

HCJDA.38
JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Criminal Appeal No.671 of 2016

Saqib Ali Vs. The State & another

&

Criminal Revision No.839 of 2016

Muhammad Azam Butt Vs. Saqib Ali

JUDGMENT

Date of hearing:	10.06.2020.
Appellant, as well as, respondent in Crl. Revision No.839 of 2016 by:	Mr. M. Asad Manzoor But Advocate.
State by:	Ms. Tahira Parveen, District Public Prosecutor.
Complainant, as well as, petitioner in Crl. Revision No.839 of 2016 by:	Rana Arif Mehmood Advocate.

Malik Shahzad Ahmad Khan, J:- This judgment shall dispose of *Criminal Appeal No.671 of 2016*, filed by Saqib Ali (appellant) against his conviction and sentence, as well as *Criminal Revision No.839 of 2016*, filed by Muhammad Azam Butt petitioner/complainant for enhancement of sentence awarded to Saqib Ali (respondent of said criminal revision), from imprisonment for life to death, as both these matters have arisen out of the same judgment dated 09.03.2016, passed by learned Additional Sessions Judge, Lahore.

2. Saqib Ali (appellant) along with his co-accused was tried in case F.I.R. No.905/2009 dated 17.11.2009, registered at police

station Ghazi Abad, Lahore in respect of offences under sections 302/363/ 364-A/201 PPC. After conclusion of the trial, the learned trial Court *vide* its impugned judgment dated 09.03.2016, has convicted and sentenced the appellant as under: -

Under section 364-A PPC to imprisonment for life.

Under section 302(b) PPC to imprisonment for life. The appellant was also directed to pay compensation of Rs.1,00,000/- (Rupees one hundred thousand only), to the legal heirs of Hashir (deceased), as provided under section 544-A Cr.P.C and in case of default to further undergo six months simple imprisonment.

Benefit of section 382-B Cr.P.C was also extended to the appellant. Both the sentences of imprisonment were ordered to run concurrently.

Through the same impugned judgment, the appellant was acquitted from the charges under Sections 364-A, 302(b) and 201 of PPC regarding the abduction and murder of Muhammad Ahmad (minor deceased) and disappearance of evidence to the extent of said deceased whereas, co-accused of the appellant, namely, Atif Zaman, Iftikhar Alam and Mst. Ayesha were acquitted from all the charges.

3. Brief facts of the case as given by Muhammad Azam Butt (complainant/PW-5) in his complaint Ex.PA, on the basis of which formal FIR Ex.PA/1 was chalked out, are that the complainant was employed in the Daily Express News. On 16.11.2009, at about 6.00 p.m (evening), the children of the complainant namely Muhammad Ahmed aged about 5 years, Muhammad Hashir aged about 3, were playing with the brother-in-law of the complainant namely Saqib Ashrafi alias Saqib Ali (appellant), who came to the house of the complainant and stayed there for about 2 to 3 hours and thereafter he (appellant) left the said house. After half an hour from the departure of the appellant, the above mentioned children of the complainant also disappeared from his house. The complainant expressed his suspicion that his children had been abducted by Saqib Ashrafi alias Saqib Ali (appellant) because he (appellant)

used to pose himself as a fake “Peer” and entice the family members of the complainant, therefore, the complainant forbade the appellant from doing so and posing himself as a fake “Peer”, due to which he (appellant) abducted the children of the complainant, hence the abovementioned FIR.

Initially the FIR was lodged under section 363 PPC. On 02.12.2009, the dead body of an unknown minor was found in a canal situated within the area of police station Satto Katla, Lahore whereupon FIR No.1420/2009, under section 302 PPC, was lodged at police station Satto Katla against unknown accused persons. Later on, the dead body of abovementioned unknown minor was identified to be that of Muhammad Hashir (minor son of the complainant), therefore, offences under sections 302/201 PPC, were added in the instant case.

