

Stereo HCJDA-38
Judgment Sheet
**IN THE LAHORE HIGH COURT, MULTAN BEHCH,
MULTAN**
JUDICIAL DEPARTMENT

Crl. Appeal No. 151 of 2016
Muhammad Nadeem vs. The State etc.

&

Crl. Revision No. 107 of 2016
(Mst. Bachal Mai Vs. The State etc.)

JUDGMENT

Date of hearing:	29-11-2023
Appellant by:	M/s Malik Shafiq Ahmad Kalru and Rana Muhammad Ibrahim, Advocates.
State by:	Malik Mudassar Ali, DPG with Akhar, SI.
Complainant by:	M/s Maher Habib Ullah Girwah and Ch. Shafqat Ali, Advocates

Muhammad Tariq Nadeem. J:- Muhammad Nadeem, appellant along with his co-accused Yasir Ali, faced trial in case FIR No. 207 dated 29-05-2013 for offences under sections 302, 34 PPC registered at Police Station Fatehpur with the allegation that the accused persons committed the murder of Momna Bibi alias Saba and after conclusion of trial in the said case, vide judgment dated 22-01-2016, the learned trial court, while acquitting co-accused namely Yasir Ali, convicted and sentenced the appellant as under:-

U/S 302 (b) PPC.

Life imprisonment along with compensation of Rs. 2,00,000/- to the legal heirs of deceased, under section 544-A Cr.P.C. and in default thereof to further undergo 05 months S.I. Benefit of section 382-B Cr.P.C. was extended to the appellant.

2. The appellant has filed the titled appeal against his conviction and sentence, whereas, a criminal revision has been preferred by petitioner Mst. Bachal Mai (PW.10) for enhancement of sentence of appellant. Since common questions of law and facts are involved, therefore, both these matters are being disposed of by means of this single judgment.

3. The prosecution story as given in the judgment of the learned Trial Court reads as under:-

“.... The prosecution case as per complaint Exh.PE is that on 29.5.2013 deadbody of an unknown woman was found within the limits of Chak No. 305/TDA near Dashu minor and PWs Muhammad Anwar as well as Asghar Ali were present there. The deadbody was sent to mortuary for postmortem whereas as per police record photograph of the deadbody, blood stained earth, moulds of shoe of unknown accused person and tyre of motorcycle were procured.

It is in the prosecution story that on 06.6.2013 victim was identified by her mother Bachal Mai PW-10 from her photograph at the proclamation who further nominated present accused persons Nadim and Yasir and thereby alleged that Nadim has committed the murder of her daughter with the help of his co-accused.

Allegedly deceased Momna Bibi had contracted marriage with accused Nadim against the will of her parents but their relations got strained when accused Nadim forbade her from going to D.G. Khan to see her mother but she was adamant to go there and she inspite of restraining by accused Nadim, went to D.G. Khan a few days before occurrence which annoyed the accused. Upon this case/FIR 207/13 was registered at P.S.Fatehpur u/s 302 PPC....”

4. After completion of investigation, a report under section 173 Cr.P.C. was prepared and submitted before the learned trial court. The learned trial court after observing all codal formalities, as provided under the Code of Criminal Procedure, 1898 framed charge against the appellant along with his acquitted co-accused Yasir Ali to which they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution produced as many as 16 witnesses during the trial. Muhammad Nasrullah, ASI (PW.1) being moharrar kept one parcel of six moulds of feet and handkerchief of black

