

## **JUDGMENT SHEET.**

### **ISLAMABAD HIGH COURT, ISLAMABAD** **JUDICIAL DEPARTMENT.**

#### **Criminal Appeal No.115/2016**

<b>Moaz Waqar</b>	<b>Versus</b>	<b>The State &amp; another</b>
Appellant by:		Mr. Shajjar Abbas Hamdani, Advocate.
Complainant by:		Syed Mohammad Tayyab, Advocate & Ch. Wajahat Elahi, Advocate.
State By:		Mr. Sadaqat Ali Jahangir, State Counsel.

#### **Criminal Appeal No.126/2016**

<b>Asif Mehmood</b>	<b>Versus</b>	<b>The State &amp; another</b>
Appellant by:		Mr. Haider Mehmood Mirza, Advocate.
Complainant by:		Syed Mohammad Tayyab, Advocate & Ch. Wajahat Elahi, Advocate.
State By:		Mr. Sadaqat Ali Jahangir, State Counsel

#### **Jail Appeal No.114/2016**

<b>Asif Mehmood</b>	<b>Versus</b>	<b>The State</b>
Appellant by:		Mr. Haider Mehmood Mirza, Advocate.
State By:		Mr. Sadaqat Ali Jahangir, State Counsel

#### **Murder Reference No.06/2016**

<b>The State</b>	<b>Versus</b>	<b>Syed Moaz</b>
State By:		Mr. Sadaqat Ali Jahangir, State Counsel
Respondent by:		Mr. Shajjar Abbas Hamdani, Advocate.
Date of hearing:		29.01.2018

### **JUDGMENT**

**MOHSIN AKHTAR KAYANI, J.** Through this single judgment we intend to decide Criminal Appeal No.115/2016 filed by Moaz Waqar (appellant), Criminal Appeal No.126/2016 filed by Asif Mehmood and Jail Appeal No.114/2016 also filed by Asif Mehmood (appellant) who have been convicted and sentenced by learned Additional Sessions Judge (West) Islamabad in case FIR No.394, dated 12.10.2013, U/S

365-A, 302, 419, 420, 201/34 PPC, P.S. Aabpara, Islamabad vide judgment dated 31.05.2016 in the following manner:-

*I. The accused Moaz Waqar is convicted u/s 302 (b) read with section 34 of PPC and is sentenced to capital punishment of death, as Tazir. He shall be hanged by neck till he be dead. The accused will also pay amount of compensation in the sum of Rs.3,00,000/- each to the legal heirs of deceased u/s 544-A of Cr.P.C. The amount of compensation shall be recoverable as an arrears of land revenue and it is further directed that in default of payment or of recovery as aforesaid, the convict shall suffer imprisonment for a period of 6 months (S.I.), u/s 544-A (2) of Cr.P.C.*

*II. Accused Asif Mehmood is guilty of offence under section 302 (b) PPC for committing qatl-e-Amd of deceased Fahmina, however, due to existence of mitigating circumstances the maximum punishment of death is not awarded and he is convicted to undergo imprisonment for life, as Tazir in order to meets the end of justice. He is also burdened with compensation to the tune of Rs.200,000/- under section 544-A Cr.P.C. to be paid to the legal heirs of the deceased and in default thereto to further undergo six months S.I.*

*III. The accused are convicted u/s 201/34 of PPC and are sentenced to rigorous imprisonment for 5 years alongwith fine of Rs.20,000/- . In case of non payment of fine, the accused will undergo further rigorous imprisonment for the period of two months.*

*IV. The accused are convicted u/s 420/419/34 of PPC and are sentenced to rigorous imprisonment for 5 years alongwith fine of Rs.20,000/-. In case of nonpayment of fine, the accused will undergo further rigorous imprisonment for the period of two months.*

Appellants have been held entitled to the benefit of section 382 (B) Cr.P.C.

Murder Reference No.06/2016 for confirmation or otherwise of death sentence of appellant Syed Moaz Waqar shall also be decided through this single judgment.

2. Brief facts of the case are that complainant Nosheba Taskeen (Nosheeba Tasleem) filed a complaint Ex.PQQ to SHO P.S. Aabpara, Islamabad with the following allegations:-

"گزارش ہے کہ میں مسماۃ نوشابہ تسکین، ساکن مستقلہ طارق روڈ، مکان نمبر C-333 بلاک 2، محلہ النصر بلڈنگ پی، ای، سی، ایچ، ایس کراچی شرقی کی رہائشی ہوں۔ یہ کہ میری بیٹی فہمینہ عمیر سلیمان جو کہ فہمینہ چوہدری کے نام سے بھی جانی جاتی ہے سنگاپور بلاک 41 اپارٹمنٹ سوانا کنڈور پارک کی مستقل رہائشی ہے اور ایڈورٹائزنگ کے شعبے سے وابستہ ہے گزشتہ 2 1/2 ماہ سے سنگاپور سے اسلام آباد / کراچی اپنے کام کے لیے آئی ہوئی تھی، سنگاپور ہی کے ایک جُز وقتی رہائشی ایجنٹ "معاز وقار" ولد سید وقار مستقل رہائشی مکان نمبر 134، گلی نمبر 65، F-11/4، اسلام آباد فون نمبرز -0333-5521916 (بہن کا نمبر)، 0323-2316815، 0333-5353232 نے میری بیٹی کو advertising کا کام دلانے کا وعدہ کیا اور ہماری معلومات کے مطابق پیپسی کمپنی کے Director Advertisement "عامر" نامی شخص سے

اشتہار کے کام کے سلسلے میں Meeting کے لیے بلوایا نیز یہ کہ میری بیٹی کو اُسی معاز وقار نے اسلام آباد اور کراچی میں پلاٹ خریدوا کر دینے کا وعدہ بھی کیا اور فہمینہ کو اپنے ساتھ پیسے/Jewelry لانے کا کہا معاز وقار نے فہمینہ سے 40 لاکھ کی advance jewelry وصول کی، 9-10-2013 تاریخ کو فہمینہ کراچی سے اسلام آباد بذریعہ ہوائی جہاز آئی اور ہوٹل مارگلہ نزد کنونشن سینٹر اسلام آباد میں رہائش اختیار کی، 10-10-2013 کو شام 6 بجے فہمینہ کا میرے سے آخری رابطہ ہوا کہ وہ Meeting کے لیے جا رہی ہے اسکے بعد اگلی صبح یعنی 11-10-2013 کو علی الصبح فہمینہ کی اسلام آباد سے سنگاپور کی فلائٹ تھی، تاہم اُس نے فلائٹ پر سفر نہیں کیا اور نہ ہم سے کوئی رابطہ ہوا، 11-10-2013 کو دو پہر 3 بجے SMS کراچی میں میرے فون نمبر 0321-2011925 پر 0334-9554181 موصول ہوا کہ "آپ کی بیٹی ہماری قبضہ میں پشاور میں زندہ ہے، دو آدمیوں کے ساتھ، ہم نے ایک کو قتل کر دیا ہے اور ایک زندہ ہے، اگر آپ اپنی بچی کو خیریت و زندگی چاہتے ہیں تو کسی کو اطلاع نہ کریں کیونکہ ہمیں آپ کے کراچی و پنڈی گھر کا پتہ معلوم ہے ہم سب کو قتل کر سکتے ہیں، ہمیں 2 کروڑ روپے 2 دنوں میں ادا کریں میں آپ کو دوبارہ SMS کروں گا پیسے کا انتظام کریں، ایک پولیس والا آکر پیسے لے جائے گا، میں پھر دوہرا رہا ہوں کہ کسی کو خبر نہ کریں آپ پر میری نظر ہے۔" میں خوفزدہ حالت میں رہی اور آج صبح کراچی سے اسلام آباد آئی ہوں گزارش ہے کہ ہمیں معاز وقار ولد سید وقار احمد کے متعلق قوی یقین ہے کہ اُس نے عامر نامی شخص جس کا حقیقی نام کچھ اور بھی ہو سکتا ہے اور دیگر نا معلوم افراد کے ساتھ مل کر میری بیٹی فہمینہ عمیر سلیمان کو اغوا کیا ہے۔ جس بے جا میں رکھا ہے اور تاوان طلب کر رہے ہیں اور ہماری دانست میں اس سارے گھناؤنی فعل کے متعلق معاز وقار کے والد سید وقار، اسکی والدہ ثمینہ وقار، بہن جویریہ اور بھائی کو علم ہے۔ لہذا معاز وقار، عامر نامی شخص اور دیگر شریک مجرمان کے خلاف اغوا برائے تاوان کے جرم کی FIR درج کی جائے اور مجرمان کو قرار واقعی سزا دلوائی جائے اور میری بیٹی فہمینہ عمیر سلیمان کو بازیاب کرایا جائے۔"