4. The appellant was arrested in this case by the police on 15.12.2009 and after completion of investigation the challan was prepared and submitted before the learned trial court. The learned trial Court, after observing legal formalities, as provided under the Code of Criminal Procedure, 1898 framed charge against the appellant and his co-accused to which they pleaded not guilty and claimed trial. In order to prove its case the prosecution produced sixteen witnesses during the trial. The statement of the appellant under section 342, Cr.P.C was recorded, wherein he refuted the allegations levelled against him and professed his innocence.

5. The learned trial Court *vide* its judgment dated 09.03.2016, found the appellant guilty, convicted and sentenced him as mentioned and detailed above.

6. It is contended by learned counsel for the appellant that the appellant is absolutely innocent and he has falsely been implicated in this case by the complainant being in league with the local police; that the evidence of Muhammad Yaqoob, PW.3 who allegedly saw the appellant and his co-accused while throwing two

minor boys in the canal, is not worthy of reliance because the said witness appeared before the police with considerable delay of two months and six days from the date of occurrence; that the circumstantial evidence produced by the prosecution is very weak thus, the same is not worthy of reliance; that the dead body of Muhammad Ahmad, deceased has not been recovered in this case and the appellant has been acquitted from the charges of abduction and murder of Muhammad Ahmad, deceased; that insofar as the murder of Muhammad Hashir, deceased is concerned, according to his postmortem examination report, there were five injuries on his body but no weapon of offence has been recovered from the possession of the appellant; that the alleged recoveries of last worn clothes of the minor deceased, namely, Muhammad Ahmad and Muhammad Hashir were not stained with blood and the said recoveries were also rightly disbelieved by the learned trial Court; that the evidence of last seen produced by the prosecution through Roheel Ahmad, PW.11 and Atif Mehmood, PW.12 is not worthy of reliance because they made their statements before the police with the delay of one month and seventeen days from the occurrence; that the prosecution evidence regarding the alleged pointation of the place of occurrence by the appellant is also inconsequential because nothing incriminating was recovered from the said place; that the motive alleged by the prosecution has also not been proved through any reliable evidence and the same has rightly been discarded by the learned trial Court; that the prosecution evidence has been disbelieved by the learned trial Court against Mst. Ayesha, Atif Zaman and Iftikhar Alam, co-accused, therefore, the same evidence cannot be believed against the appellant without independent corroboration which is very much lacking in this case; that the prosecution miserably failed to prove its case against the appellant beyond the shadow of doubt, therefore, this appeal may be accepted and the appellant may be acquitted from the charges.

7. On the other hand, it is argued by the learned District Public Prosecutor assisted by learned counsel for the complainant that the prosecution has proved its case against the appellant beyond the shadow of any doubt; that the co-accused of the appellant, namely, Mst. Ayesha, Atif Zaman and Iftikhar Alam were not nominated in the FIR or by the prosecution witnesses of last seen evidence, namely, Roheel Ahmad, PW.11 and Atif Mehmood, PW.12, therefore, their case is distinguishable from the case of Saqib Ali, appellant and as such the acquittal of the said co-accused is of no avail to the appellant; that convincing and reliable prosecution evidence is available on the record against the appellant in the shape of statement of Muhammad Yaqoob, PW.3, who saw the appellant and his co-accused while throwing the minor boys in the canal; that there is evidence of lastly seeing alive the minor sons of the complainant in the company of the appellant which was produced by the prosecution through Roheel Ahmad, PW.11 and Atif Mehmood, PW.12; that last worn clothes and articles of both the deceased boys were recovered on the pointation of the appellant and the recoveries of the said clothes/articles have been proved by the prosecution through Abdul Basit PW.4; that Muhammad Azam Butt, complainant/PW.5 also proved the motive alleged in this case that the appellant used to pose himself as a fake 'Peer' and he was forbidden by the complainant, therefore, due to the said grudge, he (appellant) committed the murder of his (complainant's) two minor sons; that the prosecution witnesses stood the test of lengthy cross-examination but their evidence could not be shaken; that there is no substance in this appeal, therefore, the same may be dismissed. Learned counsel for the complainant while arguing Crl. Revision No.839 of 2016, contends that Saqib Ali, respondent (appellant in Crl. Appeal No.671 of 2016) has wrongly been awarded lesser punishment by the learned trial Court whereas there was no mitigating circumstance in his favour, therefore, he may be awarded capital punishment.

