

**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)**

1. Cr.A No. 448-M/2019

(Lal Zada Versus The State and another)

Present: Mr. Jehangir Khan, Advocate for the appellant/
convict.

Mr. Haq Nawaz Khan, Assistant A.G. for State.

Muhammad Mushtaq Khan, Advocate for complainant.

2. Cr.A No. 470-M/2019

(Fayaz Ahmad Versus Muhammad Salman and others)

Present: Muhammad Mushtaq Khan, Advocate for the appellant/
complainant.

Mr. Haq Nawaz Khan, Assistant A.G. for State.

Respondents/accused in person.

3. Cr.R No. 102-M/2019

(Fayaz Ahmad Versus The State and another)

Present: Muhammad Mushtaq Khan, Advocate for petitioner.

Mr. Haq Nawaz Khan, Assistant A.G. for State.

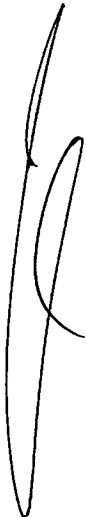
Mr. Jehangir Khan, Advocate for the respondent/
convict.

Date of hearing: **10.06.2021**

Date of announcement: **30.06.2021**

JUDGMENT

ISHTIAQ IBRAHIM, J.- Shahid Khan son of Sher
Rehman aged about 19/20 years resident of village
Gorathai, District Swat, who was a Suzuki driver,
left his house as routine on 13.11.2017 for his work
but thereafter went missing and did not return to his
home. His brother Fayaz Ahmad inquired about him



from Arif, owner of the vehicle, who informed him that Shahid Khan had taken out the vehicle for plying at morning time and brought the same back at 20:00 hours whereafter he went to his house. He was thoroughly searched in the area but could not be traced out, therefore, complainant Fayaz Ahmad (PW-1) in the company of his uncle Ghafoor Khan went to P.S *Ghaligay* and lodged a report to this effect vide Daily Diary No. 17 dated 15.11.2017 (Ex.PW-1/1). He further informed the police that SIM Nos. 0342-0933117 and 0314-2372335 were in use of his missing brother but his repeated calls on the same contact numbers went unattended and cell phone of his brother was thereafter switch off. The complainant also stated in his report that they have no enmity with any one.

2. Police initiated inquiry in the matter, however, complainant again went to police station on 18.11.2017 in the company of one Nasar Khan and expressed his solid suspicion regarding the present appellant Lal Zada aged about 32/33 years as well as his acquitted co-accused Muhammad Salman and Ikram Khan. He informed the local police that his missing brother had friendly relations with appellant Lal Zada, however, the relationship

between them had become strained a few days back. On the basis of above information received from the complainant, the present appellant was summoned to police station who revealed during interrogation that he and his co-accused named above had taken Shahid Khan to orchard of one Afzal Khan situated at *Aboha* where the co-accused caught hold of Shahid Khan while he himself killed him through blows of a hoe on his head and thereafter buried him in a ditch.

3. Police took the appellant alongwith complainant and other police contingents to the said orchard from where dead body of Shahid Khan was recovered on pointation of the appellant. Complainant identified the dead body of his brother and charged the present appellant and his acquitted co-accused for the murder. ASHO Abdul Qahar Khan (PW-11) arrested the appellant and reported the matter against him and his other co-accused through *Murasila* on the basis whereof FIR (Ex.PA) was chalked out against the accused u/s 302/34 PPC. It is noteworthy that a mobile phone of Rivo brand with SIM No. 03331533646 (converted to Telenor) was recovered from possession of the appellant at the time of arrest.

4. The dead body was sent to THC Hospital Barikot for postmortem which was conducted by Dr. Ikram Khan MO (PW-8). The autopsy report (Ex.PW-8/1) is reproduced below:

Name: Shahid
Father Name: Sher Rehman
Cast: Afghani
Residence: Guratai Swat
Sex: Male
Age: 19/20 years
District: Swat
Body brought by: Shah Khalid IHC PS
Ghalegay
Body identified by: Sher Rehman
Date and hour of Examination: 18.11.2017
at 11:45 P.M
Death: Approximately 72 hours before at
12:45 P.M
Dispatch of matter
to chemical examiner: 19.11.2017
Symptoms observed before death: Nil
Information furnished by police: Blade/digger
(Kudal)

1. EXTERNAL APPEARANCE:

Condition of subject Stout emaciated, decomposed, etc clothing, wounds, bruises, position, size, nature: Thin lean victim with off-white color qamees, completely covered in mud due to burial stained with blood and brain spilled on it having no shalwar on him (lying on the side of the victim. Rigor mortis fully developed with appearance of morbidization and having washer man feet/hands.