3. On the basis of said complaint/ Ex.PQQ, case FIR No.394, dated 10.10.2013, U/S 302/201, 419/420, 365-A/34 PPC, P.S. Aabpara, Islamabad was registered as Ex.PTT. The Investigation Officer arrested appellant Moaz Waqar who during the course of investigation disclosed that he alongwith one Asif Mehmood committed murder of deceased Fahmina, therefore, the complainant nominated accused Asif Mehmood vide supplementary statement dated 14.10.2013 and appellant Asif Mehmood was also arrested in this case. On their pointation dead body of deceased Fahmina as well as her personal belongings and .30 bore pistol were recovered and taken into possession. After preparation of autopsy report Ex.PE, Investigation Officer completed the investigation and submitted the Challan U/S 173 Cr.P.C. against the present appellants before learned trial Court, after recording of evidence of 13 PWs including Dr. Tanvir Afsar Malik, Medico-Legal Officer, Federal Government Services Hospital, Islamabad (PW-1), Dr. Sabeen Aslam, Registrar Gynie Department, Federal Government Services Hospital,

Islamabad (PW-2) and Dr. Muhammad Naeem Jan (PW-10), concluded the evidence whereafter the statements of appellants were recorded U/S 342 Cr.P.C. and both the appellants have been convicted and sentenced with abovementioned punishments vide impugned judgment dated 31.05.2016, hence, instant appeals/ Murder Reference.

4. Learned counsel for appellants contended that conviction passed by learned trial Court U/S 302 (b)/ 419/ 420/ 201/ 34 PPC is against law and facts of the case and the entire case is based upon circumstantial evidence in which the chain of evidence is missing whereas the learned trial Court has ignored the standard of proof and convicted the appellants without any basis; that the instant case has not been proved beyond any shadow of doubt and the recoveries have been planted in order to frame the appellants in this case; that dead-body was not recovered on the pointation of appellants and it has been brought in evidence through PW-6 who had already reached at the place of dead-body, whereafter, the appellants were taken to the said place as PW-6 was watching and performing his duties as Guard before arrival of police party; that the complainant in this case has changed her stance on different occasions and the evidence of CCTV video in USB/ Ex.P-90 from Margalla Hotel has not been proved in accordance with law and there are glaring contradictions and dishonest improvements made by the prosecution in this case; that there is no direct evidence of last seen available against the appellants even the motive has not been proved independently; that the recovery of huge amount from appellant Moaz Waqar, was brought by the father of appellant which has been planted upon the appellants in the police station through different recovery memos in order to frame the appellants in this case; that USB/Ex.P-90 has not been proved in terms of the Qanun-e-Shahadat Order,1984 being an electronic document.

5. Conversely, learned counsel for complainant as well as learned State Counsel contended that the prosecution has successfully brought every incriminating piece of evidence against the appellants whereby the appellant Moaz Waqar has been identified by PW-09/ Manager Margalla Hotel, Islamabad when he paid the bill of deceased Fahmina; that Ex.P-17 is invoice bill of Margalla Hotel which was signed by appellant Moaz Waqar and the defence side has not cross examined the star witness, hence, the statement to that extent has to be considered as admitted against the appellant; that car bearing

registration No.IDD-8365, Honda City used in said crime for removal of evidence was recovered from appellant Moaz Waqar and the same has been proved through Ex.P-1 rent agreement signed by the appellant Moaz Waqar; that vehicle used in crime has also been proved through the evidence of owner of rent-a-car business; that prosecution has proved the injuries of the deceased Fehmina through independent evidence of Dr. Tanvir Afsar Malik, Medico-Legal Officer, Federal Government Services Hospital, Islamabad (PW-1), Dr. Sabeen Aslam, Registrar Gynae Department, Federal Government Services Hospital, Islamabad (PW-2) and Dr. Muhammad Naeem Jan (PW-10).

6. Arguments heard, record perused.

7. From the perusal of record, it has been observed that case FIR No.394, dated 12.10.2013, U/S 365-A, 302, 419, 420, 201/34 PPC, P.S. Aabpara, Islamabad was registered on the complaint of Mst. Nosheba Taskeen (PW-11)/ Mother of deceased through her complaint Ex.PQQ with the allegation against appellant No.1/ Moaz Waqar in which she categorically alleged that her daughter Fahmina Ch. is attached with advertising business and she came to Islamabad-Karachi 2 ½ months ago from Singapore for her job and she met a part time agent Moaz Waqar s/o Syed Waqar in Singapore who promised her daughter to provide a business of advertisement and managed to engage her services in Pepsi company through Director Advertisement namely Amir. Complainant further alleged in her complaint that said Moaz Waqar called her daughter (deceased) and promised that he will arrange plots in Islamabad and Karachi and in order to arrange the said property he directed Fahmina to bring her jewelry, which was approximately worth of Rs.4,000,000/-. On 09.10.2013 Fahmina came to Islamabad from Karachi by air and stayed at Margalla Hotel near Convention Centre, Islamabad and last contact made by Fahmina with the complainant was on 10.10.2013 at about 06:00 p.m. At that time she told the complainant that she is going for a meeting whereafter, she has to leave for Singapore in morning on 11.10.2013 through flight however, she was not boarded flight and on 11.10.2013 complainant received SMS on her phone No.0321-2011925 from 0334-9554181 that her daughter is in custody of them in Peshawar alongwith two other persons and they have killed one of them and one is alive and if you (complainant) want to save your daughter then don't let anybody know as we are aware of your addresses in

Rawalpindi and Karachi and we might kill all of them and claimed ransom of two crores within two days, therefore, complainant reached Islamabad and expressed her suspicion on Moaz Waqar as well as Amir (whose actual name might be changed) and contended that both have abducted her daughter Fahmina and are claiming ransom. She nominated appellant Moaz Waqar, Syed Waqar (father), Samina Waqar (mother), Javeria (sister) and his brother.

8. The police entertained complaint Ex.PQQ and converted the same into FIR No.394/2013/ Ex.PTT and started investigating the matter. The Investigation Officer Munawar Ahmed, Inspector (PW-12) arrested the appellant Moaz Waqar on 14.10.2013 on spy information from Bani Gala in vehicle No.IDD-8365 Honda City, Silver Colour whereby PW-12 contended that appellant Moaz Waqar disclosed that he picked deceased Fahmina on his vehicle No.IDD-8365, Honda City and dropped her at Centaurs Mall and went away and he did not know about her whereabouts. PW-12 (Investigation Officer) got recovered different articles Ex.P8 to Ex.P45 vide recovery memo Ex.PJ. The vehicle No.IDD-8365/Honda City was also taken into possession vide recovery memo Ex.PH and same was retained in police station. PW-12 further contended that on 14.10.2013 during the course of investigation the appellant Moaz Waqar made a disclosure that he alongwith his co-accused Asif had abducted deceased Fahmina from Margalla Hotel on their vehicle No.IDD-8365/Honda City, silver color and after committing her murder they have thrown her dead body at Shahpur Road Khajorian under the culvert in a nullah, thereafter, he led the police party and had pointed to the place of recovery of dead body i.e. Shahpur Road Khajorian and got recovered the dead body whereby memo of pointation of place of recovery of dead body was prepared as Ex.PM and the dead body was taken into possession vide memo of recovery of dead body Ex.PN. PW-12 further contended that memo of identification Ex.PRR was prepared and the same was signed by the witnesses and their statements were recorded U/S 161 Cr.P.C. whereby the photographs of place of recovery were captured. The land from where dead body was recovered owned by one M.A Khalid and the house owned by Deputy Secretary Safeer Abbasi which was a nullah under the culvert at Shahpur Road Khajorian, Islamabad. The inquest report of the deceased Fahmina was prepared as Ex.PE. The application for

postmortem was prepared as Ex-PB and was sent alongwith dead body to the Polyclinic Hospital, Islamabad. The postmortem was conducted and the dead body was handed over to the legal heirs for burial purposes through receipt Ex.PSS. The last worn clothes of the deceased alongwith weapon of offence i.e. cord Ex.P48, T-shirt Ex.P46, pent Ex.P51, brazier Ex.P47, razai/blanket Ex.P50, separate parcels of the weapon of offence/ cord, last worn clothes and blanket were prepared and sealed with the official stamp KJ 1/1 and taken into possession vide memo of recovery Ex.PQ. The site was inspected and unscaled site map plan was prepared as Ex.PWW. The request for obtaining phone record of accused Moaz and complainant was prepared as Ex.PXX and request was also made for constitution of Joint Investigation Team as Ex.PYY. The appellant Asif Mehmood was nominated vide supplementary statement of complainant dated 14.10.2013. PW-12 further contended that on 17.10.2013 appellant Moaz Waqar during physical custody made disclosure and led to his house No.1615, at Bani Gala, from his living room at the northern side, he got recovered four white gold rings Ex.P52/1-4, two earrings Ex.P54/1-2, three chain lockets Ex.P53/1-3 which were taken into possession vide recovery memo Ex.PR. The owner of vehicle bearing No.IDD-8365 Honda City, presented the agreement of the vehicle Ex.P1, authority letter Ex.P3. Investigation Officer also got recovered the mobile I-4, Black Color, which was used for the purpose of ransom through recovery memo Ex.PS. On 20.10.2013 the Investigation was transferred to Qasim Khan, Inspector.