8. Arguments heard and record perused.

9. The detail of the prosecution case as set forth in the FIR (Ex.PA/1) and in the complaint (Ex.PA) has already been given in paragraph No.3 of this judgment, therefore, there is no need to repeat the same.

10. As mentioned earlier, all the accused including Saqib Ali, appellant have been acquitted from the charges of abduction and murder of Muhammad Ahmad, minor deceased, however, Saqib Ali, appellant has been convicted and sentenced only for the abduction and murder of Muhammad Hashir, deceased, as mentioned and detailed above.

11. I have noted that the prosecution has produced two types of evidence in this case. The prosecution produced ocular account of the occurrence through Muhammad Yaqoob, PW.3 and at the same time, the prosecution has also produced circumstantial evidence in this case through Abdul Basit (PW.4), Muhammad Azam (PW.5), Roheel Ahmad (PW.11) and Atif Mehmood (PW.12). It is, therefore, evident that the complainant party of this case was not sure that as to whether they (complainant party) should produce direct evidence in the shape of ocular account or to produce circumstantial evidence in this case against the accused persons. Insofar as the ocular account of the prosecution is concerned, I have noted that the prosecution has produced Muhammad Yaqoob, PW.3 who had seen Saqib Ali, appellant and his co-accused while throwing two minor boys in the canal.

Ocular account/Evidence regarding throwing two minor boys in the canal by the appellant and his co-accused.

The prosecution produced its ocular account through Muhammad Yaqoob, PW.3. He stated that on 16.11.2009, he was proceeding from cavalry ground to Harbanspura, Lahore alongwith his friend Tariq Hussain and when they were crossing Harbanspura Bridge, they saw Saqib Ali, appellant, Atif Zaman and Iftikhar

Alam, co-accused while throwing two minor boys in the canal. He further stated that a girl was also sitting in the car alongwith Saqib Ali, appellant and his co-accused at the time of occurrence. Muhammad Yaqoob, PW.3 admitted during his cross-examination that his statement was recorded by the police on 22.01.2010. It is not understandable that if Muhammad Yaqoob, PW.3 had witnessed the occurrence of a heinous crime and seen Saqib Ali, appellant and his co-accused while throwing two minor boys in the canal on 16.11.2009 then as to why he remained mum till 22.01.2010 i.e. for a period of two months and six days from the date of occurrence. Muhammad Yaqoob, PW.3 also stated in his examination-in-chief that on the next day of occurrence, he visited Police Station Ghazi Abad in connection with personal affair where he identified all the accused persons of this case but even then he did not make statement regarding the above mentioned fact to the police on the said day and made his statement before the police for the first time on 22.01.2010. No plausible explanation has been given by the said witness for remaining mum for such a long period. It is also noteworthy that the statement of Muhammad Yaqoob, PW.3 is in conflict with the medical evidence produced by the prosecution in this case. Dr. Liaqat Ali, APMO (PW.10) conducted postmortem examination on the dead body of Muhammad Hashir, deceased on 08.12.2009. According to his opinion the time that elapsed between the injuries and death was immediate and the time that elapsed between the death and postmortem examination was six to twelve days meaning thereby that the death of Muhammad Hashir, deceased took place between 26.11.2009 to 02.12.2009 whereas according to the statement of Muhammad Yaqoob, PW.3, Muhammad Hashir, deceased was thrown in the canal by Saqib Ali, appellant and his co-accused on 16.11.2009 and as such there is difference of ten days regarding the date of death as given by Muhammad Yaqoob, PW.3 and the Medical Officer (PW.16).

