referred as Ex.P-23, however, the opinion of the Doctor is as under:-

MLC Report;

23.08.2012 at 5.25 pm Ch. Usman Son of Ch. Taj Mehmood aged 32 years male R/o 43/-A, St No.61, G-6-1/2, Islamabad brought to emergency polyclinic hospital with the history of road side accident by police station Aabpara with the complaint of plain, swelling deformity right knee one day. No history of loss of consciousness, GCS 15/15 on local examination right leg within (Knee flexes) bruising over the right knee. Local tenderness++movement very painful, distal Nauru vascular intact.

Advised X-ray right knee, femur and chest report given by the radiologist, communicated, fracture seen through the distal shaft of femur.

No bone injury seen through Thoracic cage operation distal femur plating applied by the orthopedic surgeon.

Patient admitted 23.08.2012 and discharged 10.09.2012.

Nature of injury 337-G PPC and kind of weapon road side accident, MLC report No.2322 handed over to police Munir Raza 417/LHC dated 16.01.2013.

MLC report is Ex-P23 which bears my signature as Ex-P23/1.

PW-22 also conducted the potency test of appellant Usman Mehmood referred as ExP-24. However, during the course of cross examination of PW-22, nothing adverse or favorable has been brought on record by the appellants or the prosecution.

12. As per prosecution story, three witnesses, Zafar Iqbal PW-2, Shafiq Ahmed PW-4 and complainant Muhammad Anar, have been produced as witness of last seen, whereas complainant again appeared as PW-3 before the learned Trial Court, in which he categorically stated that;

"We were standing in the street at gate and were busy in discussion and in the meantime Jamal Khan, Naeem Afridi, Ch. Usman, Saifullah and Mahmood Khan came, greeted me and my son and took him for excursion with themselves. Haider Mahmood was standing in the street."

PW-3, in his testimony, has specifically alleged the role, which is as under:-

"As per statement of Jamal Khan recorded in case FIR No.64/2012 registered at PS Bani Gala, Naeem Afridi and Ch. Usman have murdered my son by firing with 30 bore pistol with whom Saifullah, Mahmood Khan and Haider Mahmood were also present. The above accused persons wanted to commit sexual intercourse with my son on whose refusal; Naeem Afridi and Ch. Usman have murdered my son by firing."

During the cross examination, PW-3 admitted that he involved Jamal Khan PW-14 as accused in the instant FIR, even though he was aware that Jamal Khan got recorded his own criminal case FIR No.64/2012.

13. The other witnesses of last seen are Zafar Iqbal PW-2 and Shafiq Ahmad PW-4, during the course of cross examination, referred all the appellants and absconded accused in their examination-in-chief but they only referred Jamal Khan, Usman Mehmood, Naeem Afridi, Saifullah and Mahmood Azam, who took Kashif Anar with them, but they

separately stated that Haider Mehmood was also present at the corner of street. During the course of cross examination, PW-4 Shafiq Ahmad admitted before the Court that he has not identified any of the accused in jail nor identified them at Police Station and he admitted that he never expressed the attributes of the accused rather, he identified accused Haider Mehmood and Usman Mehmood present in the Court, who introduced themselves one by one.

14. Learned trial Court recorded the testimony of Muhammad Hayat PW-7 as witness of Wajtakar, who stated before the Court that on 22.08.2012 at about 05:00 PM, he went to Sector G-6/1-2, Street No.61 to meet his friend Chaudhry Muhammad Jameel. When he saw Kashif Anar alongwith Ch. Usman and five other boys, who were speaking Pashto however, he identified Ch. Usman and Haider Mehmood amongst them though, during the cross-examination, he was confronted with his own statement that whether he has mentioned the name of Haider Mehmood and others standing there, whereupon, it has been admitted by him that fact of standing of all five accused at the same time, has not been mentioned in his statement under section 161 Cr.P.C. PW-7 has also admitted the fact that he has not mentioned about the features, age and the colour of clothes of the five accused persons. In essence, the above referred witness has only admitted before the Court that he is witness of last seen, and he has not referred the details of the address of the house, where deceased was murdered, and only stated that he saw Kashif Anar entering in a house next to his friend's house, i.e. Ch. Jameel. Besides the testimony of PW-7, all other witnesses of last seen are not only police officials but they are related to complainant Muhammad Anar PW-1 (PW-3) and they have recorded their testimonies with reference to their private relationship with complainant Muhammad Anar as they were not performing their official duties at the relevant time, however, it has been settled through numerous judgments of the superior Courts that the evidence of last seen has a corroborative value if other evidence connects the accused with the commission of offence. The evidence of last seen can only be considered to the extent of last seen evidence and not beyond. In essence, status of last seen evidence has been explained in 2017 PCr.LJ 586 [Lah] (Kaleem Ullah alias Bhola vs. State), 2016 YLR 1291 [Pesh] (Kabir Shah vs. The State), 2016 PCr.LJ Note 126 [Lah] (Asif Shah vs. State), 2016 PCr.LJ 1754 [Kar] (Abdul Ghafoor vs. State), 2017 PCr.LJ 400 [Lah] (Imran Ishaque and

others vs. The State), and 2010 SCMR 939 (Zafar Abbas vs. The State), whereas in the latter judgment, it is held that:-

“Even otherwise, the evidence of last seen without corroboration is a weak piece of circumstantial evidence to base conviction. Reference in this regard is invited to “Naqibullah v. State (PLD 1978 SC 21) and Karamat Hussain v. State (1972 SCMR 15)”.