9. PW-13 Muhammad Qasim Khan Niazi, Inspector got recorded his statement before the learned trial Court and contended that on 22.10.2013 he arrested appellant Asif Mehmood near Aabpara Chowk and on 24.10.2013 Waqar Ahmed (father), Samina Waqar (mother) and Sidra Noor (sister of appellant Moaz Waqar) who were nominated in the FIR were discharged from the said case however, PW-13 further contended that 12 photographs Ex.P6/1-12 of the place of recovery of dead body were taken into possession by him vide recovery memo Ex.PG. The statements of witnesses were recorded U/S 161 Cr.P.C. PW-13 further contended that deceased Fahmina was murdered by strangulating with a cord Ex.P48. On 25.10.2013 PW-13 got recovered a pistol concealed by appellant Moaz Waqar at Kashmir Highway and a separate FIR U/S 13/20/65 A.O. was also

registered. PW-13 also got recovered the SIM used for the purpose of ransom demanded by the appellant Moaz Waqar and appellant Moaz Waqar also got recovered under his clothes an amount of Rs.400,000/- which was managed through sale consideration of jewelry articles of deceased sold by the appellant Moaz Waqar which were taken into possession vide recovery memo Ex.PEE. Appellant Asif Mehmood led the police party to his house in *Satra Meel* and got recovered two suitcases belonging to deceased Fahmina one hand bag and disclosed that these are the same articles which were given to him by appellant Moaz Waqar on 10.10.2013, the items which were present in those suitcases Ex.P65 to Ex.P89/1-4 were also taken into possession vide a separate recovery memo Ex.PFF. Appellant Moaz Waqar also got recovered SIM No.03345376429 from vehicle No.IDD-8365 which was also taken into possession through recovery memo Ex.PGG/Ex.PU. PW-13 received an amount of Rs.6 lacs from the father of appellant Moaz Waqar on 29.10.2013, Rs.5 lacs on 04.11.2013, Rs.140,000/- on 06.11.2013. Father of appellant Asif Mehmood also handed over to PW-13 an amount of Rs.80,000/- on 06.11.2013 and Rs.160,000/- on 11.11.2013, all these amounts were taken into possession vide recovery memo Ex.PHH, Ex.PJJ, Ex.PKK, Ex.PLL and Ex.PMM.

10. Besides the above referred investigation conducted by two inspectors the prosecution brought on record the statement of complainant Nosheba Taskeen as PW-11, Jahangir Hussain, Manager Margalla Hotel, as PW-9, Nazakat Hussain, owner of rent-a-car as PW-4, Sikandar Ali, Constable as PW-6, Malik Amir Shahzad, draftsman as PW-7, Iftikhar Ahmed, Head Constable as PW-8, Muhammad Irshad, Head Constable, as PW-5, Muhammad Rasheed, ASI as PW-3, and three doctors i.e. Dr. Tanveer Afsar Malik, MLO as PW-1, Dr. Sabeen Aslam as PW-2 and Dr. Muhammad Naeem Jan as PW-10 who examined deceased Fahmina.

11. Dr. Tanvir Afsar Malik, Medico-Legal-Officer, Federal Government Services Hospital, Islamabad appeared as PW-1 who conducted the autopsy observed as under:-

**“EXTERNAL APPEARANCE**

*It was a deadbody of female of very good physique wearing grey color half sleeve T-Shirt, bra dark pink colour, navy blue colour tight jeans, white colour underwear, with eyes closed and mouth opened, with protruded tongue which was bitten in between teeth. Body was in advance stage of de-composition and there abundant amount of maggots all over*



*the body with foul smell coming out of the body. There was peeling of skin over the limbs (upper and low limbs).*

#### **EXTERNAL EXAMINATION**

*On external examination following injuries were observed:-*

1. *Injury No.1: There was a ligature mark on the middle of the neck tightly with rope and depression of the ligature mark present all over the horizontal aspect of the neck which was about 20 inches in all circumference.*
2. *Injury No.2: There was a contusion mark on the medi aspect of upper 1/3 rd of the left thigh measuring 08 c.m. x 6 c.m. x 4 c.m. in diameter which was only skin deep.*
3. *Injury No.3: Punctured wound over the left side of the scalp with surrounding redness, which was deeply seated.*

*On dissection of the skull, dural membranes of the left side of the skull were ruptured but there was no extra dural or sub dural heamorrhage.*

*On dissection of neck, there was deep contusion mark all over the transfers aspect of the sub-cutanaous tissues and muscles of neck, Tracheal rings were intact Ilyoid bone not fractured, clinical. On opening of the tracheal cavity slightly blood stained fluid was present.*

*Skull and vertebrae healthy, membranes spinal cord, dural membranes of the left side of the skull were ruptured, otherwise healthy.*

#### **ABDOMEN.**

*Walls peritoneum, mouth pharynx and oesophagus, diaphragm pancreas, liver, spleen, kidneys bladder were healthy. Stomach and its contents were healthy and semi digested contents in small quantity were present. Large intestine and contents were healthy with miled fecal matter.*

#### **EXTERNAL & INTERNAL ORGANS OF GENERATION.**

*Pad was present due to menstruating, otherwise healthy.*

#### **OPINION**

*In my opinion, deceased sustained ligation over the middle of the neck which was homicidal in nature, causing the obstruction of upper respiratory tract organs causing the hypoxia and later-on anoxia causing the death of the deceased. All these injuries were antemortem in nature and were sufficient to cause death in ordinary course of life.*

*Probable time between injury and death five to seven minutes and probable time between death and postmortem approximately four day."*

12. The prosecution produced Dr. Sabeen Aslam, Registrar Gynie Department, Federal government Services Hospital, Islamabad as PW-2 who has also given the details referred above by PW-1. The post-mortem report has been brought on record as Ex.PA.

13. Dr. Muhammad Naeem Jan appeared as PW-10 who issued death certificate Ex.POO of deceased Fahmina.

14. The above referred case prepared by the prosecution is based upon evidence of last seen, recovery of dead body, recovery of articles of deceased, recovery of SIM used for the purpose of ransom, recovery of crime weapon i.e. Cord Ex.P48, therefore, in order to verify all these factors we have appraised the entire evidence submitted by the prosecution, however, all these portions of chain have to be seen separately in order to justify the conviction.