A. Stab wound to the head completely penetrated into the cranial cavity through parietal bone in between coronal suture and lambdoidal suture in the shape of inverted L shape in structure with cleanly cut and inverted having some abrasion and bruises seems at the side. The long length of L measuring 3x3 inch in length and left with one inch in width. The short tail of measuring 2x3 in ches in length and depth

with 1.5 inch in width, with the portion of brain spilled out.


- B. Stab wound to head completely penetrated into cranial cavity through occipital bone below lambdoidal suture starting from medial to lateral to nick. The size of the stab wound measuring 1.5 x 2 inch in length and depth with 0.5 inch in width with the portion of brain spill out.
- C. Stab wound to the head with temporal bone exposed posteriorly to external auditory meatus with clearly cut having regular margin measuring 2 x 1 cm in length and depth and 0.5 inch in width.
- D. Laceration measuring 2 cm in length above the left lateral eyebrow.

2. CRANIUM AND SPINAL CORD

Scalp, skull and vertebrae; membranes, brain, spinal cord

- A. Scalp completely tears at three places (temporal, parietal, occipital areas)
- B. Skull fracture at two places (parietal and occipital bone)
- C. Membrane tears and brain spilled out at fracture sides.

3. THORAX



Walls, ribs and cartilages:	Healthy
Pleurae:	Healthy
Larynx and trachea:	Healthy
Right lung:	Healthy
Left lung:	Healthy
Pericardium and heart:	Healthy
Blood vessels:	Healthy

4. ABDOMEN

Walls:	Healthy
Peritoneum:	Healthy
Mouth, pharynx and Esophagus.	Healthy
Diaphragm:	Healthy
Stomach and its contents:	Healthy
Pancreas:	Healthy
Small intestine and their contents	Healthy
Large intestine and their contents	Healthy
Liver	Healthy
Spleen	Healthy
Kidneys	Healthy

Bladder	Healthy
Organs of generation	
External and internal	Healthy
Muscles, bones and joints	Healthy

REMARKS BY MEDICAL OFFICER:

The cause of death is head injury and excessive damage to brain (vital organ) and brain spilled out of cranium cavity.

Probable time that elapsed:

Between injury and death: Less than one hour approx..

Between death and postmortem: Approximately before 72 hours or later.

Postmortem started: Nil

End: Nil

5. Acquitted co-accused Muhammad Salman and Ikram Khan were also arrested on the same night. Mobile phone Nokia having SIM No. 0341-1916299 was recovered from accused Ikram Khan whereas Samsung mobile phone with SIM No. 0341-7704024 was taken into possession from co-accused Muhammad Salman. During the course of investigation, I.O secured blood stained earth from the place of occurrence and also took into possession blood stained clothes of the deceased. Four days police custody of all the accused was allowed on 19.11.2017. The appellant made pointation of the place of occurrence to I.O in presence of witnesses and also led him to heap of paddy straw in his field wherein he had concealed the hue with which he had

killed the deceased and thereafter buried him in the plums orchard. Police recovered the said hoe stained with blood on his pointation and secured the same through pointation-cum-recovery memo Ex.PW-6/2 besides photographs of the proceedings so conducted were also made which are available on file. Mobile phone Nokia model x1-01 with SIM Nos. 0342-0933117 and 0314-2372335 had been taken away by appellant which was recovered from a shelf of bathroom of his house on his pointation. Recovery memo to this effect is Ex.PW-6/3 whereas photographs thereof are Ex.P21 to Ex.P28. The co-accused were produced before the Judicial Magistrate for further custody on 23.11.2017, however, the request was turned down and they were sent to judicial lockup. On the same day the present appellant volunteered to confess his guilt, hence, his confessional statement was recorded which is available on record as Ex.PW-13/2.