15. The other important piece of evidence brought on record is the testimony of PW-14 Jamal Khan, who claims to be the eyewitness of the alleged incident of murder, who appeared before the learned Trial Court as PW-14, aged 19 years, recorded his statement that he was present at his home on 22.08.2012 at about 4:00 PM, Naeem Afridi, Saif Ullah, Mehmood Khan, Ch. Usman and Ch. Haider came to his house and asked him to accompany them for picnic as of the eve of Eid. He alongwith the above mentioned accused, went to the house of Kashif Anar, situated at House No.44-A, St. No.71, Sector G-6/1-1, Islamabad, where Kashif Anar also accompanied them. PW-14 also stated before the Court that all accused and deceased knew each other and Ch. Usman and Ch. Haider asked them to go to their house, from where after taking some eatable stuff, they will go for picnic, therefore, they went to quarter No.140-A, St. No.61, Sector G-6/1-2, Islamabad and narrated the account as under:

“In the evening time, suddenly, Naeem Afridi, Ch. Usman and Ch. Haider pointed their pistol at me and Kashif Anar (since dead) and asked us to get down our Trouser (Shalwar) for the purpose of sodomy. When we refused then Saif Ullah and Mehmood Azam Khan had clutched us for purpose of sodomy and in the meanwhile, Naeem Afridi and Ch. Usman made fires at me and deceased Kashif Anar. One fire was landed on the chest of Kashif Anar (since dead) due to which he fell down and after that they brought me to the other room and locked me and threatened me that if I make noise then I will also face same consequences. After three four hours Ch. Usman, Ch. Haider, Naeem Afridi, Saifullah and Mehmood Azam Khan came back to me and took me to a vehicle and at about 11:30 pm (midnight) when they took me to the jungle area of Rawal Dam, wherein, Naeem Afridi and Ch. Usman made firing with their pistol out of which three fires were landed on my body due to which I fell down on the ground/jungle and they flee away.”

16. The above referred statement of Jamal Khan clearly demonstrates that all three accused (including two appellants) had pointed their pistol at him and deceased Kashif Anar, whereas Saif Ullah and Mehmood Azam Khan had clutched them for the purpose of sodomy and meanwhile, Naeem Afridi and Ch. Usman fired at him and deceased Kashif Anar, as a result of said firing, one fire hit on the chest of Kashif Anar (since

dead), due to which, he fell down. PW-14 further stated that he was locked in another room and threatened that if he makes any noise, he will also face the same consequence and after about three or four hours, Ch. Usman, Ch. Haider, Naeem Afridi, Saifullah and Mehmood Azam Khan came back and took him in a vehicle at about 11.30 PM (midnight) to the jungle area of Rawal Dam, wherein, Naeem Afridi and Ch. Usman started fire at him, whereupon, three bullets hit him, due to which, he fell down on the ground, thereafter they fled away. He stated that he came to the roadside and requested someone to drop him at Police Station Bani Gala, Islamabad.

17. During the course of cross examination, PW-14 admitted again that:

"I do not remember what color/ trouser and shirt were worn by me. I have received three bullets. First bullet hit under my hand near the wrist, second bullet hit my chest and third bullet on my arm."

However, the cross examination was stopped on the request of defence counsel and was reserved that the MLR is not available on the case record, though, the entire testimony of PW-14 is silent qua the injury details through MLR, nor the prosecution ever produced any such MLR on record through which one can assume that PW-14 was injured with three firearm injuries. He was further confronted regarding the firearm injuries, on which he stated that, *"if the doctor says that there are two bullets it would be wrong and my statement to this extent would be correct"*. PW-14 admitted that he was nominated as accused in the FIR (Ex.PE) however, he denied that all the accused and deceased, went to Bani Gala on motorcycles, however, during the Course of cross-examination, PW-14 admitted that Kashif Anar died in the house Haider Mehmood and Ch. Usman due to firearm injury caused by Naeem Afridi, whereas, he could not name the person who brought him to Police Station Bani Gala. Though, later on during the course of cross-examination, PW-14 explained the firing incident in the following words:-

"Those two accused fired at me as well as deceased and from the firing of those two persons I was injured and Kashif Anwar deceased was murdered. First accused Usman opened fire at deceased and then Naeem Afridi made another shot on the body of deceased. Both of these persons did not shot at me at that time."