### **LAST SEEN.**

15. The prosecution has produced Jahangir Hussain, Manager of Maralla Hotel, Islamabad as PW-9 who got recorded his statement before the Court that on 09.10.2013 one lady namely Fahmina Umair Suleman came to hotel and she checked in the hotel by the hotel staff. She provided copy of her passport. She was given room No.134 of the hotel. She said that her husband will come and he should be allowed to come inside the room. On 10.10.2013 one man whose name was later on revealed Moaz Waqar (appellant) came and paid the total charges of the room and went away and at about 12 noon same day he again came on silver colour Honda Civic car and placed the luggage of deceased Fahmina in his vehicle and went away with the deceased Fahmina. On 12.10.2013 the footage of CCTV camera was taken in USB Ex-P90 regarding the arrival and departure of the deceased and accused, was handed over to the I.O alongwith entry card Ex.P91 (Learned defence counsel objected on the exhibition of USB in terms of articles 164, 73 and 78-A of Qanun-e-Shahdat Order, 1984). During the course of cross examination following factors have been observed:-

- (i) *The Chief Security Officer of the hotel is the concerned person who looks after the camera and security system.*
- (ii) *The Chief Security Officer is also not an I.T man.*
- (iii) *There is no person specifically appointed for monitoring the CCTV footage.*
- (iv) *USB was not prepared by PW-9 it was prepared by the I.T person, who prepared the USB under his permission. PW-9 doesn't remember the name of person who prepared the USB.*

- (v) *PW-9 is not aware that who was on duty when the CCTV footage was prepared and was handed over to the police on 12.10.2013.*
- (vi) *The I.O. also did not record the statement of the person who prepared the USB and brought it to me to produce to the I.O.*
- (vii) *PW-9 does not know the contents of the footage because he neither saw it before nor after it was prepared.*
- (viii) *Police did not interrogate any bell man or porter who took the baggage of the deceased to or from her room.*
- (ix) *Police did not record any evidence or interrogate any person having seeing the deceased lady boarding the car or any person taking her luggage.*
- (x) *At the time when the deceased was checked out from the hotel the bill was prepared by Mr. Sami-ur-Rehman he has now left the job about year ago.*
- (xi) *The only other thing which can show the check in or check out of guest is the computer generated bill.*

16. The above referred evidence is on two particular points i.e. last seen by Jahangir Hussain PW-9 and CCTV footage of deceased Fahmina with appellant Moaz Waqar, when the above referred two different set of evidence thrashed out, this Court has come to the conclusion that PW-9 in his statement has never pointed out towards appellant Moaz Waqar in the trial Court nor even identified appellant Moaz Waqar in the Court that he is the same man who was in company of deceased Fahmina when she left hotel on 10.10.2013. Whereas the requirements of last seen evidence under the law is to prove that witness has seen the deceased in company of accused and he identified the accused in Court or in identification parade or he knew the accused otherwise from his credentials on his personal information but no such evidence was brought through PW-9 who is the material witness of last seen.

17. The second important piece of evidence which was brought on record in the statement of PW-9 is USB Ex.P90 regarding CCTV footage on 12.10.2013 in which arrival and departure of deceased has been shown alongwith entry card Ex.P91.

18. The above referred evidence in cross examination clearly reveals that PW-9 has never seen the said CCTV footage neither it was prepared by him nor the same was

shown to him in the learned trial Court. It has further been observed from the evidence that it is not his job to prepare such kind of footage but it was prepared by some analyst who was not called as witness in the Court, although, I.O has taken into possession the said USB but the learned trial Court has not seen the same even the same could not be considered by learned trial Court while passing the sentence, therefore, it can safely be concluded that learned trial Court has not justified the conviction on the strength of Ex.P90. Although this Court during the course of hearing called the investigation officer as well as Prosecutor on 10.07.2017 to display the material contained in USB Ex.P90 as the prosecution has never relied upon the said piece of evidence nor it was displayed in the learned trial Court, therefore, this Court issued direction to learned Advocate General, ICT to ensure the production of Ex.P90 alongwith instrument on which the same shall be displayed. The video was displayed by the I.T. Department of this Court on Laptop on 13.12.2017 whereby this Court has observed that first portion of CCTV footage reveals that a lady on 10.10.2013 at about 03:34 p.m. in Margalla Hotel at counter/ reception desk is filling the documents, the second portion reveals that on the said date about 12:30 on hotel counter, a man is filling the forms, third portion reveals that on the said date a person wearing blue shirt with French cut beard coming from lift entered into a room of the hotel, fourth clip is dated 10.10.2013 at about 11:15:39 a man entered into a room and at about 01:11 p.m. said lady left the room and at about 12:28 male person left the room of the hotel.

19. The above referred video contents do not reveal that a male and female were coming together or leaving together from the hotel in any manner even they have not been seen in conversation with each other in any of the video content nor prosecution put any effort to get verified all video contents from complainant/ mother of deceased (Nosheba Taskeen)/PW-11 neither the same was explained by the Investigation Officer in his testimony.

20. In view of above background we are of the view that objection raised in terms of articles 164, 73 and 78-A of Qanun-e-Shahdat Order, 1984 has to be seen in terms of judgment reported as 2016 SCMR 2084 “Asfandiyar and another versus Kamran and another” wherein it has been held that:-

*Art. 164---Closed-Circuit Television (CCTV) footage---Evidentiary value--  
-Mere producing of CCTV footage as a piece of evidence in court was not  
sufficient to rely upon the same unless and until it was proved to be  
genuine---In order to prove the genuineness of such footage it was  
incumbent upon the defence or prosecution to examine the person who  
prepared such footage from the CCTV system.*

*Under Article 164, Qanun-e-Shahadat Order, 1984 trial court may  
allow production of Closed-Circuit Television (CCTV) footage but it was  
incumbent upon the defence to prove the same in accordance with the  
provisions of the Qanun-e-Shahadat Order, 1984. Defence had to  
produce, the concerned person who had prepared the footage from the  
C.C.T.V. system in order to prove the same. Adverse party was to be given  
an opportunity to cross-examine the said witness regarding the  
genuineness or otherwise of the said footage.*

*Mere producing of CCTV footage as a piece of evidence in court  
was not sufficient to rely upon the same unless and until it was proved to  
be genuine. In order to prove the genuineness of such footage it was  
incumbent upon the defence or prosecution to examine the person who  
prepared such footage from the CCTV system.*

21. In view of above authoritative judgment of apex Court we are of the confirmed view that the prosecution has not produced the author of said Ex.P90 before the Court nor the Investigation Officer recorded statement of any person who recorded the said video or prepared Ex.P90 which is necessary evidence to be corroborated, therefore, Ex.P90/USB has no evidentiary value for the purpose of capital punishment nor the same evidence can be used as incriminating material against the appellant Moaz Waqar, similarly evidence of Hotel Manager Jahangir Hussain/ PW-9 is also not in accordance with law to be considered as valid piece of evidence to be relied upon.

### **RECOVERY OF DEAD-BODY**

22. The second important aspect in this case is the recovery of dead body of Fahmina Chaudhry which was recovered through recovery memo Ex.PN dated 14.10.2013 in presence of Sarwar Naeemi, ASI and Sikandar Ali, Head Constable-2928, P.S. Aabpara as well as Inspector Munawar Ahmed/ Investigation Officer whereby the appellant Moaz Waqar after disclosure of place of dead-body led the police party to the place of recovery on 14.10.2013 and got recovered the dead-body of deceased Fahmina from Shahpur Khajorian under a pulley which was wrapped in colorful quilt/ Razai. In order to verify the recovery memo Ex.PN, Sikandar Ali/2928 has been produced as PW-6 who stated before the Court that on 14.10.2013 appellant Moaz Waqar was arrested and vehicle No. IDD/8365 Honda City color silver was recovered, which was taken into

possession vide recovery memo Ex.PH alongwith different articles including one mobile set I-Phone of black color having SIM No.0332-1554670, cheque book, one iron ring, one silver locket, one Tawiz, two valets, two chargers of cellular phone, one receipt of Faisal Bank, One card of VIP jewelers, one empty SIM jacket, one battery card of vehicle comprising of Ex.P8 to Ex.P45 which were taken into possession vide Ex.PJ. PW-6 further stated that on the same date i.e. 14.10.2013 appellant Moaz Waqar made disclosure that dead body of Fahmina was disposed of in the area of Shah pur road, Khajoorian. The I.O. prepared memo of pointation as Ex.PM and also prepared recovery memo of dead body of Mst. Fahmina which was signed by Sarwar Naeemi, ASI. During the course of cross examination PW-6 acknowledged that:-

- (i) *It is correct that the recovery memo relating to recovery of dead body does not bear any time.*
- (ii) *The dead body was recovered at about 10:00 am.*
- (iii) *The vehicle in which the accused was seating were at number three.*
- (iv) *I can't say in which vehicle I was, volunteer, we had gone earlier then the police party.*
- (v) *I don't remember how I reached the place of recovery of dead body. I was there about 1-1/2 to 2 hours before the arrival of the police party.*
- (vi) *I had visited the place of recovery of dead body twice between 14.10.2013 and 24.10.2013. It is **correct that I had prior knowledge of place of recovery of dead body before 14.10.2013.***

23. The above referred statement of PW-6 who is star witness of recovery of dead body, has demolished the entire case of the prosecution by taking a stance that he had already reached at the place of dead body of deceased Fahmina Chaudhry prior to arrival of police party and vehicle in which appellant Moaz Waqar came to identify the place.