6. After winding up the process of investigation, Sessions Case No. 52/7 of 2018 was registered against the accused on submission of report u/s 173, Cr.P.C for their joint trial. They were formally charge-sheeted for the offence but they did not plead guilty and opted to face the trial. Thirteen


PWs appeared in the witness box and recorded their statements in support of allegations against the accused whereas the remaining 13 PWs were abandoned. When examined u/s 342, Cr.P.C, all the accused stated to have been involved in a false case, however, they neither opted to be examined on oath in terms of section 340(2), Cr.P.C nor they produced any evidence in their defence.

7. On conclusion of trial, the learned trial Court vide judgment dated 01.10.2019 convicted the present appellant Lal Zada u/s 302(b) PPC and sentenced him to undergo imprisonment for life as *tazir*. He was also burdened with payment of Rs.500,000/- to legal heirs of the deceased as compensation or to suffer further six months S.I in case of default thereof. Benefit of section 382-B, Cr.P.C was extended to him. The learned trial Court acquitted co-accused Muhammad Salman and Ikram Khan through the same judgment by giving them the benefit of doubt.

Appellant Lal Zada has preferred this appeal against the judgment of trial Court whereas complainant has challenged the above referred quantum of sentence through the connected Cr.R No.

102-M/2019 with the prayer for enhancement. He has also assailed acquittal of co-accused through the connected Cr.A No. 470-M/2019. All the cases, being off-shoots of the same verdict of the trial Court, are decided through this judgment.

8. We have paid our anxious consideration to arguments of learned counsels for the parties including the learned A.A.G. representing the State and perused the record with their able assistance.



9. We would first take up the case of appellant Lal Zada for discussion. He has been held guilty of the charge by learned trial Court. As per postmortem report, a young boy of 19/20 years has been killed during nocturnal hours whose dead body was recovered from a plum orchard after five days of his murder. It means that the occurrence was unseen one and thereafter no one had taken notice of the buried corpse in the orchard as it had not been a formal grave, the murderer had covered up the dead body to conceal his crime. Keeping in view the above stated scenario of the case, recourse to circumstantial evidence on record was the only option with the trial Court to adjudge culpability of the appellant in the present case and


so is the situation before this Court in exercise of its appellate jurisdiction.

10. Main evidence available on record against the appellant is in shape of his inculpatory confession before the Judicial Magistrate and recovery of dead body as well a hoe/blade digger on his pointation which was used in commission of murder. Before making further discussion on the evidentiary value of judicial confession made by appellant, we deem it appropriate to reproduce the same below.

بیان کیا کہ مقتول شاہد علی کے ساتھ عرصہ تقریباً 6/7 سال سے میرے دوستانہ تعلقات تھے۔ وقوعہ سے چند دن قبل میرے اور مقتول کے درمیان کسی بات پر جھگڑا ہوا اور اُس نے میرے ساتھ اٹھنا بیٹھنا چھوڑ دیا تھا بدیں وجہ میں نے اُسے قتل کرنے کا منصوبہ بنایا۔ مورخہ 13.11.2017 کو میں نے مقتول کو اپنے موبائل سے فون کر کے کھیتوں میں آنے کو کہا۔ اُسی دن شام کے بعد وہ کھیتوں میں آیا اور مجھے فون کیا تو میں نیچے کھیتوں میں آپہنچا۔ میں نے اُسی کو قتل کرنے کیلئے کسی (کھودال) اپنے گھر سے لا کر کھیتوں میں موجود گھاس کے ڈھیر میں چھپا کر رکھا تھا۔ جب میں موقع پر پہنچا تو وہی کسی (کھودال) میں نے چھپکے سے نکال کر اپنے چادر کے اندر چھپایا اور اُسے آگے چلنے کیلئے کہا جبکہ میں پیچھے پیچھے جانے لگا۔ تھوڑا سا آگے جا کر الوچے کے باغ میں میں نے اُس پر پیچھے سے کسی (کھودال) کے ذریعے پے در پے سر پر گزارات کئے جو میرے گزارات سے زمین پر گر پڑا اور تقریباً آدھا گھنٹہ تک وہ زمین پر تڑپتا رہا اور میں اُسے دیکھتا رہا اور آخر کار جب اُس کی سانس نکل گئی تو میں اُسی جگہ کے نزدیک بذریعہ کھودال گڑھا کھودا اور اُس میں اُسے دفنایا۔ میں نے مقتول کی جیب سے موبائل نکال کر جائے وقوعہ سے چلا گیا۔ میں نے پولیس کو جائے وقوعہ کی درست نشاندہی کی ہے اور میری نشاندہی پر پولیس نے نقش اڑاں مقتول شاہد علی آلوچہ باغ سے برآمد کی ہے۔ اسی طرح آلہ قتل بھی میری