This fact shows that Jamal Khan PW-14 was injured at two different occasions, firstly at the time of murder of Kashif Anar and secondly when accused fired at him in jungle nearby Rawal Dam. As per the statement of Jamal Khan, it is implied that he received

total four firearm injuries on his body but no such evidence is available on record to prove the same.

It has further been observed from the abovementioned statement of Jamal Khan PW-14 that, deceased has received two firearm injuries upon his body whereas the medical evidence Exh.P22 (Autopsy Report) as well as statement of Dr. Tanveer Afsar Malik, PW-22, contradict this very fact, as report clearly reveals only one firearm injury on Kashif Anar deceased, hence, there is contradiction in medical and ocular account, therefore, the statement of Jamal Khan, PW-14, is not believable.

18. The statement of PW-14 plays an important role in the entire case as he has not disclosed anything regarding his own FIR although he is very well aware of his own criminal case, but he never uttered a single word regarding the incident when he got injured by the appellants and he separately lodged a criminal case in P.S. Bani Gala, which is surprising to this Court as to why PW-14 has not tendered the details of his own FIR, although FIR No.64/2012 registered at P.S. Bani Gala has been exhibited as Ex.PX, but without any corroboration. Furthermore, another important question emerges at this stage as to why the injured witness PW-14, complainant of FIR No.64/2012, has not referred the said FIR in his statement, hence, the testimony of this witness requires corroboration from any independent source.

19. From the perusal of entire record, it has not been observed from any documentary evidence that PW-14 ever received any firearm injury as alleged by him, even the said statement has not been corroborated through a Doctor, likewise the details referred by PW-22 Dr. Tanveer Afsar, clarifies the injuries of accused/appellant Ch. Usman, who treated the said appellant and referred his MLC report as Ex.P23 on record, but no such effort has ever been made by the Investigating Officers in this case, not even by the PW-14, rather the complainant Muhammad Anar PW-1, himself relied upon the testimony of Jamal Khan.

20. If we peruse the statement of PW-14 in isolation, following facts come on record:

- i. Place of occurrence is Quarter No.140-A, Street No.61, G-6/1-2 Islamabad.
- ii. Naeem Afridi, Ch. Usman and Ch. Haider pointed their pistol at him and Kashif Anar (deceased).
- iii. Naeem Afridi and Ch. Usman fired at him and deceased Kashif Anar.

- iv. Deceased Kashif Anar received two fires.
- v. Appellants and absconded accused took PW-14 to the jungle area of Rawal Dam, where Naeem Afridi and Ch. Usman started firing upon him, resultantly, three bullets got hit on his body.

The above referred facts need to be scrutinized and if all these factors have not been corroborated, especially the act of firearm injuries when the appellant Usman fired at PW-14 in Quarter No.140-A, Street No.61, Sector G-6/1-2, he remained unhurt. Similarly, he got injured in the subsequent event at Rawal Dam as narrated by him, where he claims that he received three firearm injuries.

21. We are of the considered view that, it is the prime duty of the prosecution to prove the above referred five factors as recorded by PW-14, through an independent source, but there is no corroboration available on record, however, Investigating Officer produced document called Ex.PJ (نرد متبوعگی خول چلیدہ گولی سکہ و نکڑا کارپٹ) in which appellant Ch. Usman identified the place of occurrence on 23.08.2012 to Shakir Ahmed S.I. PW-9, Nasrullah, Head Constable PW-8 and Khawar Zaman Constable (not produced). Shakil Ahmed S.I. recorded his testimony wherein he stated that he recorded the statement of Muhammad Anar on his complaint Ex.PE and registered the FIR No.358/2012 as Ex.PE/1 on 22.08.2012. PW-9 stated before the Court that he received information that a person sustained firearm injuries is present at Polyclinic Hospital and whereafter on getting the permission from CMO, he inquired the matter from Jamal Khan, who expressed the entire incident and has also obtained the copy of FIR No.64/2012 registered at P.S. Bani Gala, Islamabad from Iftikhar Ahmed Chatha S.I. (the I.O. of the said case) and in such manner FIR No.64/2012 Ex.PK came on record, hence, it can safely be concluded that the prosecution has not made any effort to brought on record the incident of P.S. Bani Gala by any independent source nor even the I.O. has been called who investigated the FIR No.64/12, PS Bani Gala, Islamabad, except Iftikhar Ahmed has been called as witness in the case who has only produced FIR Ex.PK which was handed over to Shakeel, ASI, PW-9, during his visit to Polyclinic Hospital, and even PW-14 remained silent for his own FIR No.64/2012. PW-9 Shakil Ahmed S.I., initial Investigating Officer, stated in his evidence that,

Ch. Usman and Naeem Afridi directly fired on Kashif Anar, who later on, succumbed to injury. He admitted before the Court that during the spot inspection, two empties of .30 bore pistol (P5), one bullet/(sikka goli) (P6) and a piece of carpet (P7), had been taken into possession vide recovery memo Ex.PJ.