colour, parcel of blood stained earth, parcel of last worn clothes of deceased, two envelopes and four phials (sealed), one clip, one “Challa”, one finger ring of green colour, which he kept in the malkhana of the police station and subsequently handed over to Ghulam Qadir, SI/I,O (PW.15). Muhammad Younis 578/C (PW.2) was the recovery witness of moulds of appellant Muhammad Nadeem as well as tyres of motorcycle prepared by Muhammad Iqbal, foot tracker (PW.11) on the instruction of the Investigating Officer, which were taken into possession vide recovery memo (Exh.PA). Mansab Ali Patwari (PW.3) prepared scaled site plans (Exh.PB and Exh.PB/1) of the place of occurrence. Rashid Imran (PW.8) and Tahir Saleem alias Tariq Saleem (PW.9) have furnished the evidence of extrajudicial confession of the appellant. Mst. Bachal Mai mother of Momna Bibi alias Saba appeared as PW.10 and supported the prosecution story. Muhammad Iqbal appeared as PW.11 who furnished the feet tracking evidence. Muhammad Anwar (PW.12) was the witness of recovery memo of six moulds of footprints and handkerchief as well as seizure memo of parcel of blood stained earth taken from place of occurrence (Exh.PK) and (Exh.PL). Muhammad Numan (PW.14) and Sana Ullah (PW.16) have furnished evidence relating to throwing of a baby by the accused persons into the canal. Zafar Iqbal, SI (PW.13) and Ghulam Qadir, SI (PW.15) being Investigating Officers stated about the various steps taken by them during investigation of the case. The medical evidence was furnished by Doctor Kausar Parveen, WMO (PW.7) and issued PMR of Momna Bibi alias Saba as Exh.PF.

Rest of the prosecution witnesses are formal in nature. The prosecution gave up Ghulam Mustafa, Shahzad Hussain, Haji Allah Bakhsh, Asghar Ali and Muhammad Akhtar, SI, PWs being unnecessary. The prosecution also produced documentary evidence in the shape of Ex.PA to Ex.PV.

5. After completion of prosecution evidence, learned trial court recorded the statements of the appellant alongwith his acquitted co-accused Yasir Ali as required under section 342 Cr.P.C. wherein they controverted the allegations leveled by the prosecution against them and

professed their innocence. The appellant did not opt to make statement under section 340(2) Cr.P.C. to disprove the allegations leveled against him, however, he produced certain documents i.e. Exh.DD and Exh.DE in his defence evidence.

6. The learned trial court *vide* judgment dated 22-01-2016 found Muhammad Nadeem, appellant guilty, convicted and sentenced him as mentioned above, *however*, acquitted his co-accused Yasir Ali of the charge through the same judgment by giving him the benefit of doubt, hence, the appeal.

7. Learned counsel for the appellant contended that the impugned judgment is against the law and facts of this case, which resulted into grave miscarriage of justice; that the prosecution story is nothing but a cock and bull story which has been engineered by mother of Momna Bibi alias Saba, deceased; that the appellant has been falsely roped in this case due to erratic guesswork and malicious intention of alleged witnesses of extrajudicial confession evidence; that not a single iota of tangible evidence is available against the appellant to connect him with the commission of crime, even no direct evidence is available against him and the prosecution case is entirely based on circumstantial evidence which is admittedly the weakest type of evidence; that the evidence of extrajudicial confession as well as last seen were maneuvered and the witnesses so produced are not reliable; more so evidence of extrajudicial confession is also very weak type of evidence and cannot be relied upon and the same could not have been used against him; that the prosecution has produced Sana Ullah (PW.16) only to fill up the lacuna of the prosecution evidence and his evidence is not confidence inspiring; that co-accused of the appellant namely Yasir Ali has been acquitted by the learned trial court by giving him the benefit of doubt through the same judgment, which renders the prosecution story highly doubtful; that medical evidence is merely a supportive circumstance, which cannot take the place of substantive evidence; that the recoveries at the instance of the appellant and the report of the Punjab Forensic Science Agency are hardly of any consequence being the embroidery of main allegation, which could

not be proved by the prosecution through some concrete evidence; that even the motive subsequently introduced by the prosecution was not successfully proved. Further submits that the prosecution has badly failed to bring home the guilt of the appellant beyond any shadow of doubt but learned trial court ignored all the fallacies of the prosecution case with surprising ease; that the impugned judgment has been passed by the learned trial court without application of judicious mind, which is unsustainable from all corners, hence, prays that the instant appeal may be accepted and the appellant may be acquitted of the charge leveled against him.