24. The other witness of said Ex.PN (recovery of dead body of Fahmina) is Munawar Ahmed/PW-12 (I.O) who got recorded his statement before the learned trial Court that on 14.10.2013 during the investigation accused Moaz Waqar made a disclosure that on 10.10.2013 he alongwith co-accused Asif had abducted deceased Fahmina from Magralla Hotel on their vehicle No.IDD-8365 Honda City color silver and after committing her

murder they have thrown her dead body at Shahpur Road Khajorian under the culvert in a nullah. He further stated that on disclosure of accused Moaz Waqar, he led the police party and had pointed to the place of recovery of dead body i.e. Shah Pur Road Khajorian and got recovered the dead-body. The memo of pointation of place of recovery of dead body was prepared as Ex.PM and the dead body was taken into possession vide memo of recovery Ex.PN. He further stated that photographs of place of recovery were captured and the place of recovery of dead body was between a land and a house whereas land was owned by one M.A Khalid and the house was owned by Deputy Secretary Safeer Abbasi which was a nullah under the culvert at Shahpur road Khajorian, Islamabad. During the course of cross examination PW-12 acknowledged that:-

- (i) *On 14.10.2013 dead body was recovered. It was not within the area of police station Aabpara, Islamabad. I had not informed in writing the concerned police station from which area the dead body was recovered.*
- (ii) *No private witness of the that area is associated from where the recovered of dead body was effected.*
- (iii) *The accused Moaz Waqar was taken for recovery at about 11.30 am.*
- (iv) *We had a Hafiz Anwar lady constable No.365 with us for recovery of dead body.*
- (v) *It is correct that the said lady constable was not cited as witness.*

25. The above referred statement of PW-6 & PW-12 if placed in juxtaposition then it can safely be concluded that there is a serious discrepancy among the statements of two witnesses who claimed to be at the place of recovery of dead body on 14.10.2013 but the most important factor comes on record is the difference of time where PW-6 had already reached at the place of recovery of dead body at about 10 a.m. whereas Investigation Officer alongwith other officials and accused Moaz Waqar reached at about 11.30 a.m. and if the same has to be seen in the light of earlier admission of PW-6. The entire recovery of dead body seems to be non-believable, hence, the prosecution has failed to discharge the onus of recovery of dead body of deceased Fahmina by appellant Moaz Waqar and a serious doubt emerges on record. Reliance is placed upon 2017 P.Cr.L.J 1435 [Lahore] "Muhammad Safeer and another versus The State and others" and

**2016 YLR 1291 [Peshawar] “Kabir Shah versus The State through Advocate General and another”.**

**RECOVERY OF JEWELRY OF DECEASED FROM APPELLANT MOAZ WAQAR.**

26. From the perusal of record it has been observed that jewelry of deceased Fahmina Chaudhry was recovered through Ex.PR dated 17.10.2013 which includes four gold rings (white gold), one gold chain (white gold), two gold tops (white gold), one locket (S) (white gold), one locket chain (white gold) alongwith small box, in presence of witnesses Sikandar Ali HC-2928 and Khawar Abbas 2268-C. All these jewelry items were recovered as per the prosecution story of PW-12.

27. In order to verify the status of recovery memo it is necessary to go through the relevant evidence of the witnesses concerning the said recovery items. Sikandar Ali, constable/PW-6 stated before the Court that on 17.10.2013 he joined the investigation with the I.O. The accused Moaz Waqar made disclosure that he could recover the gold ornaments of the deceased, he led us to his house number 1615 Bani Galla near Korang Nalla and from a living room situated towards northern side he recovered from the Almirah, gold ornaments consisting of 4 rings of white gold Ex.P52/1-4, three chains of white gold Ex.P53/1-3 and tops of ear Ex.54/1-2 which were taken into possession by the I.O. vide recovery memo which bears his signatures as Ex.PR/1 and Khawar Abbas. During the course of cross examination he acknowledged that:-

- (i) *The house from which the recovery of ornaments was affected through recovery memo of gold ornaments on 17.11.2013 was an inhabited house.*
- (ii) *It is the house where the parents and the family of accused Moaz Waqar are residing.*
- (iii) *I don't remember whether any lady police constable accompanied us.*
- (iv) *I don't know whether the door was opened or I.O had knocked the door.*
- (v) *I don't know or recognized the person who opened the door. I.O. had entered in the house. I also entered the house.*
- (vi) *The rooms from where the gold ornaments were recovered were on the northern side.*



- (vii) *I don't know it was on the ground floor or first floor. I was with the I.O and entered in the room.*
- (viii) *The Almeria from where the gold ornaments were recovered in the shape of safe, however, I don't remember the detail of Almeria.*
- (ix) *The accused Moaz Waqar himself was taking out the recovered gold ornaments.*
- (x) *I don't remember that any key was handed over for opening of Almeria by any one.*

28. The prosecution has not produced the second witness of recovery memo Ex.PR i.e. Khawar Abbas, Constable, therefore, the only witness left for the said recovery memo is Munawar Ahmed Inspector PW-12 who while appearing before the Court got recorded his statement that on 17.10.2013 accused Moaz Waqar during physical custody had made a disclosure and led to his house No.1615, at Bani Gala, from his living room at the northern side, he recovered four white gold rings Ex.P52/1-4, two earrings Ex.P54/1-2, three chain lockets Ex.P53/1-3 which were taken into possession vide recovery memo Ex.PR. During the course of cross examination PW-13 Muhammad Qasim Khan, Inspector (2<sup>nd</sup> I.O.) acknowledged that:-

- (i) *Accused Moaz further disclosed that deceased Fahmina had left the gold jewelry with him and returned back to Karachi.*
- (ii) *Accused Moaz Waqar had given the gold jewelry of deceased which was consisting upon few set of gold rings and locket and were given to the Raheem jeweler and he obtained two solid gold bar weighing 20 tolas.*
- (iii) *Thereafter, he had sold out the remaining jewelry which was consisting upon one large locket, one small locket, two rings and two earrings were sold to VIP jeweler against sale consideration of Rs.9 lacs and the two gold bars were sold against sale consideration of Rs.11 lac, while four rings, two earrings, and three chain lockets were remained with him which he had placed in his house.*

29. The prosecution produced Nosheba Tasleem as PW-11 (mother of deceased) to prove the identification of jewelry which were recovered from appellant Moaz Waqar. PW-11 stated before the Court that on 27.11.2013 she visited police station Aabpara

alongwith his son Umar Farooq whereby SHO Qasim and ASI Rasheed had shown the recovered articles consisting upon 36 items i.e. four rings of white gold and diamond of deceased Fahmina P-93/1-4, one pair of earrings of white gold and diamond P-94, one plain bracelet of white gold P-95, two gold chains P-96/1-2, pendant S shape of gold P-97 were recovered from accused Moaz Waqar however, she had not said that she identified the jewelry that it belonging to her daughter, however, during the course of cross examination she acknowledged the following facts regarding jewelry:-

- (i) *The jewelry mentioned by me including the jewelry given to her by me and my family and it also include the jewelry given to her In-laws.*
- (ii) *I had not given the receipt of purchase of which was jewelry given to the deceased to the police since, it was handed over to the deceased along with the jewelry.*
- (iii) *I did not inform the police about the shops from where I purchased the jewelry because police had not asked me.*
- (iv) *Similarly, no receipts were produced about the jewelry provided by the family of Umair Suleman to the deceased because police had not asked for it.*
- (v) *There is no restriction under any law to travel by Air with such huge amount of jewelry.*

30. The above referred evidence brought by the prosecution regarding recovery and identification of jewelry of deceased from appellant Moaz Waqar is admitted to the extent of identification of jewelry but the recovery proceedings which have been conducted by the police create suspicion especially when PW-6 is not aware of any of the steps of recovery proceedings as the house was inhabited, it was opened by whom? He is not aware whether the jewelry was recovered from room situated on ground floor or first floor and no one else was there in the said house, which shows that the entire proceedings seem to be artificial and even recovery has not took place in a manner in which it has been stated, therefore, entire recovery proceedings of Ex.PR of the jewelry of the deceased are disbelieved, however, identification by mother is not in line with contention of other PWs.