22. In order to verify the place of occurrence, we have gone through the record with assistance of learned counsels, following discrepancies have been found:

Reference	Content Referred in Evidence/Exhibited Documents
PW-3 Shafiq Ahmad	<i>"We went to the spot at Sector G-6/1-1."</i> (No house address mentioned)
PW-7 Muhammad Hayat	<i>"In my presence, Kashif Anar entered in a house in front of house of Chaudhry Jameel along with Chaudhry Usman and other friends."</i> (No house address mentioned)
PW-8 Nasrullah 4569/HC	<i>"On the pointation of accused Choudhry Usman, at the time of inspection of place of occurrence recovered two empties of .30 bore pistol Ex.P5, one bullet (Sikka Goli) .30 bore pistol Ex.P6 and blood stained carpet Ex.P7."</i> (No house address mentioned)
PW-9 Shakil Ahmad S.I.	<i>"Accused Chaudhry Usman was taken in a vehicle to his house where he opened the door of his house and led us to the room where the deceased Kashif Anar was shot dead. During the spot inspection, two empties of 30 bore pistol, one bullet / (sikka goli) and a piece carpet which was wet, parcels were made and were separately taken in to possession through recovery memo Ex.PJ."</i> (No house address mentioned)
PW-12 Amir Shahzad Drafstman	<i>"The site plan was prepared by me on the pointation by PW Jamal Khan. As per his pointation, the deceased was inside the house of someone whom I don't know."</i> (No house address mentioned)
PW-14 Jamal Khan Co-accused/Complainant	<i>"I, Kashif Anar (since dead) alongwith Naeem Afridi, Saifullah, Mehmood Azam Khan went to the house of Ch. Usman and Ch. Haider situated at <u>quarter No.140-A, St No.61, Sector G-6/1-2, Islamabad.</u>"</i> (Alleged place of incident)
PW-23 Ch. Javed S.I./I.O.	<i>"I alongwith accused, Muhammad Rasheed and Munawar Hussain constables went to the place of occurrence situated at <u>House No.63-A. St No.61, Sector G-6/1-2, Islamabad.</u>"</i> (Given Different Address)

Statement U/S 342 Cr.P.C. Ch. Usman Mehmood	“(Question No.2 – Put by prosecution)took the Kashif Anar in the presence of witnesses from his house situated at Quarter No.440-A Gali No.71, G-6/1-1 Islamabad (at the time of taking of Kashif Anar from his above mentioned house your co-accused was standing a bit away from the house of Kashif Anar) on the pretext of picnic and went at your home situated at <u>quarter No.43-A Gali No.61, sector G-6/1-2, Islamabad.</u> ” (Given Different Address)
Statement U/S 342 Cr.P.C. Mehmood Azam Shah	“(Question No.2 – Put by prosecution)took the Kashif Anar in the presence of witnesses from his house situated at Quarter No.44-A Gali No.71, G-6/1-1 Islamabad (at the time of taking of Kashif Anar from his above mentioned house your co-accused Haider Mehmood was standing a bit away from the house of Kashif Anar) on the pretext of picnic and went at your home situated at <u>quarter No.143-A Gali No.61, sector G-6/1-2, Islamabad.</u> ” (Given Different Address)
Ex.PJ فرد متبوعی حول چیلیدہ گولی سکہ و کلوا کابریٹ	دوران ملاحظہ موقع کمرہ جہان پر ملزمان نے مقتول کاشف انار کو فائر کر کے ناحق قتل کیا۔ (No house address mentioned)
Ex.PV فرد متبوعی پش 30 بور	(No house address mentioned)
Ex.PX FIR No.64/2012 PS Bani Gala, Islamabad	میں اور کاشف ان تمام کے ہمراہ چوہدری عثمان کے کوارٹر نمبر 140A، گلی نمبر 61، سیکٹر G-6/1-2 چلے گئے (Alleged place of incident)
Ex.PZ فرد نشانہ ہی جائے وقوعہ	روبرو گواہان ذیل ملزم بالا محمود اعظم شاہ نے بحراست پولیس پارٹی راہبری کرتے ہوئے گلی نمبر 61، سیکٹر G/6/1-2، مکان نمبر 43-A کے سامنے از خود گاڑی رکوائی اور پولیس کو مکان نمبر 43-A کی نشاندہی کرتے ہوئے بتایا کہ بروز وقوعہ مورخہ 12-08-22 مقتول کاشف انار کو ہمراہ دیگر ملزمان مقدمہ اسی مکان پر لائے تھے۔ (Given Different Address)
Ex.PQ نقشہ جائے وقوعہ	(No house address mentioned)
Ex.PEE نقشہ جائے وقوعہ حسب نشاندہی ملزم بالا (محمود اعظم)	(No house address mentioned)

Hence, it can safely be concluded that the prosecution failed to establish the place of occurrence even the Investigation Officer, recovery witnesses have failed to confirm the

place of occurrence, therefore, we are of the confined view that this create a huge doubt in the case when place of occurrence is not confirmed, such kind of tainted piece of evidence could not be used to corroborate any other statement of witness, or to form basis of conviction.