8. Conversely learned Deputy Prosecutor General assisted by learned counsel for the complainant vehemently opposes the contentions raised by learned counsel for the appellant and *inter alia* maintains that though no direct evidence is available against the appellant yet the prosecution has proved its case through circumstantial evidence, the chain of which is complete in all respects and has well-connected the appellant with the commission of brutal and ruthless murder of an innocent lady; that the prosecution witnesses had no ill-will, enmity, malice or *mala fide* against the appellant to falsely implicate him in a case involving capital punishment; that the prosecution version is corroborated by the medical evidence, recoveries at the instance of the appellant and positive report of the Punjab Forensic Science Agency. Lastly, submits that the prosecution has proved its case against the appellant beyond any shadow of doubt, *hence*, his appeal may be dismissed.

9. I have anxiously considered the arguments put forth by learned counsel for the appellant as well as learned Deputy Prosecutor General assisted by the learned counsel for the complainant and gone through the record minutely.

10. The facts and circumstances highlighted in FIR (Exh.PE/1) as well as other evidence led by the prosecution clearly depict that the alleged occurrence had not been witnessed by anyone and in order to prove its case, the prosecution has heavily relied upon circumstantial evidence, which is normally considered as a weak type of evidence. It is well settled

by now that in such like cases, prosecution is required to link each circumstance to the other in a manner that it must form a complete, continuous and unbroken chain of circumstances, firmly connecting the accused with the alleged offence and if any link is missing then obviously benefit is to be given to the accused. Reliance is placed upon the esteemed judgments of the Supreme Court of Pakistan reported as “Hashim Qasim and another v. The State” (2017 SCMR 986), “Fayyaz Ahmad v. The State” (2017 SCMR 2026) and “Sadi Ahmad and another v. The State” (2019 SCMR 1220).

11. In an attempt to prove the accusation against the appellant and to form a complete chain of circumstances, the prosecution has relied upon the evidence of extrajudicial confession allegedly made by the appellant before Rashid Imran (PW.8) and Tahir Saleem alias Tariq Saleem (PW.9), feet tracking evidence furnished by Muhammad Iqbal (PW.11) coupled with recoveries, medical evidence and the motive.

12. As far as the first significant piece of evidence in this case i.e. evidence of extra judicial confession allegedly made by appellant before Rashid Imran (PW.8) and Tahir Saleem alias Tariq Saleem (PW.9) is concerned , according to them, on 17-06-2013, they along with Ghulam Mustafa (given up PW) were present in the drawing room of Rashid Imran (PW.8) and at about 08:00 p.m. the appellant came there on motorcycle in perplexed condition and stated before them that due to the immoral activities of Momna Bibi alias Saba, he (appellant) along with his co-accused Yasir Ali (since acquitted) murdered her. He (appellant) requested to get pardon from Sheraz Gul as they were having good relations with him.

Admittedly, both the supra mentioned PWs are not relatives of above-said Sheraz Gul. who had no authority or any status in the vicinity to get pardon from him in favour of the appellant. Rashid Imran (PW.8) has stated in his cross-examination as under:-

“....Nadim accused did not visit to me before confession on 17.6.2013. When Nadim accused came

to me Yasir accused was not accompanying him. I did not attend the funeral ceremony of deceased Mamona alias Saba. On the confession of accused Nadim before me, I did not inform the concerned police station.-----

-----My statement u/s 161 Cr.P.C. was recorded in this case at P.S. Chowk-Azam. I did not make any statement at P.S. Fatehpur regarding this case. -----

Accused narrated the story of extra judicial confession within span of one hour.-----

I was also having mobile phone. PW Tariq Saleem was my driver on my wagon whereas Mustafa was conductor of the wagon No. 6355. When accused came to us he was not having any kind of weapon with him. The time 8.00 p.m. was exactly told by me to the police in my statement. -----

The house of Sheraz Gul is at the distance of about one K.M.-----

Police Station is at the distance of two K.M. from my residence.