12. Moreover, Muhammad Yaqoob, PW.3 did not state that he saw Saqib Ali, appellant and his co-accused while throwing dead bodies of the minors in the canal rather he stated that he saw the appellant and his co-accused while throwing two children in the canal. His examination-in-chief in this respect reads as under:-

“Stated that on 16.11.2009, I was proceeding to obtain an installment from cavalry ground to Harbanspura at about 10:00/11:00pm alongwith Tariq Hussain, my friend. When we were crossing Harbanspura Bridge, we saw a vehicle in which a girl was sitting, **we saw Saqib, Atif and Iftikhar accused present in the Court throwing two children in the canal.** Next day I visited Police Station Ghazi Abad in connection with a personal affair, there was a panchait and there we found out that panchait was regarding missing of two children who allegedly were thrown in the canal. There I identified all the three accused present in the Court. I prior to that did not have any acquaintance with complainant of the case and I told him what I saw the preceding night.”

(Bold and underlining supplied for emphasis).

It is, therefore, evident from the statement of Muhammad Yaqoob, PW.3 that he saw the appellant and his co-accused while throwing two children in the canal and not their dead bodies. On the other hand, according to the medical evidence furnished by Dr. Liaquat Ali, APMO, PW.10, there were five injuries on the body of Muhammad Hashir, deceased which were ante mortem and bones under injuries No.1 to 4 were also found to be fractured meaning thereby that Muhammad Hashir, deceased was murdered before throwing his dead body in the canal but as mentioned earlier Muhammad Yaqoob, PW.3 did not state that the appellant and his co-accused threw the dead body of any minor in the canal or the minors were thrown in injured condition in the canal and as such

the evidence of Muhammad Yaqoob, PW.3 is in conflict with the medical evidence of the prosecution. Under the circumstances, the ocular evidence produced by the prosecution through Muhammad Yaqoob, PW.3 is not worthy of reliance and the same has rightly been disbelieved by the learned trial Court in paragraph No.26 of the impugned judgment.

13. Insofar as the circumstantial evidence produced in this case is concerned, it is by now well settled that in a case of circumstantial evidence, utmost care and caution is required for reaching at a just decision of the case. In such like cases every circumstance should be linked with each other and it should form such a continuous chain that its one end touches the dead body and other to the neck of the accused but if any link in the chain is missing then its benefit must go to the accused. In this regard, guidance has been sought from the judgments of the Apex Court of the country reported as 'Ch. Barkat Ali vs. Major Karam Elahi Zia and antoher' (1992 SCMR 1047), 'Sarfraz Khan Vs. The State' (1996 SCMR 188) and 'Asadullah and another vs. The State' (PLJ 1999 SC 1018). In the case of Ch. Barkat Ali (supra), the august Supreme Court of Pakistan, at page 1055, observed as under:-

'...Law relating to circumstantial evidence that proved circumstances must be incompatible with any reasonable hypothesis of the innocence of the accused. See 'Siraj vs. The Crown' (PLD 1956 FC 123). In a case of circumstantial evidence, the rule is that no link in the chain should be broken and that the circumstances should be such as cannot be explained away on any hypothesis other than the guilt of the accused.'

In the case of **Sarfraz Khan** (supra), the august Supreme Court of Pakistan, at page 192, held as under:-

7....It is well settled that circumstantial evidence should be so inter-connected that it forms such a continuous chain that its one end touches the dead

body and other to the neck of the accused thereby excluding all the hypothesis of his innocence.'

Further reliance in this context is placed on the case of 'Altaf Hussain vs. Fakhar Hussain and another' (2008 SCMR 1103) wherein, at page 1105 it was held by the Hon'ble Supreme Court as under:-

7....Needless to emphasis that all the pieces of evidence should be so linked that it should give the picture of a complete chain, one corner of which should touch the body of the deceased and other corner to the neck of the accused. Failure of one link will destroy the entire chain.'