31. As per story of prosecution deceased Fahmina was abducted and murdered by Moaz Waqar/appellant and the said story was initially referred in complaint Ex.PQQ by complainant/ PW-11 (mother of deceased) whereas no details of any jewelry was given in the said complaint, however, her supplementary statement was recorded on 12.10.2013 in which she categorically referred the gold jewelry valuing Rs.50 lacs and she also recorded another supplementary statement on 14.10.2013 in which she referred the motive for the murder of deceased i.e. greed for money by Moaz Waqar/appellant. Complainant/ PW-11 appeared in police station on 27.10.2013 alongwith his son Umar Farooq whereby SHO Qasim and ASI Rasheed had shown recovered articles consisting of 36 items out of which P-93/1-4 four rings of white gold and diamond, P-94 one pair of earrings of white gold and diamond, P-95 one plain bracelet of white gold, P-96/1-2 two gold chains, P-97 pendant S shape of gold which were allegedly recovered from Moaz Waqar/ appellant although the said recoveries have already been disbelieved but in order to verify the status of these items the defence has cross examined the complainant and she admitted the following facts:-

*“On 17<sup>th</sup> August 2013, Fahmina came to Pakistan for the last time and she landed directly in Islamabad. It is correct that I and my deceased daughter Fahmina spent out pleasure trip in Islamabad and from there we both went to Karachi and deceased did not return to Singapore, volunteers accused Moaz Waqar was holding her passport and during my visit with my deceased daughter Fahmina, the deceased handed over her jewelry to accused Moaz Waqar.”*

Sher further acknowledged the following factors in her evidence:-

*“It is correct that I made three statements i.e. application Ex.PQQ, supplementary statement of 12.10.2013 and supplementary statement of 14.10.2013. It is correct that in Ex.PQQ I stated that the value of jewelry was Rs.4,000,000/-. It is incorrect that I had stated the weight of the jewelry as 50 Tolas gold and white gold, confronted with Ex.D5 portion A to A, volunteers that I had not stated the weight of jewelry but the police recorded it and therefore, I had made correction in my supplement statement dated 14.10.2013. It is correct that Ex.D5 does not mention the value of the jewelry. It is correct that I recorded my supplementary statement on 12.10.2013 in order to correct my statement Ex.PQQ. I remembered the error in Ex.PQQ subsequently and made the correction in my supplementary statement in the evening time before 5:00 pm. My son in law corrected me and therefore, I made the supplementary statement. I read the FIR to my son in law and he then informed me about the error in the worth of the jewelry on telephone. About this fact there is no record of telephone and it is only my statement.”*

Besides the above referred statement of PW-11 following facts were further admitted:-

*“The jewelry mentioned by me including the jewelry given to her by me and my family and it also include the jewelry given to her In-laws. I had not given the receipt of purchase of which was jewelry given to the deceased to the police since, it was handed over to the deceased along with the jewelry. I did not inform the police about the shops from where I purchased the jewelry because police had not asked me. Similarly, no receipts were produced about the jewelry provided by the family of Umair Suleman to the deceased because police had not asked for it.”*

The above referred three different portions of cross examination clearly reveal that the jewelry was already with appellant Moaz Waqar as claimed by complainant and it was in the knowledge of complainant as she stated in her but the jewelry allegedly recovered from appellant Moaz has not been verified from any independent source i.e. receipt of purchase of jewelry nor any jeweler was confronted in this regard even the complainant is not able to disclose the jewelry shop from where she purchased the said jewelry. These facts clearly demonstrate that the statement in which she recorded her stance regarding jewelry is not believable even she has changed the value of jewelry through supplementary statement but the fact remains the same that the detail of jewelry is most important factor which had to be disclosed to the police authorities but such details have not been given by the PW-11 and particularly with reference to these items which were allegedly recovered from appellant Moaz Waqar. Even otherwise, the Investigation Officer/ PW-13 stated before the Court that appellant Moaz Waqar had given gold jewelry of the deceased to Raheem jeweler and obtained to solid gold bar weighing 20 tols and the remaining jewelry consisting upon one large locket, one small locket, two rings and two earrings were sold to VIP jeweler against sale consideration of Rs.11 lacs but both these jewelers have not been associated as witness nor their statements have been recorded even they have not been produced before the Court.

32. In view of above background recovered jewelry as referred in recovery memo Ex.PR dated 17.10.2013 is also disbelieved.

#### **STATUS OF CAR BEARING REGISTRATION NO.IDD-8365, HONDA CITY**

33. That on 14.10.2013 the appellant Moaz Waqar was arrested while driving vehicle No.IDD-8365 Honda City, Silver Colour which was taken into possession vide recovery

memo Ex.PH and the Investigation Officer took into possession rent a car agreement by appellant Moaz Waqar Ex.1 which was executed on 09.10.2013 with Ahsan Associates Car Rentals, Copy of CNIC of appellant Moaz Waqar was also taken into possession as Ex.P2 alongwith copy of I.D. Card of Ahsan Group of Business. The Investigation Officer has also taken into possession Authority Letter as Ex.P3 and sales invoice of said vehicle as Ex.P4, Sale Certificate as Ex.P5 whereas, no registration book was recovered in this case nor the same was verified in any manner by the Investigation Officer, however, during the search of said vehicle no incriminating article was recovered which belong to deceased Fahmina through which it can be assumed that the alleged car was used in commission of murder of deceased Fahmina.

**RECOVERY OF I-PHONE 4 ALONGWITH SIM NO.0334-9554181 USED FOR RANSOM.**

34. The Investigation Officer PW-12 stated before the Court that on 18.10.2013 accused Moaz Waqar during interrogation disclosed that on 11.10.2013 and 13.10.2013, he had contacted the complainant (mother of the deceased) on her phone No.0321-2011925 twice and he twice sent her SMS from the SIM No.0334-9554181 of his cousin Abdullah and demanded Rs.2 Crore as ransom money from the complainant. The phone set I-4 of black color is present in his house which he can get recovered and thereafter, accused led the police to his house at Bani Gala and under the mattress of his room he got recovered the mobile phone (Ex.P55) which was taken into possession vide recovery memo Ex.PS. The witnesses signed it and their statement was recorded U/S 161 Cr.P.C. The phone set was having IMEI No.012645007534579, the recovery memo was signed by Sikandar Ali 2928/HC and Khawar Abbas 2268/C whereas, Khawar Abbas 2268/C has not been produced. The other witness of recovery is Sikandar Ali PW-6 who reiterated the same story of the investigation officer/PW-12 and confirmed his signatures on the recovery memo Ex.PS/1, however, during the course of cross examination PW-6 admitted that:-

(a) *The house from which the recovery of gold ornaments was affected through recovery memo of gold ornaments on 17.11.2013 was an inhabited house.*

(b) *It is the house where the parents and the family of accused Moaz Waqar are residing.*

(c) *I don't know whether the door was opened or I.O had knocked the door.*

35. The above stated stance also confirms that on 18.10.2013 place of recovery of I-Phone alongwith SIM No. 0334-9554181 was already known to the Investigation Officer as well as PW-6 the witness of recovery. The place of alleged recovery is a inhabited house, no person was available in the said house who opened the door nor it has been brought by the prosecution that the premises were already sealed as a crime scene nor it is the case of prosecution that articles were recovered in one day, police officials have earlier visited the place, therefore, the recovery of I-Phone alongwith SIM have no evidentiary value in this criminal case for the purpose of capital punishment.

36. The Investigation Officer was also cross examined who was also aware of the place of recovery as he earlier visited the place as per his own stance, therefore, all the subsequent recoveries which were allegedly made from the same place have to be seen in the light of Articles 38, 39 & 40 of the Qanun-e-Shahdat Order, 1984 and objection was also raised by the appellants side during the trial whereas from the perusal of entire judgment this aspect has not been discussed by the learned trial Court, therefore, in order to understand the concept of discovery in terms of relevant provisions of the Qanun-e-Shahadat Order, 1984 it is necessary to go through the said provisions, whereby prosecution is under heavy burden to prove the fact of recovery of I-Phone or jewelry or any other item allegedly discovered in consequence of information received from the accused of any offence in custody of police officer and such information relates to a fact of discovery which is in exclusive knowledge of that accused in terms of Article 40 of the Qanun-e-Shahadat Order, 1984 whereas, in our humble view the information of place of recovery was already with the Investigation Officer prior to the recovery of I-Phone as the exercise of recovery had already been made for the purpose of jewelry on 17.10.2013, therefore, this recovery has no evidentiary value. Reliance is placed upon **2003 SCMR 1419 "Khalid Javed and another versus The State"**, hence, the same cannot be used against the appellant Moaz Waqar.