Similarly, Tahir Saleem alias Tariq Saleem (PW.9) has also stated in his cross-examination as infra:-

“....Nadim accused did not visit to me before confession on 17.6.2023.-----

Accused was not known to me prior to 17.06.2013, however, I had seen the accused many time while passing thereby near to the Baithak of Rashid Imran. Rashid PW told me the name of the accused. I narrated the exact narration of the accused to the police relating to extrajudicial confession. Police station is at a distance of 2 2 ½ K.M. from Baithak of Rashid Imran. -----

We did not try to apprehend the accused. -----

The I.O got our statement at P.S. Chowk-azam and after recording our statements he allowed us to go. That I.O was related to P.S.Chowk-azam and not related to any other police station. Accused remained in Baithak for one hour. During extrajudicial confession no question was put to the accused by us.

Neither I nor Rashid Imran remained member of any committee or contested election of local bodies....”

In view of the statements of the supra-mentioned PWs, the appellant was empty handed, remained present in the drawing room of Rashid Imran (PW.8) for about one hour whereas the police station was located at a distance of two kilometers and one of the PW having a cell phone, even then they had not tried to apprehend the appellant or even informed the concerned police, thus, the story narrated by supra-mentioned prosecution witnesses regarding extrajudicial confession is highly improbable and does not appeal to common sense. In this backdrop, the appellant had no necessity to involve himself in an untraced occurrence involving capital punishment. The aforementioned facts certainly raise serious doubt about the veracity of witnesses and their testimonies are not upto the mark to place any reliance upon it. In such circumstances, I have no option except to hold that the evidence of extrajudicial confession made by the appellant regarding the incident was fabricated in order to create some circumstantial evidence in this unwitnessed tragedy. In the given circumstances, the evidence of extrajudicial confession does not bear any credibility and that cannot be permitted to render any sort of help to the case of the prosecution. Even otherwise, the evidentiary value of extrajudicial confession has been declared a weak type of evidence by the Supreme Court of Pakistan in plethora of judgments including in cases titled as “Mst. Asia Bibi v. The State and others” (PLD 2019 Supreme Court 64) and “Wajeeh-Ul-Hassan v. The State” (2019 SCMR 1994).

13. Insofar as the evidence of foot tracker Muhammad Iqbal (PW.11) as well as the report of Punjab Forensic Science Agency, Lahore (Exh.PU) are concerned, I have noted that according to him, he was foot tracker by profession and on 29-05-2013, he was summoned by the police of Police Station Fatehpur, upon which, he reached in the area of Chak No. 305/TDA, Tehsil Karor, where dead body of unknown woman was lying. He prepared four moulds of visible footprints of accused from near the dead body and two moulds of visible impression of tyres of

motorcycle. He could identify the accused in a “Foot identification parade” in the light of moulds of footprints collected from the spot. Police took into possession aforesaid moulds through recovery memo and his statement was recorded in this regard. Thereafter, on 16-07-2013, he was again summoned by the police where foot identification parade was conducted in presence of the Investigating Officer and he picked up footprints of appellant in said “foot identification parade” and two moulds of footprints of Muhammad Nadeem, appellant with shoes i.e. left and right foot were prepared by him and handed over to the police for their comparison with the footprints collected from the spot on 29-05-2013.

During cross examination, he (PW.11) stated that he did not tell the police that moulds were related to open shoes, casual shoes or formal shoes, boots, Khairri etc. He had not told the police that whether the moulds relate to the child or adult. He further stated that he had not told the police that whether footprints were of a female or male. He also stated that when he reached there 30 to 40 persons were present at the place of occurrence. Moreover, he further disclosed in his evidence that on 29-05-2013 police did not obtain his signature or impression on his statement but thereafter police got his thumb impression.

In addition to the above, the prosecution has also examined Muhammad Anwar (PW.12), the recovery witness of the supra mentioned moulds of a male and tyres of motorcycle from the spot, who during his cross examination also stated that before their arrival a few persons were present at some distance of the dead body. He further stated that it was 7:30/8:00 a.m. in the morning.

I have further noted that there is haunting silence with regard to the fact that when the above-mentioned PWs reached at the place of occurrence whether the moulds of the shoes as well as tyres were covered or not at that time, therefore, it is not probable that the footprints of the accused would have remained intact during that period.