14. Keeping in view the parameters, laid down in the above-mentioned judgments, I proceed to discuss separately, every piece of the prosecution circumstantial evidence produced in this case.

15. The prosecution circumstantial evidence is based on the following pieces of evidence:

- i) Last seen evidence;
- ii) Recoveries of last worn clothes and other articles of both the deceased;
- iii) Pointation of the place of occurrence by the appellant;
- iv) Motive;
- v) Medical evidence.

i) Last seen evidence:

It is noteworthy that Muhammad Azam Butt, complainant (PW.5) while lodging the FIR did not level the allegation that he saw the appellant while taking away his two minor sons (Muhammad Ahmad and Muhammad Hashir) out of his house. He only alleged that on 16.11.2009 at about 6:00 P.M., Saqib Ali, appellant, who was his (complainant's) brother-in-law came to his (complainant's) house and kept on playing with his above

mentioned sons. He (complainant) further stated that Saqib Ali, appellant remained in his house for 2/3 hours and thereafter, he left his house. After half an hour from the departure of the appellant from the complainant's house, the minor sons of the complainant also disappeared from the said house. The complainant expressed his suspicion that his sons were abducted by Saqib Ali, appellant. It is, therefore, evident that the complainant had not seen the appellant while taking away his minor sons from his house. The last seen evidence was produced by the prosecution through Roheel Ahmad, PW.11 and Atif Mehmood, PW.12. Both the above mentioned witnesses stated that on 16.11.2009, Saqib Ali, appellant brought one minor boy to the house of Roheel Ahmad, PW.11 so that he may play with his goats and thereafter the appellant left the above mentioned house, however, after sometime, Saqib Ali, appellant came back to the said house and took the minor boy with him.

Insofar as the evidence of Roheel Ahmad, PW.11 is concerned, I have noted that cross-examination on the said prosecution witness on behalf of Saqib Ali, appellant was reserved on 06.07.2013. He appeared before the learned trial Court on some subsequent dates of hearing but thereafter he statedly left for Saudi Arabia, therefore, his statement could not be subjected to cross-examination. His bail-able warrants of arrest were repeatedly issued by the learned trial Court and eventually his non-bail-able warrants of arrest were issued vide order dated 15.04.2015 but he did not appear before the Court for cross-examination. There is no order of the learned trial Court to close the right of cross-examination of Saqib Ali, appellant on Roheel Ahmad, PW.11. It is by now well settled that the statement of a witness which is not subjected to cross-examination is inadmissible in evidence and the same is of no legal effect, therefore, no benefit could be extended to the prosecution on the basis of examination-in-chief recorded in this case of Roheel Ahmad, PW.11. Reference in this respect is made to

the cases reported as “Pir Mazharul Haq and others Vs. The State through Chief Ehtesab Commissioner, Islamabad” (PLD 2005 Supreme Court 63) and “Jan Sher Khan Vs. The State” (2013 MLD 1554).

Insofar as the evidence of Atif Mehmood, PW.12 is concerned, I have noted that the said witness stated that on 16.11.2009, he lastly saw Saqib Ali, appellant in the company of a minor boy to whom he later on recognized with the help of his snaps as Muhammad Hashir (deceased) but he made statement before CIA Police on 02.01.2010. There is delay of one month and seventeen days in making the statement of above mentioned prosecution witness before the police. Learned counsel for the complainant argued that Atif Mehmood, PW.12 was not known to the complainant and he was resident of the locality of the appellant, therefore, he had no information regarding the abduction or murder of minor sons of the complainant and as such the above mentioned delay in making the statement by Atif Mehmood, PW.12 before CIA Police is not fatal to the prosecution case. There is no substance in the above mentioned argument of learned counsel for the complainant because I have noted that Atif Mehmood, PW.12 has admitted during his cross-examination that his affidavit Ex.DD bears his signature. The perusal of affidavit Ex.DD shows that the same was sworn by Atif Mehmood, PW.12. In the said affidavit, Atif Mehmood, PW.12 deposed that Saqib Ali, appellant is absolutely innocent. Atif Mehmood, PW.12 further deposed in the said affidavit that Muhammad Azam Butt, complainant had lodged a false and fabricated case against Saqib Ali, appellant regarding abduction of his two sons. The backside of affidavit Ex.DD shows that the same was issued on 19.11.2009. The perusal of the above mentioned affidavit shows that Atif Mehmood, PW.12 was in the knowledge of the occurrence on 19.11.2009 but he made statement regarding last seen evidence before CIA police for the first time on 02.01.2010. Although, it is next argued by learned counsel for the