23. In order to verify the testimony of PW-14, we are analyzing the fact of two fires at the place of occurrence referred by him read with the statement of PW-8 and PW-9, it has been observed that, PW-8 and PW-9, the witnesses of recovery memo Ex.PJ, have not referred the place, even the recovery memo Ex.PJ was prepared on the pointation of Ch. Usman, whereas Ch. Usman was hospitalized on 23.08.2012 at 05:25 PM when he was examined by Doctor Tanveer Afsar Malik, CMO, PW-22 and as per statement of PW-22, Ch. Usman remained in hospital w.e.f. 23.08.2012 till 10.09.2012 for treatment of his knee deformity, therefore, recovery memo of two empties of .30 bore pistol and Sikka Goli, has of no significance, although the same were referred by PW-8 and PW-9 being witnesses to the said recovery memo but it could not be assumed that how Ch. Usman identified the place when he himself was not present at the preparation of Ex.PJ, whereas the words “حسب نظامی ملزم چوہدری عثمان” has been referred in Ex.PJ, the said recovery memo is silent qua the place of recovery. Even it has been observed from the record that, appellant Ch. Usman referred his address in the statement under section 342 Cr.P.C. as House No.43-A, Street No.61, Sector G-6/1-2 Islamabad, whereas PW-14 Jamal Khan in his FIR (Ex.PX) referred the house/quarter No.140-A, Street No.61, G-6/1-2 Islamabad, as the place of occurrence, even the statement of PW-14 recorded on oath, refers the place of occurrence as house of Ch. Usman and Ch. Haider situated in Quarter No.140-A, Street No.61, Sector G-6/1-2 Islamabad. First Investigation Officer, Shakil Ahmed, ASI, PW-9 has not referred any address in his statement. Similarly, PW-8 has also not referred the place of recovery of two firearm empties of .30 bore pistol (P-5) and one Sika Goli (P-6) as well as bloodstained carpet (P-7).

24. In view of above referred piece of evidence, which has been brought on record to justify the presence of PW-14, is not made out, the prosecution has badly failed to connect this piece of evidence with the testimony of PW-14 Jamal Khan. We have also gone through the testimony of PW-16 Iftikhar Ahmed, Inspector, who recorded the

complaint of Jamal Khan and registered FIR No.64 dated 23.08.2012, under sections 324, 148, 149 PPC, P.S. Bani Gala, Islamabad (Ex.PX). However, during his testimony, he has not referred the injuries of PW-14 in any manner nor even suggested that he brought PW-14 Jamal Khan in injured condition to Polyclinic Hospital rather he only confined his testimony to the extent of handing over of copy of FIR (Ex.PX) to Shakil Ahmed, ASI PW-9, therefore, his testimony has no significance in the entire case as the FIR itself could not be treated as substantive piece of evidence unless the facts referred in the FIR have been corroborated through the testimony of a witness, even it has been settled by the different Higher Courts that FIR is not a substantive piece of evidence and same can be used to set law in motion. Reliance is placed upon PLD 1992 [Peshawar] 56 (The State vs. Daneil Boyd (Muslim name Saif Ullah and another), PLD 1992 [Peshawar] 179 (Ghiasuddin and another vs. The State), PLD 1964 [Kar] 264 (Dhani Bux vs. The State) and **PLD 2016 SC 17 "Malik Muhammad Mumtaz Qadri versus The State and others"** whereas, in the latter judgment passed by apex Court, it has been held that:-

"An FIR is not a substantive piece of evidence and the prosecution had not brought even an iota of evidence on the record regarding the appellant acting at the behest of anybody else."

In addition to above, it is the duty of prosecution to prove FIR by way of submission of criminal complaint and through its author, in order to give complete picture to the accused who should not be subjected to any handicap in the defence of his case. Moreover, mere production of a copy of an FIR, cannot properly fall within the definition of first information report without criminal complaint and therefore, it should have been excluded from consideration by the Court. Reliance is placed upon 1968 PCr.LJ 720 (Mohabbat and 2 others vs. The State). It has further been settled by the Higher Courts that, FIR constitutes corroborative evidence to the extent of evidence of its own maker and its corroborative value attached with the probative value of his evidence. Reliance in this regard is placed upon 1987 PCr.LJ 1325 [Kar] (Gul Hassan and others vs. The State). It is also a settled proposition of law that, when accused made a counter FIR and admits his presence at the scene of occurrence, the same can be used against him but not against the co-accused and similarly recording of another FIR in respect of same occurrence is not contemplated by law when the occurrence is based upon one transaction. Reliance

regarding these aspects, is placed upon PLD 1962 Kar 583 (Ahmad and others vs. The State) and NLR 1981 Criminal 181 [Lah] (Malik Muhammad Aslam vs. SHO PS Saddar, Sargodha).