There is yet another aspect of the case that the prosecution has also failed to prove safe custody of abovesaid moulds as statement of Ghulam Qadir, SI (PW.15) is silent about the fact that on which date and time, he had handed over the moulds to the moharrar of the police station.

According to the postmortem report (Exh.PF) and statement of Doctor Kousar Parveen (PW.7) postmortem of the deceased was conducted on 28-05-2013 whereas according to the statement of Muhammad Iqbal, foot tracker (PW.11), he prepared moulds of footprints and impression of tyre of motorcycle on 29-05-2013 from nearby place where dead body of an unknown woman was lying. When the dead body was not present at the place of occurrence on 29-05-2013 then whole evidence of above-mentioned PW had lost its sanctity.

I have also observed that the prosecution desired that the evidence of Muhammad Iqbal, foot tracker, (PW.11) be treated as expert's evidence within the meaning of Article 59 of Qanun-e-Shahadat Order, 1984, which deals with the "opinion of expert". It is true that in rural areas some villagers by constant practice develop a knack to identify the human footprints and the Courts of this country also with lot of reservations, consider it as a piece of evidence. Identification of human footprints has not developed as a definite science so far as we have sciences of identification of handwriting and fingerprints, therefore, evidence of foot track described is always treated to be weak type of evidence. Number of instructions for procuring evidence of footprints found at the scene of occurrence are laid down in Rule 26 of Chapter XXV of The Punjab Police Rules, 1934. To better decide the controversy in issue, it is expedient to have a glance over Rule 26 of Chapter XXV of Punjab Police Rules, 1934, which reads as under:-

“...**25.25. Track law.** Provision of law regarding tracking are contained in Sections 41 and 42 of Act IV of 1872 (Punjab Laws Act).

25.26 Importance of footprints and track evidence.-

(1) Footprints are of the first importance in the investigation of crime. For this reason all officers in charge of police stations shall

instruct their subordinates as well as all lambardars and chukidars that, when any crime occurs all footprints and other marks existing on the scene of the crime should be carefully preserved and a watch set to see that as few persons as possible are permitted to visit the scene of the crime.

(2) When it is desired to produce of the identity of tracks found at the scene of or in connection with a crime, the procedure for securing the record of such evidence shall be similar to that prescribed in rule 26.32 for the identification of suspects. The attendance of a magistrate of the highest available status shall be secured, or, if that is impossible, independent witnesses of reliable character shall be summoned. In the presence of the magistrate or other witnesses, and in conformity with any reasonable directions which they may give, ground shall be prepared for the tests. On this ground the suspect or suspects, and not less than five other persons shall be required to walk. The magistrate, or in his absence the police officer conducting the test, shall record the names of all these persons and the order in which they enter the test ground. While these preparations are proceeding the tracker or other witness who is to be asked to identify the tracks shall be prevented from approaching the place or seeing any of the persons concerned in the test. When all preparations are complete the witness shall be called up and required to examine both the original tracks and those on the test ground, and thereafter to make his statement. The magistrate or, in his absence, the police officer conducting the test, shall record the statement of the witness as to the grounds of his claim to identify the tracks, and shall put such other questions as he may deem proper to test his bona fides. The Officer investigating the case and his assistants shall be allowed no share in the conduct of the test.

Tracks found, which it is desired to test by comparison as above, shall be protected immediately on discovery, and their nature, measurements and peculiarities shall be pretended at the time in the case diary of the investigating officer.

The details of the preparation of the test ground and the actions required of the suspect and those with whom his tracts are mixed must vary according to the circumstances of the case. The officer conducting the test, in consultation with the magistrate or independent witnesses, shall so arrange that the identifying witness may be given a fair chance, but under the strictest safeguards, of comparing with the original tracks other tracks made on similar ground and in similar conditions.