complainant that Atif Mehmood, PW.12 has explained that affidavit Ex.DD was got executed from him under the pressure of ‘*Mohallahdars*’ but the fact remains that the present occurrence was in the knowledge of Atif Mehmood, PW.12 on 19.11.2009 but he remained silent for a period of one month and thirteen days from the date of swearing of his affidavit Ex.DD and made his statement before the police for the first time regarding last seen evidence on 02.01.2010. He did not give any reason for remaining mum for such a long period. Learned counsel for the appellant next argued that Muhammad Azam Butt, complainant (PW.5) was a journalist by profession and he was working in the daily Express News and ‘Express News Channel’, therefore, under his pressure, Atif Mehmood, PW.12 was arrested in this case as a suspect who gave false evidence of last seen against the appellant under the pressure of the police and the complainant. The said contention of learned counsel for the appellant is supported by the statement made by Atif Mehmood, PW.12 during his cross-examination who candidly conceded that on 02.01.2010 (the date when statement of the said witness was recorded by the CIA police), he (PW.12) was in police custody and being interrogated in this case. The relevant part of his statement reads as under:-

“It is correct that on 02.01.2010, I was in police custody and being interrogated in this case. My ‘Behnoi’ Tariq constable came at CIA staff only to inquire why I was arrested. I was not guilty, therefore, I was released. It is incorrect to suggest that said Tariq was a Guarantor that I shall depose in the Court according to the desire of police. It is incorrect to suggest that to own the guarantee of my ‘Behnoi’ Tariq, I deposed falsely.”

It is, therefore, evident that Atif Mehmood, PW.12 was himself interrogated in this case as a suspect and he was under police custody when he made statement against the appellant on

02.01.2010. I am, therefore, of the view that it is not safe to rely upon the above mentioned evidence of last seen produced by the prosecution through Roheel Ahmad, PW.11 and Atif Mehmood, PW.12.

ii) Recoveries of last worn clothes and other articles of both the deceased.

Abdul Basit, PW.4 is the witness of recovery of last worn clothes of Muhammad Ahmad and Muhammad Hashir, deceased on the pointation of Saqib Ali, appellant. He stated that on 28.12.2009, Saqib Ali, appellant led to the recovery of pent (P-1), shirt (P-2), Jogger (P-3), high neck T-shirt blue colour (P-4) belonging to Muhammad Ahmad, deceased and also got recovered shoes (P-5) and feeder (P-6) belonging to Muhammad Hashir, deceased which were taken into possession vide recovery memo Ex.PC. As mentioned earlier, according to the evidence of Dr. Liaqat Ali, APMO (PW.10), there were five injuries on the body of Muhammad Hashir, deceased and bones under injuries No.1 to 4 were also found to be broken meaning thereby that multiple grievous injuries were inflicted on the body of Muhammad Hashir, deceased before his death which must have resulted into profused bleeding but neither in the statement of Abdul Basit, PW.4 nor in the recovery memo Ex.PC, it is mentioned that any of the above mentioned recovered clothes/articles was stained with blood. It is also noteworthy that the appellant has been acquitted from the charges of abduction and murder of Muhammad Ahmad, deceased by the learned trial Court and no appeal has been filed by the State or the complainant against the acquittal of the appellant from the said charges, therefore, the recovery of pent (P-1), shirt (P-2), Jogger (P-3), high neck T-shirt blue colour (P-4) belonging to Muhammad Ahmad, deceased allegedly recovered on the pointation of Saqib Ali (appellant), is of no avail to the prosecution.