**MOBILE PHONE CALL DATA RECORD (CDR).**

37. The prosecution has linked the appellants with the Call Data Record (CDR) for the purpose of SMSs and mobile calls which were used for the purpose of ransom and in this regard the prosecution has brought on record statement of Muhammad Qasim Khan, Inspector/ PW-13 who contended that on 27.10.2013 through post/Dak seven pages print out message regarding SIM No.0334-9554181 and 14 pages print out of phone No.0333-5353232, No.0332-1554670 belonging to accused Moaz Waqar, (14 pages) of SIM No.03420508388 belonging to accused Asif Mehmood and other miscellaneous documents sent by Umair Suleman husband of deceased Fahmina were taken into possession vide separate recovery memo Ex.PV which was attested by the witnesses. He also got recorded the statement of Nosheba Takseen and Umar Farooq U/S 161 Cr.P.C. PW-13/ Inspector also stated that on 30.11.2013, Umair Suleman husband of deceased Fahmina had sent E-mail to the police high ups which were received through official dak and the e-mail were consisting upon eight pages and the same were taken into possession vide recovery memo Ex.PX which was attested by the witnesses. During the course of cross examination he stated that there is a dispatch register maintained at every police station through which mails are sent and the person who received the dak through a dispatch register is required to sign the relevant column of dispatch register. PW-13 further stated that he cannot tell the name or rank of the high ups police officials from whom he had received the dak Ex.PV and Ex.PX and even he has was not able to prove that who placed the said dak on his table.

38. Beside the above referred answers to the particular questions this Court has taken notice of Ex.PV (فرد مقبوضگی ریکارڈ موبائل فون و ریکارڈ ایس۔ایم۔ایس و بیان تحریری و کاغذات عمیر) which was sent by Umair Suleman but he was neither produced as witness nor he joined the investigation as he never came to Pakistan. Similarly, record of mobile phone as well as documents of Umair Suleman has also been taken into possession vide recovery memo Ex.PX on 30.11.2013 but when we compare both these recovery memos while placing them in juxtaposition, the signatures of witness Sikandar Khan-2928/HC on Ex.PX do not match with any of his previous signatures available on Ex.PV, Ex.PN, Ex.PH, Ex.PJ, therefore, in our humble view both the recovery memo lost their

evidentiary value, even the mobile data record which has been placed on record through Ex.PV and Ex.PX has not been confirmed from any independent source i.e. mobile company, therefore, same has lost its status to be used for the purpose of conviction as per operative evidence in this case and the same is hereby discarded.

**RECOVERY OF CASH AMOUNT FROM APPELLANT MOAZ WAQAR**

39. The prosecution has brought on record the recovery memos Ex.PEE, Ex.PHH, Ex.PJJ, Ex.PKK, Ex.PLL, Ex.PMM which contain recovery of amounts of Rs.400,000/-, Rs.600,000/-, Rs.500,000/-, Rs.40,000/-, Rs.80,000/- and Rs.160,000/- from the appellants, therefore, it is necessary to discuss the status of said recovery as it is corroborative piece of evidence through which prosecution put its effort to connect the appellant with the said crime. All these recovery memos have been prepared on 25.10.2013, 29.10.2013, 04.11.2013, 06.11.2013 & 11.11.2013 and were prepared by Ghulam Qasim Khan Niazi SHO/ PW-13 and the witnesses Iftikhar Ahmed 5285-HC/ PW-8 and Abid Ali 3775-C signed the same as second witness whereas Abid Ali constable has not been produced by the prosecution.

40. As per the stance of PW-13 who recorded his statement before the Court and stated that appellant Moaz Waqar led to the police party to his resident house No.1615 and he led us inside his room and recovered I-pad box which contained IMEI No.012667006448563 and one box of I-phone IMEI No.012645007534579, mobile phone X3S box IMEI No.0121560018033051 and one SIM No.0334-9554181 Ex.P62 which was used by him for the purpose of ransom of Rs.2 crore and appellant Moaz Waqar also got recovered Rs.400,000/- from his home which was the sale consideration of jewelry articles of the deceased sold by the him. However, he stated that on the said day i.e. 25.10.2013, accused Moaz Waqar made a disclosure that he had concealed the pistol at Kashmir Highway and he could recover the same, thereupon appellant Moaz Waqar led them to the place of recovery of pistol however, from there the Investigation Officer alongwith Javed S.I, Iftikhar Ahmed HC Abid Ali alongwith appellants Moaz Waqar and Asif Mehmood proceeded to Bani Gala on official vehicle and got recovered the above referred items. Learned counsel for appellants had raised objection before learned trial Court regarding the statement given by the Investigation Officer before the



Court, however, the said objection has not been decided in the judgment by the learned trial Court. The specific words used in the statement of PW-13 are as under:-

*“We alongwith accused Moaz Waqar and accused Asif went to Al-Nasir street Bani Gala on the pointation of the accused Moaz Waqar. We de-boarded the vehicle and accused Moaz Waqar led us to his house and he opened the house with his key which already recovered from accused Moaz Waqar and on his disclosure that the recovered key from his possession was of that house and it has to be taken alongwith us in order to open the said house.”*

41. The Investigation Officer further stated before the Court that on 29.10.2013 at about 5:00 p.m. father of accused Moaz Waqar came at police station and handed over Rs.6 lacs to accused Moaz Waqar which he handed over it to him (I.O) and the same was taken into possession vide recovery memo Ex.PHH which was signed by Abid Ali and Iftikhar and same exercise was again done on 04.11.2013, father of accused Moaz Waqar came at Police Station and handed over to accused Moaz Rs.500,000/- who presented the same to Investigation Officer through recovery memo Ex.PJJ and similar exercise was again done on 06.11.2013 when father of accused Moaz Waqar handed over Rs.140,000/- from the sale proceed which was handedover to the appellant and the same were taken into possession vide recovery memo Ex.PKK. Similarly, Rs.80,000/- were also taken from the father of accused Asif Mehmood through Ex.PLL. Similarly, on 11.11.2013 Rs.160,000/- were taken into possession from accused Moaz Waqar vide recovery memo Ex.PMM.

42. The above referred recovery proceedings of three empty box and mobile phone form the house of appellant Moaz Waqar situated in Bani Gala is admittedly a joint recovery as referred above by the Investigation Officer and it was a known place to the Investigation Officer in terms of Article 40 of the Qanun-e-Shahadat Order, 1984 and there is no new discovery of fact which led to recovery of three boxes as the said house was earlier visited by the previous Investigation Officer with other police officials on number of occasions even the said house was opened and inhabited in the previous round of recoveries as stated by the previous Investigation Officer/ PW-12 as well as PW-6, therefore, entire recovery proceedings lost their legal significance and admissibility for the purpose of corroborative evidence against appellant Moaz Waqar.

43. Besides the above referred legal defect it is not a discovery in terms of Article 40 of the Qanun-e-Shahadat Order, 1984 as the place was already known to the Investigation Officer even the other recoveries of amount which were taken into possession through different recovery memos are nothing but exercise of misuse of authority by the police officials which is apparent from record as the father of the appellants paid huge amount to the Investigation Officer which was taken into possession through different recovery memos on different dates by handing over the same to the appellants who were already in custody and on physical remand, therefore, such kind of exercise is just an abuse of authority and nothing else, hence, the entire recoveries made by Investigation Officer/ PW-13 have no evidentiary value and cannot be used as incriminating evidence against the appellants for the purpose of conviction.

**RECOVERY OF ARTICLE FROM APPELLANT ASIF MEHMOOD.**

44. Investigation Muhammad Qasim Khan Inspector (PW-13) arrested appellant Asif Mehmood on 22.10.2013 from Bus Stop Aabpara Chowk of route No.127 on spy information and on 23.10.2013 his eight days physical remand was obtained from Anti-Terrorism Court and as per prosecution story Asif Mehmood had pointed out the place of recovery of dead body on 24.10.2013 which was already identified earlier to the said date, therefore, the place of pointation in case of appellant Asif Mehmood has no relevancy. The complainant nominated Asif Mehmood through supplementary statement dated 14.10.2013 whereas, the prosecution has alleged in the evidence that appellant Asif Mehmood got recovered all the personal belongings of deceased Fahmina on 25.10.2013 in presence of Qasim Ali Khan/ PW-13 and Iftikhar Ahmed/HC (PW-8) vide recovery memo Ex.PFF from *Traith* which includes one empty suitcase grey color Ex.P66, one small empty suit case grey color Ex.P65, one golden color belt Ex.P67, one colorful *Dupata* Ex.P68, one purple T-shirt Ex.P69, one black waist belt Ex.P70, one box of Samsung Galaxy Mobile, Ex.P71, four (04) warranty Cards Ex.P72/1-4, one Perfume, Ex.P73, one Perfume Triangle shape perfume Ex.P74, one hair brush, Ex.P75, one small box of made in china Ex.P76, one artificial hair clip of silver colour Ex-P77, one stand camera Ex.P78, one chain Ex.P79, one locket of thin chain Ex.P80, one bracelet Ex.P81, two coin of Singapore currency of denomination of 20 each Ex.P82/1-2, one kit bag

Ex.P83, two ear rings Ex.P84/1-2, four Singapore currency notes of denomination dollar two Ex.P85/1-4, one ring Ex.P86, one driving license of deceased Fahmina Umair Ex.P87, one hand bag Ex.P88, four artificial golden Twaiz Ex.P89/1-4.