نشاندہی پر پولیس نے برآمد کی ہے۔ مجھ سے غلطی ہوئی ہے۔ بس یہی
میرا بیان ہے۔

11. It is apparent from perusal of the above statement that appellant has confessed his guilt by giving detailed description of the entire episode in a natural manner. Learned counsel for the appellant during the course of his arguments attacked genuineness of the confession mainly on the ground of delay. He argued that belated recording of the confession by appellant after remaining in police custody for five days connotes his torture and inducement by police for obtaining statement of their own choice. According to him, the confession being involuntary and result of torture, was wrongly relied upon by trial court for conviction of the appellant. Recording of the confession in the present case with delay of four days could not be denied but delay per se in each and every case is not a conclusive proof of police torture upon accused for obtaining his judicial confession. Each case has its own facts and circumstances which are required to be considered for reaching at a just conclusion. When the Court forms an opinion that confession of an accused inspires confidence and is supported by



circumstantial evidence on record then such statement can be regarded as true and voluntary confession irrespective of the fact that the same was either recorded with delay or retracted by accused. Judging the confessional statement of the appellant in the present case on the touchstone of the above criteria laid down by superior Courts, his narrations before the Judicial Magistrate do not appear to be result of torture, coercion or inducement more particularly when no evidence on record is available to suggest that accused was tortured before recording of his confession. Statement of the appellant not only appears to be true but same is duly corroborated by circumstantial evidence on record, therefore, retraction thereof by appellant during his examination u/s 342, Cr.P.C and the allegations he had levelled against police while replying Q. 24 of the said statement are nothing more than his endeavours to save his skin. Most important aspect of the present case is that the dead body had already been recovered on pointation of the appellant and that evidence was of pivotal importance in support of the allegation against him, therefore, there was indeed no need for the police to strain every nerve to procure his false confession

through torture. In the mentioned circumstances when otherwise confession of the appellant is true and voluntary and the Magistrate while recording the confession had observed all legal and codal formalities, objection of the learned counsel with regard to delay holds no water. The august Supreme Court of Pakistan held in the case of Syed Sharifudin Pirzada v. Sohbat Khan (PLD 1972 SC 363) that no hard and fast rule can certainly be placed about period within which confessional statement of the accused ought to be recorded during the course of investigation. This view was relied by the august Supreme Court in the case titled "Nabi Bakhsh and another Vs. The State and another" reported as 1999 SCMR 1972 wherein it was observed that:

9. We have carefully perused the record and considered arguments prevailed before us by learned counsel for the parties. It may be seen that prosecution case mainly hinges upon confessional statements of appellant Nabi Bakhsh and petitioner Ghulam Haider, which is supplemented by medical evidence, recovery of crime weapon and other circumstantial factors. Undisputedly the appellant and petitioner were arrested on 19-11-1990. Recovery of crime weapon at the instance of appellant Nabi Bakhsh was effected on the same day in presence of P.W.3 Abdul Ghafoor and one Muhammad. Yousaf. Therefore, in this context, pivotal question requiring consideration would be whether delay of 6/7 days in recording confessional statements was fatal and affects its validity or

admissibility. It may be seen that Superior Courts while dealing with this aspect have invariably observed that delay in recording confessional statements by itself is not sufficient to affect its validity. No hard and fast rule can certainly be placed about period within which confessional statement of the accused ought to be recorded during the course of investigation. No doubt long period of detention in police custody is looked with suspicion and tends to cast doubts about voluntary nature of such statement. However, Courts are obligated to properly scan and thoroughly scrutinize the truthfulness and voluntary basis of making confession before the Magistrate.