Insofar as the recovery of shoes (P-5) and feeder (P-6) belonging to Muhammad Hashir, deceased is concerned, the said

articles were not mentioned by the complainant in his complaint Ex.PA. In complaint Ex.PA, the complainant alleged that his minor son Muhammad Hashir, deceased was wearing trouser suite of sky blue colour and pink jacket and although the said clothes have been shown to be recovered in the recovery memo Ex.PC but the recovery witness, namely, Abdul Basit (PW.4) while appearing in the witness box did not state that any sky blue colour trouser suit or pink jacket of Muhammad Hashir, deceased were recovered on the pointation of the appellant.

In the light of above, the recoveries of shoes (P-5) and feeder (P-6) of Muhammad Hashir deceased on the pointation of the appellant are inconsequential for the prosecution. The learned trial Court has also rightly disbelieved the prosecution evidence qua the recovery of last worn clothes/articles of the deceased on the pointation of the appellant in Paragraph No.29 of the impugned judgment.

iii) Pointation of place of occurrence by the appellant.

Abdul Basit, PW.4 stated that on 28.12.2009, Saqib Ali, appellant pointed out the place of occurrence of throwing Muhammad Ahmad and Muhammad Hashir, deceased in the canal but no incriminating material had been recovered on account of the said pointation, therefore, the above mentioned piece of evidence is not sufficient to convict the appellant.

iv) Motive

The prosecution evidence qua the motive has been produced through Muhammad Azam Butt, complainant (PW.5). He stated that Saqib Ali, appellant was posing himself as a fake 'Peer' (Saint) and he (appellant) used to entice his (complainant's) family members, therefore, he (complainant) forbade him from doing do and due to the said grudge, the appellant committed murder of two minor sons of the complainant. It is noteworthy that as per prosecution case, it was Muhammad Azam Butt, complainant who

forbade Saqib Ali, appellant from posing himself as a fake 'Peer' and enticing away his family members. It is not the prosecution case that the minor children of the complainant, namely, Muhammad Ahmad, aged about five years and Muhammad Hashir, aged about three years, ever forbade the appellant from posing himself as a fake 'Peer'. If, for the sake of arguments the motive of the prosecution is presumed to be correct then it was Muhammad Azam Butt, complainant (PW.5) who should have been the prime target of Saqib Ali, appellant because even, according to the prosecution case itself, the appellant had no grudge against the minors Muhammad Hashir and Muhammad Ahmad, therefore, there was no reason with the appellant to commit their murder. It is further noteworthy that Muhammad Azam Butt, complainant (PW.5) also stated in his examination-in-chief that his family members were enticed by the appellant while posing himself as a fake 'Peer' but he did not name any such person who was enticed away by the appellant. No family member of the complainant appeared during the course of investigation or before the learned trial Court in support of the above mentioned motive alleged by the complainant. In the light of above, I hold that the motive alleged by the prosecution has not been proved in this case and the same was rightly disbelieved by the learned trial Court in paragraph No.25 of the impugned judgment.