25. PW-23 Ch. Javed, S.I., who is another Investigating Officer of this case, who arrested Mehmood Azam appellant on 31.08.2015, whereby on pointation of Mehmood Azam, he identified the place of occurrence and referred in his statement, i.e. House No.63-A, Street No.61, Sector G-6/2 Islamabad and also recovered a wristwatch (P-21) of deceased Kashif Anar from the house of Mehmood Azam in District Swabi, referred in recovery memo Ex.PCC and PBB. (The said witness has not been cross examined as the cross examination is not available on record.)

26. PW-23 being Investigation Officer has arrested Mehmood Azam and again got identified the place of occurrence, however it is an admitted position on record that the place of occurrence was also known to the said Investigation Officer, therefore, the subsequent pointation by the accused regarding the place of occurrence has no legal value in the eyes of law, hence, the statement could not give any benefit to the prosecution case.

27. The other Investigating Officer, Bashir, Inspector, has been produced as PW-24, who was entrusted with investigation on 30.08.2012 and who arrested Ch. Usman on 11.09.2012, after the discharge of accused Usman from Polyclinic Hospital. PW-24 stated before the Court that, on disclosure of the accused, Vehicle No.LHX-4044 (P-13), which was used during the occurrence, has been recovered from the house of Haider Mehmood, i.e. House No.43-A, Street No.61, Sector G-6/1-2, Islamabad, was taken into possession vide recovery memo Ex.PR. He stated before the Court that during the investigation, the accused Usman got recovered his .30 bore pistol which was used by him during the occurrence vide recovery memo Ex.PB and FIR No.392, under sections 13/20/65 A.O. P.S. Aabpara was registered, however, during the cross-examination, he admitted the fact that he had not given any opinion with regard to innocence or guilt of accused.

28. After meticulous reading of entire case, we have observed the following discrepancies in the instant murder case:-

- i. Haider Mehmood appellant was not nominated by the complainant Muhammad Anar PW-1 in his complaint Ex.PE nor in the FIR Ex.PE/1.

- ii. Haider Mehmood has been implicated after the statements of last seen witnesses, Shafiq Ahmed PW-4 and complainant Muhammad Anar PW-1.
- iii. PW-14 Jamal Khan is nominated accused in case FIR No.358/12 of P.S. Aabpara, Islamabad (Ex.PE/1), got registered by complainant Muhammad Anar.
- iv. No evidence is available on record through which the I.Os have declared Jamal Khan PW-14 as innocent in the instant FIR and converted his status from accused to eyewitness of the case.
- v. PW-14 has not produced any documentary proof of his medical treatment qua his three firearm injuries, which he referred in his FIR No.64/12 of P.S Bani Gala, Islamabad (Ex.PX).
- vi. No medical evidence brought on record by the prosecution regarding three firearm injuries of Jamal Khan PW-14 in the entire trial by way of producing any Doctor who treated him.
- vii. No motive has been set up except to attempt of sodomy of deceased Kashif Anar and Jamal Khan PW-14, which has not been connected through independent source.
- viii. Iftikhar Ahmad, Inspector, PW-16 of FIR No.64/12 P.S. Bani Gala, Ex.PX, has not been independently produced as witness to substantiate and corroborate the stance of PW-14 Jamal Khan.
- ix. Trial of FIR No.64/2012 P.S. Bani Gala is still pending before the Court.
- x. PW-14 in his statement categorically stated that, "*suddenly, Naeem Afridi, Ch. Usman and Ch. Haider pointed their pistol at me*" but later on he stated that Naeem and Usman fired at him and deceased Kashif Anar.
- xi. No weapon has been recovered from Ch. Haider appellant nor the Investigating Officer ever confirmed this fact.
- xii. PW-14 claims that he received three firearm injuries "*First bullet hit under my hand near the wrist, second bullet hit my chest and third bullet on my arm*". But this fact has not been independently corroborated from any evidence.
- xiii. The pistol P-15 recovered on the pointation of Ch. Usman through recovery memo Ex.PV, which was sent to FSL through Muhammad

Amjad Constable but he has not been produced before the Court to confirm this very fact.