12. As regards retraction of the confession by appellant during his examination u/s 342, Cr.P.C, retracted confession, as observed by Hon'ble apex Court in the case of Nizam-ud-Din Vs. Riaz and another (2010 SCMR 457), if found truthful and confidence-inspiring and also having qualified the test of voluntariness, can be used for conviction without looking for any other sort of corroboration. Since, confession of appellant in the present case qualifies the above standard, therefore, we cannot discard the same on the sole ground that it was later on retracted by appellant. Further reliance is placed on Shaukat Ali Vs. The State and other (PLD 2019 S.C 577) wherein the well settled principle was re-affirmed in the following words.

Retracted confession could form basis for conviction if found voluntary and truthful.

13. Confession of the appellant gets corroboration from medical evidence according to which the deceased was done to death through stab injuries on his head. According to confession, the appellant hit the deceased on his head with a hoe which has been recovered on his pointation from heap of paddy straw in his field. Keeping in view the seats and dimension of injuries sustained by deceased, infliction of the same injuries through a hoe appeals to prudent mind, hence, there is no conflict between confession of the appellant and post-mortem report. Thus, the confession, though retracted but is backed by strong corroboration from independent source, can safely be relied upon for conviction of the appellant.

13. The most important evidence on record which connects the present appellant with murder of deceased is recovery of the dead body on his pointation. Obviously, the deceased was secretly killed and thereafter buried in a ditch at night time. As per confession, the appellant all alone had committed the crime and left the spot with the belief that he had left no clue of his involvement in the

murder, however, complainant disclosed his satisfaction before police regarding involvement of the appellant in missing of his brother being his close friend. When interrogated by police, he admitted his guilt and led the police to the place where he had buried the deceased and the dead body was recovered on his pointation. It means that only the appellant was in knowledge of the place where he had buried the dead body after committing his murder. Knowledge of the appellant with regard to burial of dead body is of vital importance and so is the mode of recovery thereof on his pointation which is admissible in evidence under Article 40 of Qanun-e-Shahadat Order 1984 which reads:

40. How much of information received from accused may be proved. When any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.


No doubt, Courts are required to take care and caution while relying upon circumstantial evidence, however, keeping in view the fact that a dead body has been recovered on pointation of the appellant, fabrication of the said evidence for enroping the appellant in a false case is totally

excluded. The I.O has also recovered the hoe on his pointation with which he had killed the deceased and similarly he led the I.O to his house and made pointation of mobile phone of the deceased which he had taken from him after committing his murder. The mentioned recoveries and discoveries on pointation of the appellant have been supported by complainant Fayaz Ahmad (PW-1), Abdul Qahar ASHO (PW-11), Shah Khalid IHC (PW-9), I.O Mutabar Mian S.I (PW-7) and constable Said Umar (PW-6). Thus, we do not feel any hesitation in relying upon the above links of circumstantial evidence which are making an unbroken chain and abundantly connects the appellant with the murder of deceased. Guidance is sought from Khan Muhammad and others Vs. The State (2011 SCMR 705). The august Supreme Court of Pakistan while attributing credit to circumstantial evidence of the same nature, observed that:

The evidentiary value of the recovery of dead body at the pointation of the appellant cannot be undermined on any valid ground. In Hakim Ali v. The State (1971 SCMR 412) a statement of the accused leading to recovery of incriminating articles was found to be a good piece of evidence of corroboration. In that case the petitioner/accused had taken the Investigating Officer to a field and "brought out the decapitated head of the deceased, wrapped up in the loi." In Sh. Muhammad Amjad v. The State (PLD 2003 SC 704), it was observed that "the Banglow in question was in

possession of the appellant from where the dead body was recovered. It was also established by an unimpeachable evidence that recoveries of dead body, car or other articles were made on the lead, provided by the appellant. All above pieces of evidence under Article 40 ibid are admissible and were proved by conclusive evidence. It was accordingly held that all such pieces of circumstantial evidence when combined together provided strong chain of circumstances leading to the irresistible conclusion that it was the appellant who had killed the deceased."