(3) The evidence of tracker or other expert described in the foregoing rule can be substantiated by the preparation of moulds of other footprints of the criminal or criminals found at the scene of the crime. The method of making moulds of footprints by means of plaster of Paris or a composition of two parts of resin to one part of

wax or paraffin is taught to all students at the '[Police Training College] but requires practice before an officer can become proficient. The only advantage in the first method (plaster of Paris) is the quickness with which the material sets. Resin and wax are cheap and can be used more than once.

In making moulds for production as evidence the following precautions should be observed:-

- (a) The footprints found on the scene of the crime must be pointed out to reliable witnesses at the time and these same witnesses must be present during the preparation of the moulds. preparing
- (b) The latter must also be signed or marked by the witnesses and the officer them while still setting.
- (c) After the procedure described in sub-rule (2) above has been completed a mould should be prepared in the presence of the magistrate or witnesses of one of the footprints of the suspect made in their presence. This mould should be signed by the magistrate or witnesses when still setting.
- (d) Both moulds should be carefully preserved for production in court for identification by witnesses and comparison by the court.

Methods of recording footprints-(1) by tracing through glass-foot-prints found on the ground or other surface, and (2) by taking impressions of feet direct on to paper, as in the case of finger impressions, are taught at the [Police Training College). Such records shall be utilized in the case of notorious criminals for comparison with footprints found at the scene of offence. They may also be used to check the reliability of local tracker.”

I have observed that Rule 26 says that foot tracker should prepare the mould of footprints of an accused for which he based his opinion in the presence of Magistrate or witnesses of the footprints of the suspect made in their presence. It further says that mould of the footprints found on the scene of crime and the moulds of the footprints identified in the identification process should be preserved and then produced at the time of trial for comparison by the Court, but the supra mentioned requirements of Rule 26 of Chapter XXV of The Punjab Police Rules, 1934 have not been fulfilled in this case.

Although, according to the report (Exh.PU) of the Punjab Forensic Science Agency, Lahore regarding comparison of item 1.4 (questioned mould of a left shoe impression), with item 2.4, (the suspect “Bata” brand left shoe) and with item 2.6 (mould of the suspect of left shoe), revealed similar class and characteristics but as per the said report comparison of item 1.2, (mould of a tyre track of a zigzag design), with item 2.1, (the suspect motorcycle tyre of a zigzag design), did not reveal similar class characteristics. Moreover, according to the supra mentioned report, comparison of item 1.3, (questioned mould of a right shoe impression), with item 2.3, (the suspect “Bata” brand right shoe) and with item 2.5, (mould of the suspect right shoe), did not reveal similar characteristics. Insufficient detail was observed in item 1.5, (questioned mould of a shoe impression), and in item 1.6, (questioned mould of a shoe impression), therefore, no comparison was performed. In this way, the above-said fact demolishes this evidence completely. The tracker evidence produced by the prosecution is also found worthless. Even otherwise, it is by now well-settled law that the evidence of footprints tracker is a weak type of evidence. Of all kinds of evidence, admitted in a court this may be regarded as evidence of the least satisfactory character, thus, there is considerable force in the contention that it will be very unsafe to rely on footprint tracker’s evidence. At the most, it may be said that the evidence led against the appellant disclosed grave suspicion of guilt but it did not raise that high degree of probability on which a conviction should be based.

14. I have also observed that according to the statement of lady Doctor Kausar Parveen (PW7) on 28-05-2023, she was posted at WMO, THQ, Hospital Karor and on the same day dead body of an unknown woman aged about 35 years was brought for postmortem examination at RHC, Fatehpur but due to non-availability of WMO matter was referred to THQ, Hospital Karor and she conducted the postmortem on her body.

Contrary to above, Mst. Bachal Mai (PW.10) during her cross examination described the age of her daughter as 17/18 years. Relevant line of his statement reads as under:-

“....Momina Bibi was aged about 17/18 years....”

I am of the view that this fact also raises suspicion upon the story of the prosecution.