- xiv. No bloodstained earth was confirmed from alleged place of occurrence.
- xv. No bloodstained earth was obtained from Rawal Dam where PW-14 allegedly got injured.
- xvi. No Doctor has been produced regarding medical treatment of PW-14 Jamal Khan.
- xvii. All witnesses are police officials.
- xviii. There is no Forensic Science Laboratory report available on record to verify .30 bore pistol empties (Ex.P5) through recovery memo Ex.PJ, to confirm that they have been used through .30 bore pistol P-15.
- xix. There is no evidence through which it can be assumed that recovery of .30 bore pistol fire-arm empties and Sika Goli have been sent to Forensic Science Laboratory Lahore prior to recovery of fire-arm weapon P.15.
- xx. The initial I.O., Shakeel Ahmed, PW-9, has not referred the address in his testimony regarding the place of occurrence.
- xxi. Two firearm empties, Sika Goli and carpet piece recovered through Ex.PJ is silent regarding the place of recovery.
- xxii. Articles of Ex.PJ recovered on pointation of Ch. Usman on 23.08.2012, when he was hospitalized and no explanation has been brought on record as to why he has not been associated at the time of recovery.
- xxiii. All the witnesses of last seen are police officials (although they are family friends and relatives of complainant Muhammad Anar).
- xxiv. No private witness of any incident or recovery has been produced on record.
- xxv. There is no direct evidence available regarding murder of Kashif Anar in the room, as referred by Jamal Khan PW-14.
- xxvi. Complainant Muhammad Anar PW-1 (PW-3) has not provided details of personal belongings of deceased son.
- xxvii. Muhammad Anar complainant only referred in his statement Naeem Afridi and Ch. Usman murdered his son by firing with .30 bore pistol.

- xxviii. Muhammad Anar complainant PW-1 has not referred wristwatch (Puma) Ex.P-11 in his Complaint Ex.PE and FIR Ex.PE/1.
- xxix. Muhammad Hayat PW-7, witness of Wajtakar, has not referred the address in his statement nor he identified the other appellants, except he referred that, boys were speaking Pashto.
- xxx. PW-7 Muhammad Hayat made improvements and contradictions in his own statement.
- xxxi. Place of recovery of dead body was already in the knowledge of police, therefore, pointation of place of dead body is of no significance.
- xxxii. Place of occurrence is shrouded in mystery as there is no evidence of taking of blood stained earth from the room of Quarter No.140-A, Gali No.61, G-6/1-2 Islamabad (alleged place of occurrence). The piece of carpet exhibited through Ex.PJ recovery memo does not contain the traces of human blood as confirmed through Punjab Forensic Science Agency, Lahore report Ex.PHH.
- xxxiii. Statement of Jamal Khan, PW-14 give picture of receiving of two firearm injuries to the deceased Kashif Anar with the following words:-

"Those two accused fired at me as well as deceased and from the firing of those two persons I was injured and Kashif Anwar deceased was murdered. First accused Usman opened fire at deceased and then Naeem Afridi made another shot on the body of deceased. Both of these persons did not shot at me at that time."

Whereas, statement of Dr. Tanveer Afsar Malik, PW-22 and Autopsy Report Exh.P-22, reveal receiving of only one firearm injury on the body of deceased, therefore, there is discrepancy in medical and ocular account.

29. In view of above referred contradictions, we are of the confirmed view that the entire case rests upon the testimony of PW-14 Jamal Khan, who is an accused himself in the instant FIR Ex.PE/1 and who has failed to prove his injuries as narrated by him in FIR No.64/2012, P.S. Bani Gala Islamabad Ex.PX. Even no evidence is available on record that, he ever received any fire-arm injury as referred in his statement. No Doctor has been produced in the entire trial to justify the injuries of PW-14. Weapon of offence

has not been matched with the fire empties of .30 bore pistol recovered through Ex.PJ, therefore, recovery has no significance in this case. Even otherwise, the evidence of last seen witnesses, contradicts, especially when complainant PW-1 himself not referred the name of Haider Mehmood (appellant) in the FIR Ex.PE/1. All three witnesses of last seen placed Haider Mehmood in the event. The witness of Wajtakar PW-7 Muhammad Hayat, who is a police official, improved his statement through different incidents, which seems to be dishonest and availability of PW-7 is not believable on the basis of his improvements.