In the case of Mir Azam Vs. The State



(NLR 1994 Criminal 399), having almost identical facts, this Court took into account recovery of dead body on pointation of accused and relied upon his retracted judicial confession recorded after 2/3 days of his arrest by observing that:

It rather, in the circumstances, having been totally corroborated on very material particular by the recovery of dead body from the premises where the appellant resides at his own pointation and the medico-legal evidence confirming the happening of the murder in the manner as described in the statement has been rightly believed, taken into consideration and relied upon as a satisfactory proof of the guilt of the convict notwithstanding the fact that he remained in police custody for 2/3 days before making the statement.

14. Keeping in view the facts that the appellant had called the deceased to the field through a phone call at night time as is evident from CDR

data; on his arrival he took him to plum orchard and killed him by giving blows with a hoe on his head, it appears that all the above acts were performed by him alone as he had got sufficient time for achieving his evil goal without any interruption. Discovery of the dead body on his pointation and recovery of mobile phone of the deceased on his information from his house were sufficient to prove his guilt more particularly when he has brought no exculpatory evidence on the record to create a slight doubt regarding his involvement in the occurrence. The august Supreme Court of Pakistan in the case titled Billmoria Alias Muhammad Hussain Vs. The State (PLD 1958 S.C 1) discussed in detail liability of accused in the said case in light of circumstantial evidence by holding that:

Thus, practically everything which was robbed from the' murdered man was recovered from Billmoria's possession on the fourth day following the discovery of the crime. This is a very strong circumstance favouring the belief that he was the person who removed these things, following the murder, and the natural inference is that he was directly concerned in the murder. When it is also found that he had concealed, along with some of the deceased's goods, a weapon of the exact type with which the murder was in all probability committed, the inference becomes almost irresistible on the basis of a complete chain of circumstances, that he himself committed the crime.

The circumstances do not require that it should be supposed that more than one person took part in the crime: All that appears from the evidence could easily have been the work of a single man, provided he had a sufficient interval of time to carry it out without interruption. Accordingly, the facts established must be held to constitute a strong case of murder and robbery against Billmoria upon which, had the trial been by jury, a verdict of guilty could reasonably have been demanded, in the absence of rebuttal. That rebuttal could not successfully be founded upon any mere hypothesis, in view of the strength of the case established against the accused. Such a hypothesis was put forward before us by the learned counsel appearing for the appellant, viz. that Billmoria might have received all the things which were later recovered from his possession from some person who had actually committed the murder, of which Billmoria was himself innocent. It was admitted, however, that in the face of the recovery of the axe from the same place of concealment as certain property which had been robbed from the deceased, it was difficult to advance this hypothesis as a complete reply to the prosecution case with any confidence. The chain of circumstances in this case is so strong that in order to create a reasonable doubt regarding the natural conclusion that the murder was committed by Billmoria, it was necessary for him to establish exculpatory circumstances of a concrete kind, and in the absence of either proof or suggestion by him that he received the goods from another, in a manner unconnected with the murder, it is difficult to conceive of any circumstance which might have the effect of creating such a doubt, except perhaps an allegation supported by reliable proof, that at the time when the murder was committed, Billmoria was in some other place. There is no such allegation, and as has been seen, Billmoria led no evidence in his defence at the trial.

15. Learned counsel for the appellant has challenged the evidentiary value of the above mentioned recoveries and discoveries mainly on the ground that police have not associated any independent witness with the said process and posed police officials to the recovery memos in violation of section 103, Cr.P.C. No doubt, attesting witnesses of the recovery memos in the present case are mostly police officials, however, it has been repeatedly held by august Supreme Court of Pakistan that police are as good as other private witnesses, therefore, their testimony could not be discarded on the ground of their status as employees of police department when otherwise they have supported the recoveries through truthful statements and no evidence is there to suggest their ill-will towards the appellant. It is also settled principle that compliance of section 103, Cr.P.C is necessary when search of a house or place is conducted by police for recovery of something and not in the cases when the recovery is made on pointation of accused. In this regard we would refer the judgment of Hon'ble apex Court in the case of Muhammad Akbar Vs. The State (1995 SCMR 693) wherein it was held that:

The objection raised by the learned counsel with regard to the violation of the provisions of section 103, Cr.P.C. by not joining the two respectable of the locality to witness the recovery is devoid of force. In the instant case, neither search warrants were issued by the Magistrate for the search of the house of the petitioner nor the police had searched the house/place of its own. The petitioner himself led the police to his house and pointed the place wherefrom the gun was recovered. Section 103, Cr.P.C. would apply to a case where the police conducts search of the house/place to recover a thing for which search is to be made and not to a case where anything is to be discovered in consequence of the information given by or on the pointation of the accused. The recovery, to be made on the pointation of the accused is relevant under Article 40 of the Qanun-e-Shahadat, 1984. The association of the two respectable inhabitants of the locality is not required in a case where the accused himself leads the police to a particular place and the thing is recovered on his information and/or pointation.