15. Now come to the statements of Muhammad Numan (PW.14) and Sana Ullah (PW.16). According to Sana Ullah (PW.16) on 27-05-2013, he along with Muhammad Numan (PW.14) were going to meet Sanwal Saeed one of his friend at Bhakkar on motorcar. At about 09:30 p.m. when they reached at metalled road passing parallel to Munda Canal Bridge on its eastern side near Chak No. 335/TDA, they saw two persons namely Muhammad Nadeem, appellant and Yasir Ali (since acquitted) in the light of motorcar, who were previously known to him. Yasir Ali, accused was holding a baby and in their view he threw the baby in the canal, then they both while riding on motorcycle ran away. They both proceeded to Bhakkar to see his friend. On the next day, they returned to his home at Dera Ghazi Khan. They did not inform anybody at Layyah. On 14-06-2013 in daily newspaper Khabrain, he read a news that father-in-law of Nadeem Akbar, his cousin as well as his sons Muhammad Hassan and Ghazanfar had been murdered by the appellant. Nadeem Akbar, in order to verify said news came at Chowk Azam and after his return from Chowk Azam to Dera Ghazi Khan, Nadim Akbar told him that baby which was thrown in the canal by Nadeem and Yasir Ali, was his son, who was from the wedlock of his former wife namely Momna Bibi alias Saba (deceased). On 02-07-2013, he came at police station alongwith Muhammad Numan (PW.14) and got recorded his statement. Same was the statement of Muhammad Numan (PW.14).

I have observed that the story narrated by the surpa mentioned PWs is not acceptable to a prudent mind as they failed to justify their presence at the canal where the baby was allegedly thrown by the accused persons.

Moreover, the conduct of the supra mentioned PWs is highly unnatural because the complainant party was closely related to them and they did not timely inform the episode of throwing baby in the canal to the police and remained silent for a long time. I have further noted that Sana Ullah (PW.16) has also made dishonest improvements to his earlier statement. Relevant portion of his statement reads as under:-

“.....I stated before the I.O. in my statement Exh.DC that on 27.5.13 I alongwith Numan PW were going to meet Sanwal Saeed at Bhakkar by motor Car (confronted with Eh .DC where it is not so recorded). I stated in my statement before the I.O. that at about 9.30 p.m. we reached at mattle road passing to parallal to Tail Munda canal on its eastern side near Chak No.335/TDA(confronted with Exh.DC where it is not so recorded). I stated in my statement u / s 161 Cr.P.C. we did not inform any at Layyah but we have seen on 27.5.2013 (confronted with Exh.DC wherein not so recorded). I stated inmy statement u / s 161 Cr.P.C. that Nadim Akbar was my "Khalazad" (confronted with Exh.DC wherein not so recorded). I stated in my statement u / s 161 Cr.P.C. that Nadim Akbar in order to verified the said news at Chowk-Azam and after his returned from Chowk-Azam to D.G. Khan Nadim Akbar told me that Baby which was thrown in the canal (confronted with Exh.DC where it is not so recorded). It is incorrect to suggest that I malafidely made dishonest improvement in my statement just to give undue benefit to the prosecution case...”

In light of above discussion, I have observed that Muhammad Numan (PW.14) and Sana Ullah (PW.16) have failed to justify their presence at the relevant time rather they are interested witnesses and their evidence is not confidence inspiring, which is accordingly discarded.

16. Though, the medical evidence which is in the shape of statement of lady Doctor Kausar Parveen, WMO (PW.7), who conducted autopsy on the dead body of Momna Bibi alias Saba, deceased and issued PMR (Exh.PF), is available but no other trustworthy direct or indirect evidence is available against the appellant, which could be supportive of the medical evidence. It is well settled by now that medical evidence is a type

of supporting evidence, which may confirm the prosecution version with regard to receipt of injury, nature of the injury, kind of weapon used in the occurrence but it would not identify the assailant. Reference in this context may be made to the case of “Muhammad Mansha Vs. the State” (2018 SCMR 772).