v) Medical evidence

The medical evidence in this case was produced by Dr. Liaqat Ali, APMO (PW.10), who conducted postmortem examination on the dead body of Muhammad Hashir, deceased on 08.12.2009. He noted five injuries on the body of Muhammad Hashir, deceased and it was further observed that there were fractures of bones under injuries No.1 to 4. According to his opinion, the above mentioned injuries were ante mortem and injuries No.1 to 4 were sufficient to cause death in the ordinary course of nature. The time that elapsed between the injuries and

death was immediate and the time that elapsed between the death and postmortem examination was six to twelve days meaning thereby that death of Muhammad Hashir, deceased took place between 26.11.2009 to 02.12.2009. According to his opinion, the injuries were inflicted on the body of Muhammad Hashir, deceased by blunt means. As noted in Para No. 12(ii) of this judgment, there was conflict between the medical evidence and the ocular account of the prosecution produced through Muhammad Yaqoob, PW.3. It is further noteworthy that according to the opinion of the Medical Officer, the injuries on the body of Muhammad Hashir, deceased were caused by blunt means but no weapon has been recovered from the possession of the appellant. It is therefore, evident that the medical evidence has not supported the prosecution case. Moreover, it is by now well settled that medical evidence is a type of evidence which tells about the probable time of death, the kind of injuries, kind of weapon used in the occurrence but it would not identify the assailant. Reliance in this respect may be placed on the judgments reported as 'Muhammad Tasaweer Vs Hafiz Zulkarnain and 2 others' (PLD 2009 SC 53), 'Altaf Hussain Vs Fakhar Hussain and another' (2008 SCMR 1103) & 'Mursal Kazmi alias Qamar Shah and another Vs The State' (2009 SCMR 1410).

16. I have considered all the aspects of this case and have come to this irresistible conclusion that the prosecution evidence is full of doubts. It is by now well settled that if there is a single circumstance which creates reasonable doubt regarding the prosecution case, the same is sufficient to give benefit of doubt to the accused, whereas, the instant case is replete with number of circumstances which have created serious doubts about the truthfulness of the prosecution story.

In the case of, 'Tariq Pervez Vs. The State' (1995 SCMR 1345), the Hon'ble Supreme Court of Pakistan, at page 1347, was pleased to observe as under:-

“5.....The concept of benefit of doubt to an accused person is deep-rooted in our country. For giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right.”

The Hon’ble Supreme Court of Pakistan while reiterating the same principle in the case of “Muhammad Akram Vs. The State” (2009 SCMR 230), at page 236, observed as under:-

“13.....It is an axiomatic principle of law that in case of doubt, the benefit thereof must accrue in favour of the accused as matter of right and not of grace. It was observed by this Court in the case of Tariq Pervez v. The State 1995 SCMR 1345 that for giving the benefit of doubt, it was not necessary that there should be many circumstances creating doubts. If there is circumstance which created reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of doubt not as a matter of grace and concession but as a matter of right.”

In the case of, “Muhammad Mansha Vs. The State” (2018 SCMR 772), the Hon’ble Supreme Court of Pakistan, at page 778, was pleased to observe as under:-

“4.....Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxima, “it is better that ten guilty persons be acquitted rather than one innocent person be convicted”

17. In the light of above discussion, I **accept Criminal Appeal No.671 of 2016** filed by Saqib Ali (appellant), set aside his conviction and sentence recorded by the learned Additional Sessions Judge, Lahore *vide* impugned judgment dated 09.03.2016 and acquit him of the charges under Sections 302(b) & 364-A PPC by extending him the benefit of doubt. Saqib Ali (appellant) is in custody, he be released forthwith, if not required in any other case.

18. Insofar the criminal revision *i.e.*, **Crl. Revision No.839 of 2016**, filed by Muhammad Azam Butt (complainant) for enhancement of sentence, awarded by the learned trial Court against Saqib Ali (appellant) from imprisonment for life to death is concerned, I have already disbelieved the prosecution evidence due to the reasons mentioned in paragraph Nos.11 to 17 of this judgment and Saqib Ali (appellant) has been acquitted by this Court due to the reasons, mentioned therein, therefore, this criminal revision being devoid of any force is hereby **dismissed**.

(Malik Shahzad Ahmad Khan)
Judge

Approved for reporting

(Malik Shahzad Ahmad Khan)
Judge

Farman Ali