16. Regarding the quantum of sentence which is disputed in the connected revision petition filed by complainant for enhancement of the appellant's sentence from life imprisonment to death, it is an admitted fact that there is no eye witness of the occurrence and prosecution has based its case against the appellant wholly on circumstantial evidence. There are also slight variations in the statements of PWs especially of complainant and S.H.O of the police station with regard to timings of recovery of dead body as well as

registration of *Murasila*. Though the said disparities are not potential enough to damage the entire prosecution case, however, the same have diluted the charge against the appellant to some extent and can be counted towards the quantum of sentence for safe administration of justice. In addition, complainant in his report has mentioned no motive behind the occurrence. The appellant in his confessional statement has disclosed that the deceased had abandoned to give him company, therefore, he made a plan for his murder. Though the deceased was a borderline teenager but keeping in view his physique, as apparent from his photograph Ex.P-19, he does not appear to be a subtle youngster. His separation from the appellant and his indifferent behavior towards him was not a matter of life and death for the appellant so much so that to plan his murder extreme anger. It appears that something had happened between the appellant and deceased prior to the occurrence which had prompted the appellant to commit his murder but the same reason for commission of the offence has not been brought on record. No doubt, absence of motive or failure of prosecution to prove the motive setup in the FIR would not damage the case against an accused when

otherwise evidence on record is sufficient to prove his guilt, however, this deficiency on the part of prosecution can be considered for mitigating the sentence. Wisdom is drawn from a recent judgment of the august Supreme Court of Pakistan in the case titled Ghulam Murtaza Vs. The State (2021 SCMR 149) wherein findings of the High Court with regard to absence of motive as mitigating circumstance were approved by holding that:


4. We have observed that there is lack of motive in the case in hand and what happened prior to the scene of occurrence or what prompted the appellant to take away the life of the deceased-Mst. Saima Bibi are the circumstances which have rightly been considered by the Courts below as mitigating circumstances and thus, the appellant has rightly been dealt with by the Courts below.

Further reliance is placed on Falak Sher Vs. The State (NLR 2000 Criminal 188). It was observed by Hon'ble apex Court in the said judgment that:

In the overall circumstances of the case, where motive has become suspect and where the prosecution version suffers from inconsistencies other than of a fatal character, it appears proper not to resort to the death penalty, touching the guilt of the accused.

17. Regarding acquittal of co-accused Muhammad Salman and Ikram Khan by trial Court

through the same judgment, being a blind murder case, they were initially associated with the investigation but after pointation of dead body by appellant Lal Zada and his confessional statement, nothing has been brought on record to show their complicity with the crime. Thus, they were rightly acquitted of the charge and the impugned judgment to this extent does not call for any interference.



18. Having regard to what is established in the case against appellant/convict Lal Zada in light of the above discussion and the principles deducible from the cases cited above, we are satisfied that the appellant has been rightly convicted for the offence of murder and the sentence of life imprisonment awarded to him by trial Court would meet the ends of justice in circumstances of the case. Resultantly, this appeal preferred by him against his conviction and sentence, being devoid of merits, is accordingly dismissed. The connected Cr.R No. 102-M/2019 is dismissed and prayer of the complainant for enhancement of the sentence is turned down for the afore-mentioned reasons in Para-17 above. The order of trial Court directing the appellant to pay compensation of Rs.500,000/- shall remain intact and in case of non-payment of compensation he shall

suffer further six months S.I. Benefit of section 382-B, Cr.P.C is extended to him. The connected Cr.A No. 470-M/2019, being devoid of merits, is also dismissed accordingly.

Announced.
Dt: 30.06.2021


JUDGE


JUDGE

Office
3/7/2021
WR