17. I have further noted that co-accused of the appellant Yasir Ali has been acquitted of the charge through the impugned judgment to whom effective role was ascribed by the prosecution in the occurrence. Learned Law Officer assisted by learned counsel for the complainant has candidly conceded that no appeal against acquittal has been filed either by the State or the complainant, meaning thereby, Mst. Bachal Mai (PW.10) was satisfied with his acquittal. It is a trite principle of law and justice that once prosecution witnesses are disbelieved with respect to a co-accused then, they cannot be relied upon with regard to the other co-accused unless they are supported by corroboratory evidence coming from any independent source and shall be unimpeachable in nature but that is not available in the present case. Reliance is placed upon the cases titled as “Shahbaz Vs. The State” (2016 SCMR 1763), and “Pervaiz Khan and another Vs. The State” (2022 SCMR 393).

18. So far as recovery of Churri (P.8) at the instance of the appellant, vide recovery memo (Exh.PJ) concealed under the bushes of berry tree is concerned, the same is not helpful to the prosecution because the report of Punjab Forensic Science Agency, Lahore is in the negative as human blood was not identified on item No.1 i.e. Swabs taken from Churri.

19. With regard to the recovery of motorcycle at the pointation of appellant from his residential house, vide seizure memo (Exh.PR), I have observed that no registration number, colour, company name has been described by the prosecution witnesses. In this way, recovery of motorcycle at the pointation of appellant is inconsequential and not helpful to the prosecution case. I fortify my view from the dictum laid down in the case titled as “Naveed Asghar Vs. The State and another” (PLD 2021 SC 600).

20. The only last piece of evidence which still remains in the box of prosecution is the motive, as per version of Mst. Bachal Mai (PW.10), Momna Bibi alias Saba (deceased) contracted her second marriage with the appellant but without their consent. Thereafter, the relations between the spouses became strained on the issue that Momna Bibi alias Saba was adamant to visit Dera Ghazi Khan, whereas the appellant restrained her from going there and due to that grudge, the appellant along with his co-accused Yasir Ali (since acquitted) committed murder of her daughter. I have observed that it was merely an oral assertion of Mst. Bachal Mai (PW.10) and no substantial piece of evidence has been led by the prosecution to prove the motive part of the occurrence. Furthermore, according to the testimony of Ghulam Qadir SI/I.O (PW.15), Mst. Bachal Mai (PW.10) orally stated that Momna Bibi alias Saba (deceased) had contracted marriage with the appellant against their wishes but she could not produce any document of Nikkah or the witnesses of Nikkah. In this way, the prosecution has miserably failed to prove the motive part of the occurrence. Although, the prosecution is not under obligation to establish the motive in every murder case but it is also well settled principle of criminal jurisprudence that if prosecution sets up a motive but fails to prove it, then, it is the prosecution who has to suffer and not the accused. Reliance is placed upon the cases titled as “Tajamal Hussain Shah Vs. The State and another” (2022 SCMR 1567) and “Sarfraz and another Vs. The State” (2023 SCMR 670).

21. After analyzing the prosecution case from every angle, I have concluded that the case against the appellant is replete with doubts and his conviction and sentence cannot be upheld on the basis of such shaky and untrustworthy evidence. The Supreme Court of Pakistan has time and again held that in the event of a doubt, its benefit must be given to the accused not as a matter of grace, but as a matter of right. Reliance is placed upon the esteemed judgments of the Supreme Court of Pakistan passed in cases titled as Sajjad Hussain vs. The State and others” (2022 SCMR 1540), “Saghir Ahmad vs. The State and others” (2023 SCMR 241), “Atta ul Mustafa vs.

The State and another” (2023 SCMR 1698) and “*Barkhurdar vs. The State and another*” (2023 SCMR 1791).

22. For the foregoing reasons, titled appeal is accepted and Muhammad Nadeem, appellant is acquitted of the charge by extending the benefit of doubt to him. He is in jail; he be released forthwith if not required in any other case.

23. As a natural corollary, finding no merit criminal revision filed by Mst. Bachal Mai (PW.10) for enhancement of sentence of appellant is *dismissed.*

(Muhammad Tariq Nadeem)
Judge

Approved for Reporting

Judge

Announced, dictated, prepared and
Signed on 29-11-2023.
ANJUM