45. However, during the course of cross examination of PW-13 Muhammad Qasim Khan/ Inspector contended that he alongwith appellant Asif Mehmood proceeded towards village *Satra Meel* whereby appellant Asif Mehmood led the police party to his house and got recovered two suite cases belonging to deceased Fahmina one hand bag and different article which were present in suite cases Ex.P65 to Ex.P89/1-4 taken into possession through recovery memo Ex.PFF. Whereby the Investigation Officer conceded before the Court that recovery was made from village *Traith* which might be in territorial jurisdiction of Punjab province. He also conceded that in his statement he deposed that recovery was affected from village *Satra Meel* and he is unable to identify the territorial jurisdiction of police station in which the place of recovery is situated. He also conceded that Police Station Bani Gala is a separate police station and it is not part of P.S. Aabpara. P.S. Bhara Kahu is not adjacent to the boundary of P.S. Aabpara. There is no denial to the proposition that the place of recovery in case of appellant Asif Mehmood is not within the territorial jurisdiction of Islamabad nor even the same was given protection under the law and the time of departure from police station which has been reflected from Roznamcha is 03 p.m. on 25.10.2013. He also conceded that some of the entries have been arrayed whereafter subsequent amendment was made with different ink. Similarly, complainant Nosheba Tasleem/ PW-11 while appearing before learned trial Court contended that she identified the items which were recovered from appellant Asif Mehmood referred as Ex.P98/1-2 to Ex.P116 including two empty suit cases of large size grey color Ex.P98/1-2, Samsung mobile I-phone-4 of white colour of deceased Fahmina Ex.P99, Driving licenses of the deceased P-100, one bracelet of bronze colour having a mark of Bulgrey P-101, one chain of gold and having heart shape diamond pendent P-102, one gold ring with Zircon stone in rectangular shape P-103, one silver ring with pink stones, P-104, one wallet having Mark of Parrada on it in which she used to keep her driving license and cash P-105, two currency notes of Singapore dollars P-106/1-2, two coins each of 20 cent P-107/1-2, Avatar accessory of mobile phone, P-108, Camera Stand

P-109, one gold bracelet P-110, two bottles of perfume P-111/1-2, two dress belts P-112/1-2,, printed scarf P-113, one purple colour T-shirt P-114, one empty poach of VIP jeweler P-115, one empty make up kit P-116 and other miscellaneous articles.

46. However, she failed to produce any receipt of purchase of any of the said items which were claimed to be of deceased Fahmina and got recovered from appellant Asif Mehmood although the evidence submitted by the Investigation Officers (PW-12 & PW-13) clearly prove that recovery was made from village *Traith* whereby the said recovery has not been proved independently. Even otherwise it is the mandatory concept of law to justify the recovery through legal manner, however, the Investigation Officer as well as other witnesses have not attended to the requirements of section 161 Cr.P.C. wherein place of recovery is in different jurisdiction and it is held mandatory that Investigation Officer shall put his entry in Daily Diary of other police station before heading towards the place of recovery unless the delay occasioned might result into destruction of evidence whereas, in this case the Investigation Officer has not taken any precautionary measures nor even informed the local police station of village *Traith* which is within the territorial jurisdiction of Punjab and got recovered the articles which is not considered legal in terms of judgment passed by apex Court reported as **2011 SCMR 323 “Amin Ali & another versus The State”** wherein it has been held that:-

*“Recovery was made from jurisdiction of another police station but investigating officer did not go to that police station or make any entry so as to show his presence at relevant time within jurisdiction of that police station or took some help from that police station---Effect---Such act of investigating officer, created doubt about genuineness of recovery and no implicit reliance could be placed on such type of evidence.”*

47. In view of above background the recovery of jewelry to the extent of appellant Asif Mehmood as well as his status in the entire case has not been justified or proved by the Investigation Officers even the prosecution has not brought any concrete evidence to implicate appellant Asif Mehmood in murder of Fahmina.

### **CONCLUSION**

48. In view of above detailed discussion of evidence we are of the view that prosecution has failed to prove the facts narrated in the complaint alleged by the complainant. The factum of ransom, abduction, SMSs and calls have not been proved by the complainant, even the CDR which was taken into possession by the Investigation

Officer was brought through e-mail from husband of deceased but the said person was not associated in the investigation nor his statement was recorded in terms of section 161 Cr.P.C. The most crucial evidence in the entire case is recovery of deadbody which was already known to the police authorities as confirmed by the recovery witness PW-6, as he specifically stated that he has prior knowledge of place of recovery of dead body before 14.10.2013, therefore, the pointation of place of dead body of deceased has not been substantiated by the prosecution and recovery of jewelry of deceased has not been established independently through any jeweler or by any documentary evidence in shape of receipts. Even otherwise mother of deceased admitted the fact that jewelry was already with appellant Moaz Waqar although it was the case of prosecution that entire jewelry was converted into gold bars and sold to different jewelers but those jewelers have not been associated in the investigation nor even produced before the Court during trial.

49. In last most important piece of evidence i.e. USB/ Ex.P90 evidence relating to last seen has not been brought on record by the prosecution during the course of trial nor even the said CCTV footage was displayed in the Court, although this Court displayed the CCTV footage in the Court but the entire contents of CCTV footage could not demonstrate that both the appellant or deceased were together in any manner, the hotel manager is not the author of said CCTV footage/USB nor the said footage was taken into possession in accordance with the Qanun-e-Shahadat Order, 1984.

50. The entire background persuades this Court that when place of recovery had already been visited by the Investigation Officer and police officials, the pointation of recovery has no significance. Reliance is placed upon 2016 YLR 1291 [Peshawar] “Kabir Shah versus The State through Advocate General, Khyber Pakhtunkhwa and another”, 2017 P.Cr.L.J 1435 [Lahore] “Muhammad Safeer and another versus The State & another”, 2017 P.Cr.L.J 699 [Lahore] “Aurangzeb alias Guddu versus The State” and 2010 SCMR 1604 “Mst. Askar Jan & others versus Muhammad Daud & others”.

51. The case of prosecution is based upon circumstantial evidence, last seen and recovery of stolen article as well as weapon of offence and pointation of dead body on the instance of appellants whereas it is the requirement of law to established that every piece

of circumstantial evidence must fit in with other piece of such evidence in the chain and corroborate each other which link the accused at its own end and other with deceased but the chain of evidence is incomplete. The prosecution agency is under heavy mandate of collecting evidence against the accused which should be free from all doubt and suspicion failing which the conviction could not be sustained.

52. In this case the motive of occurrence is shrouded in mystery, SMSs, CDR has not been justified, the allegation of abduction is just an opinion of complainant even the car allegedly used in the said incident has not been linked in the entire case, recovery of dead body has been disbelieved and the complainant never disclosed the details of jewelry at the time of registration of FIR tried to improve her case through supplementary statement in order to link the appellant with the said articles but no concrete evidence was brought on record. The place of recovery is situated at Bani Gala which was already in the knowledge of PW-6/ Sikandar Ali, Constable, who has already reached at the dead body prior to identification and pointation of deadbody by appellant Moaz Waqar. House of appellant Moaz Waqar was remained opened and inhabited and same house was used for four different occasions for the purpose of recovery which is not admissible in any circumstances, therefore, we are of the confirmed view that prosecution has failed to discharge their onus regarding murder of deceased Fahmina.

53. In view of above background, Criminal Appeal No.115/2016, Criminal Appeal No.126/2016 and Jail Appeal No.114/2016 are allowed, appellants Moaz Waqar and Asif Mehmood are acquitted from the charge and shall be released forthwith if not required in any other case. Murder Reference No.06/2016 is answered in negative and death sentence is not confirmed.

**(AAMER FAROOQ)**  
**JUDGE**

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**

Announced in open Court on \_\_\_\_\_

**JUDGE**

**JUDGE**