30. In a nutshell, we are of the considered view that PW-14 failed to prove his presence in the entire picture of murder, especially when his own status is doubtful. The entire evidence of PW-14, has not been corroborated with any independent source, which creates doubt in the entire prosecution case, especially when PW-14 is a nominated accused in the FIR and he was converted as witness without declaring him innocent or otherwise, and there is no justification available on record through which prosecution can justify as to why they have not produced Doctor who examined PW-14, the MLR of PW-14 and the I.O. who investigated the case FIR No.64/2012 registered on the complaint PW-14. The prosecution has also failed to explain the reasons as to why both these cases have not been investigated at the same time and by the same Investigating Officer, or as to why they have not taken PW-14 Jamal Khan's injuries (if any) as series of first incident of murder of Kashif Anar (deceased). In essence, the prosecution has failed to establish the case beyond reasonable doubt and the entire scenario creates doubts in the prudent mind and it is a settled law that when any doubt emerges on record, it is sufficient to extend the benefit to the accused, reliance in this regard is placed upon 2014 PCr.LJ 928 (Muhammad Hanif alias Pocho vs. The State), 2014 PCr.LJ 783 (Ali Haider, etc. vs. The State), 2014 PCr.LJ 885 (Nawab Ali vs. The State), 2014 PCr.LJ 669 (Muhammad Ali alias Faisal vs. The State), 2014 PCr.LJ 1123 (Hajan, etc. vs. The State), 2014 PCr.LJ 1707 (Muhammad Bux alias Papoo Shar vs. The State), 2015 PCr.LJ 369 (Ayub vs. Munsif, etc.), 2015 PCr.LJ 735 (Iqbal vs. The State, etc.), 2015 PCr.LJ 416 (Sami Ullah, etc. vs. The State, etc.), 2014 PCr.LJ 1727 (Mir Muhammad vs. The State, etc.), 2014 PCr.LJ 354 (Siyar Muhammad vs. The State, etc.), 2014 PCr.LJ 69 (Nawaz alias Najee vs. The State, etc.) and 2011 SCMR 646 (Tahir Khan versus The State).

31. The prosecution has also referred sodomy as alleged motive for commission of offence, but there is no evidence in the entire case regarding any attempt to commit sodomy of Jamal Khan or deceased Kashif Anar, except his own statement, which has not been corroborated through an independent source, hence, we are of the view that prosecution has failed to establish the role of each appellant in the evidence. Even otherwise, in some statements, it has been suggested that fatal shot which resulted into murder of Kashif Anar, was allegedly ascribed to Naeem Afridi (P.O.), although the matter is still not connected through an independent piece of evidence except the statement of PW-14, whose testimony is not believable, as there is difference of ocular and medical evidence, and even motive is shrouded in mystery.

32. We have gone through the evidence and we are not in agreement with the findings of learned trial Court qua the charges of abduction under section 365 PPC, as there is no evidence which confirms that Kashif Anar has ever been abducted by force or there is any element of secret confinement of deceased Kashif Anar, as the dead body of Kashif Anar was recovered from an open space in Sector G-6/4, which was referred in testimony of Muhammad Ijaz Abbasi, PW-10, who informed the police and later on identified the dead body of deceased Kashif Anar, the charges of abduction can only be seen in the light of testimony of PW-14, whose testimony is not believable, therefore, the main charges of murder have not been proved through independent sources and the reasons are sufficient to hold that abduction is not available in the entire record.

33. We have meticulously seen the entire evidence and we could not see an iota of evidence through which the prosecution can ever prove the removal of any evidence, especially when the I.O. has taken over the vehicle No. LHX-4044, allegedly used in the shifting of dead body of Kashif Anar and there is no blood or related articles have been recovered from the said vehicle, even the I.O. has not explained the elements of removal of evidence from the place of occurrence to another place, hence, the same is not believable. We have also gone through the defence evidence recorded by the appellants under section 342 Cr.P.C. and the statement of appellants Ch. Usman in which he was asked to answer the question as to why this case against you, whereupon he categorically referred the reasons i.e. recoveries are illegal, Jamal Khan is accused, who could not become a witness in his own case, the ingredients of the incident have not been proved

and even Jamal Khan PW-14 has failed to prove his own injuries and there is contradiction in medical and ocular account, therefore, prosecution has failed to prove the case beyond any shadow of doubt. Finally, we have gone through the judgment dated 17.06.2016 and observed that, same is passed on the basis of tainted and erratic evidence.

34. In view of above, we on the basis of benefit of doubt, allow Criminal Appeal No.127/2016 "Mehmood Azam versus The State & another" and Criminal Appeal No.133/2016 "Ch. Usman Mehmood & another versus The State" and set-aside the conviction passed by learned Trial Court and acquit the appellants from charges of murder of deceased Kashif Anar in case FIR No.358, dated 22.08.2012, under sections 302/365/377/511/201/34, PPC, P.S. Aabpara, Islamabad. Similarly, in view of above discussion, the Criminal Revision No.75/2016 "Muhammad Anar versus Ch. Usman Mehmood & others" stands dismissed as there is no iota of evidence available on record to establish the enhancement of punishment of the appellants or to prove charge regarding "attempt of sodomy" against the appellants, therefore, all the appellants be released forthwith if not required in any other case.

(ATHAR MINALLAH)
JUDGE

(MOHSIN AKHTAR/KAYANI)
JUDGE

Announced in open Court on 29th May 2017.

JUDGE

JUDGE

Approved for reporting

Irfan Ali

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